

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

FINAL

ORDER

Purchase of Care (POC) - Licensed Exempt Providers

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding. 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 February 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 3, 2017 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 purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers receiving Purchase of Care (POC) funding.*

Statutory Authority

- Pub. L. 113-186; *Child Care and Development Block Grant (CCDBG) Act of 2014*
- 42 USC §9858; *Child Care and Development Block Grant, authorization of appropriations,*
- §418 of the Social Securities Act (42 USC §618); *Funding for child care*
- 45 CFR 98; *Child Care and Development Fund*
- 81 FR 67438; *Federal Register Child Care Development Fund*

Background

On November 19, 2014, President Barack Obama signed the (Pub. L. 113-186) into law. The Child Care and Development Block Grant (CCDBG) Act authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children. The CCDBG Act includes provisions to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce. The law requires providers receiving CCDF funds (including those that are license-exempt) to be monitored, at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Among other things, the law allows agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and to exempt relative caregivers from the monitoring requirement, if the agency chooses to do so.

The 2016 Child Care and Development Fund Final Rule updates regulations to incorporate, and in some cases clarify, changes made through the Child Care and Development Block Grant Act of 2014. The rule applies to states, territories and tribes administering CCDF and incorporates and clarifies changes made through the bipartisan CCDBG Act. It also is reflective of helpful comments received on the Notice of Proposed Rulemaking (NPRM) published in December 2015. Throughout the final rule, ACF responds to the more than 150 comments received during the public comment period and makes changes where appropriate. Where possible, it also aligns child care requirements with new Head Start regulations, including certain requirements for background checks and health and safety trainings for staff.

Summary of Proposal

DSS published this proposed regulation in the December 2016 Delaware *Register*. These regulations were erroneously

published under the Division of Medicaid and Medical Assistance. In order to promote transparency and ensure that all applicable parties have an opportunity to participate in the public comment process, DSS has chosen to republish these regulations for further public review and comment.

Purpose

To revise language in the Delaware Social Services Manual (DSSM) so as to be compliant with changes in the Child Care and Development Fund Final Rule. The final rule requires that all providers who serve children receiving CCDF funding be trained in all health and safety topics and be inspected annually by qualified licensing inspectors. In order to comply with this new regulation the state of Delaware will now require all license exempt providers who serve children receiving CCDF funding to become licensed through the Office of Child Care Licensing. Relative Care providers will remain exempt.

Summary of Proposed Changes

If implemented as proposed, the amendment to the DSSM will accomplish the following, effective April 11, 2017:

Modify DSSM 11004.4.1, Explanation of Certificates, and DSSM 11004.9, Authorizing Child Care Services, to align with the final rule.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the Delaware Social Services Manual provisions regarding Purchase of Care Licensing Requirements. Comments must be received by 4:30 p.m. on March, 3 2017.

Fiscal Impact Statement

Reauthorization of the Child Care Development Block Grant is requiring that child care providers that receive purchase of care funding to become licensed. A revision of current policy in regards to licensed exempt providers will be required. This is a revision of our current policies and will not require additional funding.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD), Governor's Advisory Council for Exceptional Citizens (GACEC), and State of Delaware Department of Children, Youth, and Their Families offered the following summarized observations:

One significant change is curtailing the scope of providers exempt from licensing. Persons who come into the child's home and relatives who provide care in their own homes remain exempt from licensing. However, the following entities would no longer be exempt: (1) public or private school care; (2) preschools and kindergarten care; and (3) before and after school care programs.

DSS recites that "(t)he final rule requires that all providers receiving Purchase of Care (POC) funding must now be licensed, including those that were previously license exempt, in order to continue receiving POC funding." The accuracy of this recital which, read literally, would disallow the exemption of persons coming into a child's home and relatives providing care in their homes, could not be verified. The federal regulations (§§98.2 and 98.40) do not categorically require Delaware to remove the current licensing exemption of the above 3 types of entities. However, §98.40 does require DHSS to describe the rationale for any exemptions in its Plan. The regulation does not provide the rationale for retaining the exemption for persons coming into a child's home and relatives who provide care in their home apart from a bare listing of some health and safety standards. A second change is deletion of an authorization category of "double time (D) which is two days". The specific rationale for this change is also not provided.

