

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. 512)

16 DE Admin. Code 11002.9

FINAL

ORDER

Child Care Subsidy Program, Definitions and Explanation of Terms, Definition of Relative

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, Definitions and Explanation of Terms. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the September 2013 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced September 30, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Definitions and Explanation of Terms in the context of the Child Care Subsidy Program, specifically, the definition of Relative.

Statutory Authority

45 CFR Part 98, Child Care and Development Fund

Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining "overall responsibilities" for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

Summary of Proposed Changes

DSSM 11002.9, Definition and Explanation of Terms, is amended to clarify the definition of "relative" for child care certificate approvals. The current definition is vague and leads eligibility determination workers to the Delaware Temporary Assistance for Needy Families (TANF) policy definitions. The proposed rule change is intended to ensure that eligible relatives provide authorized child care services.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The summary of proposed changes states that the current definition is vague and leads eligibility determination workers to the Delaware Temporary Assistance for Needy Families (TANF) policy definitions. The proposed rule change is intended to ensure that eligible relatives provide authorized child care services. The proposed regulation was published as 17 DE Reg. 289 in the September 1, 2013 issue of the *Register of Regulations*. SCPD has the following observations.

First, the new reference to "step-relatives" could be interpreted in different ways:

- A. All step-relatives (even step-cousins and step-parents) qualify as a "relative"; or
- B. Only step-grandparents, great-grandparents, aunts, uncles and siblings qualify.

This is confusing.

Second, the definition omits persons related by adoption. Compare 45 C.F.R. §98.2(definition of "eligible child care

provider), which reads, in pertinent part, as follows:

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;...

See also analogous references to "natural, legal, adoptive, step" relatives in 16 **DE Admin. Code** §11003.9.3 and definition of parent in §11002.9 covering "natural, adoptive, and step" relatives.

Third, based on the above excerpt from 45 C.F.R. §98.2 (definition of "eligible child care provider"), SCPD surmises that a "relative" must be an adult. The definition in the proposed regulation only requires a sibling to be an adult. An aunt or uncle could be under 18 years of age in the State regulation.

Based on the above observations, DSS could consider the following alternative:

Relative: An adult who is by marriage, blood relationship, or court decree, the grandparent, great grandparent, sibling, aunt or uncle of the child receiving care.

Fourth, the Division may wish to consider amending its definition of "parent" and adding a definition of "in loco parentis" in a future proposed regulation. Consider the following:

The federal definition of "parent" (45 C.F.R. §98.2) includes a "legal guardian" and "other person standing in loco parentis":

Parent means a parent by blood, marriage, or adoption and also means a legal guardian, or other person standing in loco parentis.

In contrast, the DSS definition of "parent" in §11002.9 omits guardians and other persons standing in loco parentis:

Parent: The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

Moreover, another federal regulation requires the State to specifically adopt a definition of "in loco parentis". See 45 C.F.R. §98.16(f)(9).

Agency Response: DSS appreciates your recent comments regarding the proposed revision of the relative care definition in the Division of Social Services (child care policy) Manual.

The proposed definition of "Relative" is revised as follows: An adult who is by marriage, blood relationship, or court decree, the grandparent, great grandparent, sibling, aunt or uncle of the child receiving care.

You recommend that in a future policy change DSS consider amending the definition of parent to include in loco parentis. The division will consider this for a future change.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the September 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Definitions and Explanation of Terms in the context of the Child Care Subsidy Program, specifically, the definition of Relative is adopted and shall be final effective November 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER #13-43

11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

Authorization	Form 618d or 626 is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.
Caregiver/Provider	The person(s), other than the parent/caretaker, whom DSS approves to provide child care services or the approved place where care is provided.
Caretaker	The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.