First, the regulation could be improved by including the rationale for retaining the 2 exemptions in §11004.4.1 consistent with the attached federal §98.40.

Agency Response: The Division of Social Services (DSS) appreciates the comment regarding the fact that the proposed regulation does not provide the rationale for retaining the exemption for persons coming into a child's home and relatives who provide care in their home. We would like to begin by clarifying that the final rule does not require that license exempt providers that serve children receiving CCDF funding become licensed. The final rule requires an annual inspection of all license exempt providers who serve children receiving CCDF funding; and that all licensing inspectors conducting these annual inspections should be qualified to do so. We as a state proposed that the only way to comply with the new regulations was to require that all exempt providers become licensed. The final rule exempts Relative Care Providers; therefore Delaware exempts Relative Care Providers. These providers are however required to receive 28 hours of training which includes pre-service training. This training includes topics such as "safe sleep", "CPR/First Aid", "Child Development", etc. Relative Care providers have 12 months to complete the required 28 hours of training and must complete 3 hours of health and safety training annually. This training is facilitated by the University of Delaware Institute for

Excellence in Early Childhood. Relative Care Providers, which includes providers who come into a child's home to provide care, and are monitored by the Purchase of Care Child Care Monitors.

Monitoring requirements. Section 658E(c)(2)(K) of the CCDBG Act requires that Lead Agencies conduct monitoring visits for all child care providers receiving CCDF funds, including license-exempt providers (except, at Lead Agency option, those that only serve relatives).

Second, it is recommended that DSS resolve the inconsistency between reciting that "all providers receiving Purchase of Care (POC) funding must now be licensed...." and still exempting 2 classes of providers.

Agency Response: DSS appreciates the comment regarding the ambiguity of the above statement and has revised the summary to read as follows: "The final rule requires that all providers who serve children receiving CCDF funding be trained in all health and safety topics and be inspected annually by qualified licensing inspectors. In order to comply with this new regulation the state of Delaware will now require all license exempt providers who serve children receiving CCDF funding to become licensed through the Office of Child Care Licensing. Relative Care providers will remain exempt."

Third, it is recommended that DSS provide the rationale for deleting the authorization category "double time (D) which is two days".

Agency Response: DSS appreciates this comment. The double time code was originally intended for providers who kept children for a 24 hour period. As this practice would now be a violation of licensing regulation DSS removed the code from its eligibility system.

Fourth, there will be a financial impact, sometimes significant, on a prospective applicant to become a licensed child care provider. While the Office of Child Care Licensing imposes no fees, the licensing application process requires the applicant to obtain certain state and/or local certifications for which another agency may charge a fee.

Agency Response: DSS appreciates the Department's comment regarding financial impact of this new regulation on prospective applicants. While there may be some financial impact, the final rule will not result in a significant economic impact on a substantial number of small entities. To date there are a total of 18 License Exempt providers that would be effected. The primary impact of the Act and this final rule is on the State because the rule articulates a set of expectations for how grantees are to satisfy certain requirements of the Act. The health and safety provisions in the rule will likely have the most significant impact; however there are some no/low cost options for providers such as DEPDNow and Better Kid Care's Health and Safety Training courses.

Fifth, increased staffing and funding may be required at the Office of Child Care Licensing in order to meet the increased demands for licensure from the previously exempt providers.

Agency Response: DSS appreciates the comment regarding the potential impact of the final rule on your agency's workload and its ability to meet time lines. Currently there are 18 license exempt providers who will be affected by the proposed regulation. At the time of this writing there were 16 Licensing Specialist statewide which means an increase of approximately one provider per specialist.

Sixth, 11001.4.1 (B) states: "All family child care homes and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family, or center child care provider." A specific type of child care is missing from this listing. The Office of Child Care Licensing respectfully suggests the following revision:

"All family child care homes, large family child care homes, and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family or large family child care home, or center child care provider."

Agency Response: DSS appreciates your comment regarding this missing piece of information and agrees to revise this statement to read as follows: "All family child care homes, large family child care homes, and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family or large family child care home, or center child care provider."