CCDBG	Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without state match to: <ol style="list-style-type: none"> 1. Provide child care to low income families 2. Enhance the quality and increase the supply of child care 3. Provide parents the ability to choose their provider 4. Increase the availability of early childhood programs and before and after school services. Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41
CFR	Code of Federal <i>Regulations</i> . These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.
CCMIS	Child Care Management Information System, the name used to describe the Division's payment system for child care.
Child	A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or are in need of protective services.
Child Care Category	The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are: <ol style="list-style-type: none"> 11 - Participants receiving TANF and not working, but participating in TANF E&T 12 - Participants receiving TANF and working 21 - Participants receiving Food Stamps Benefits who are mandatory or voluntary participants in E&T and not receiving TANF 31 - SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary 41 - A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or non-qualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.) 51 - A participant is coded category 51 when s/he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41
Child Care Centers	A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 13 or more children, who are unattended by a parent or guardian.
Child Care Certificate	A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but parents who wish to select a non-contracted provider of their choice cannot get care unless the provider completes one.
Child Care Parent Fee	The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.
Child Care Services	Those activities that assist eligible families in the arrangement of child care for their children.
Child Care Type	Refers to the setting or place where child care is provided. The four types of care are: <ol style="list-style-type: none"> 1. Center based (under DCIS II Child Care Sub system Site #17 or 18) 2. Large Family Home (under DCIS II Child Care Sub system Site #16) 3. Family Home (under DCIS II Child Care Sub system Site #15) 4. In-Home (under DCIS II Child Care Sub system Site #19)
Children From Low Income Families	Children in families whose income is less than 200% of the Federal Poverty Limit (FPL).
DCIS II	Delaware Client Information System, the automated client eligibility system for the Department of Health and Social Services.

Educational Program	<p>Educational Program - A program of instruction to achieve:</p> <ol style="list-style-type: none"> 1. A basic literacy level of 8.9; 2. Instruction in English as a second language; 3. A GED, Adult Basic Education (ABE), or High School Diploma; 4. Completion of approved special training or certificate courses; 5. A post-secondary degree where the degree is part of an approved DSS Employment and Training program. <p>The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associate's degree may be attained if it leads to a bachelor's degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.</p>
Employment	<p>Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to minimum wage or an equivalent. It also includes periods of up to three months of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.</p>
Family Child Care Home	<p>A private residence other than the child's residence, where licensed care is provided for one to six children who are not related to the caregiver.</p>
Family Size	<p>The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.</p>
Food Benefit Employment and Training	<p>The program by which certain unemployed mandatory and/or voluntary Food Benefit recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Benefit Employment & Training. Under the Division's DCIS II Child Care Sub system, this is Category 21.</p>
Income	<p>Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.</p>
Income Eligible	<p>A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.</p>
Income Limit	<p>The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.</p>
In-Home Care	<p>Care provided for a child in the child's own home by either a relative or non-relative, other than the parent/caretaker, where such care is exempt from licensing requirements. Care is limited to the child(ren) residing in the household. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements and is also limited to the children of one household.</p>
Job Training/Training	<p>A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Benefit Employment & Training (FB E&T) contracted programs; WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.</p>
Large Family Child Care Home	<p>A licensed child care service provided for part of a twenty-four (24) hour day, offered by any person or entity including but not limited to an owner, association, agency or organization that advertises or holds himself, herself or itself out as conducting such a service. This person or entity has in custody or control seven (7) to a maximum of twelve (12) children preschool-age or older who live at and/or are present at the Large Family Child Care Home. In addition to the children preschool-age or younger, this person or entity may also have custody or control of one (1) to a maximum of two (2) school-age children who do not live at the Large Family Child Care Home but are present only for before and after school, and/or during school holidays, and/or during the summer. All of these children are provided care, education, protection, supervision or guidance in a private home or non-residential setting. This does not include a child care service provided exclusively to relatives as defined by these rules.</p>
Legal Care	<p>Care which is either licensed or exempt from licensing requirements.</p>
Parent	<p>The child's natural mother, natural legal father, adoptive mother or father, or step-parent.</p>

Parental Choice	The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.
Physical or Mental Incapacity	A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.
Protective Services	The supervision/placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.
Purchase of Care Plus (POC+)	Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee, if applicable, and any additional provider-determined co-pay.
Reimbursement Rates	The maximum dollar amount the State will pay for child care services.
Relative	[Grandparents, great grandparents, aunts, uncles, brothers, sisters, adult brother or sister, cousins, and any other relative as defined by TANF policy, including step relatives, as they are related to the child. An adult who is by marriage, blood relationship, or court decree, the grandparent, great grandparent, sibling, aunt or uncle of the child receiving care.]
Residing With	Living in the home of the parent or caretaker.
Seamless Services	To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.
Self-Arranged Care	Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.
Self-Initiated	Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Benefit Employment & Training (FB E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.
Special Needs Child	A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the authority to do so.
Special Needs Parent/ Caretaker	An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the authority to do so.
SSBG	Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.
TANF	Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).
TANF Child Care	The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.
Technical Eligibility	Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.
Verification	Written or oral documentation, demonstrating either need for service or sources of income.
Work Force Investment Act (WIA)	Federal Legislation that consolidates Employment and Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

16 DE Reg. 78 (07/01/12)

16 DE Reg. 1276 (06/01/13)

17 DE Reg. 526 (11/01/13) (Final)