Seventh, in 11001.4.1 (C) this regulation revision proposes eliminating types of providers who are exempt from licensing requirements in Delaware. DHSS does not have the authority to determine which individuals or entities are required to be licensed to provide child care in Delaware; that authority rests with the Office of Child Care Licensing. DHSS may certainly specify that providers who are license-exempt under Office of Child Care Licensing regulations will be required to be licensed in order to receive POC subsidies but DHSS may not dictate the providers who are license exempt. Changing who qualifies for license exempt care.

Also, youth camps are not listed as a license exempt provider type; however they are currently receiving POC funding. Youth camps are currently listed as a license exempt provider type in DELACARE: Regulations for Early Care and Education and School-Age Centers. Is DHSS eliminating POC funding to youth camps or allowing them to receive POC funding if the youth camp is issued an exemption from OCCL and a permit from the Department of Public Health, as currently required by this office's regulations? The Office of Child Care Licensing does not have the regulations or staff to

license, regulate, or monitor youth camps that receive POC funding.

Agency Response: DSS appreciates the Department's comments regarding any confusion about Delaware Health and Social Services' authority where licensed providers are concerned. DHSS is aware that licensing authority rests solely with the Office of Child Care Licensing. DHSS only intended to make the public aware that the Department now requires all exempt providers who serve children receiving CCDF funding to become licensed. This new requirement is a result of the CCDF Final Rule which requires that all providers, who serve children receiving CCDF funding, be trained in specific health and safety topics; and be inspected annually by qualified licensing inspectors. The Department determined that requiring license exempt providers to become licensed was the most prudent way to comply with this new regulation.

DSS appreciates your comment regarding the status of Youth Camps and the final rule. Per the Administration for Children and Families (ACF) Youth camps are not exempt from this final rule, however the state has requested some additional guidance for Delaware regarding the final rule as it pertains to youth camps.

Seventh, 11001.4.1 (C) 6 states: "Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and"

The Office of Child Care Licensing respectfully suggests revising #3 above to include all criminal convictions and civil child abuse and neglect substantiations that prohibit a person under state and federal law as follows:

"3. providers and those 18 and older who live in the home where care is being provided are required to submit to a fingerprinted background check and must not have any prohibited criminal convictions or prohibited child abuse and neglect substantiations as designated under 31 Delaware Code, Section 309, 16 Delaware Code, Section 923 and the Child Care Development Block Grant Act of 2014."

Agency Response: DSS appreciates your comment and suggestion regarding the wording of number #3 under this section and will revise the sentence to read as follows: "providers and those 18 and older who live in the home where care is being provided are required to submit to a fingerprinted background check and must not have any prohibited criminal convictions or prohibited child abuse and neglect substantiations as designated under 31 Delaware Code, Section 309, 16 Delaware Code, Section 923 and the Child Care Development Block Grant Act of 2014."

Eight, 11001.4.1 (E) states: "The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/ Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member."

The Office of Child Care Licensing respectfully suggests revising E above to use the correct name of the form that needs to be returned to DHSS and also delete the last sentence pertaining to "other exempt providers" because in the Summary of Proposal Purpose it states, "The final rule requires that all providers receiving Purchase of Care (POC) funding must now to be licensed, including those that were previously license exempt, in order to continue receiving POC funding." Assuming that DHSS position is as stated in the Purpose (see comment #3), there should not be "other exempt providers."

SUGGESTED REWORDING: E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the ~~Child Abuse/ Neglect History Clearance Form or forms~~ yellow copy of the License Exempt Provider Criminal History and Child Abuse and Neglect Background Check Request form for all ~~members~~ persons 18 and older living in the home. If this form is not returned, discontinue care. ~~Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.~~

Agency Response: DSS appreciates your comment and has revised the regulation to read as follows: "The provider will need to complete and return the original copy of the actual child care certificate before case managers can authorize care. Relative care providers will also complete and return the yellow copy of the License Exempt Provider Criminal History and Child Abuse and Neglect Background Check Request for all persons 18 and older living in the home. If this form is not returned, discontinue care."

DSS is appreciative of these comments. DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding child care licensing requirements, specifically, *to revise the definition of licensed exempt child care providers*

receiving Purchase of Care (POC) funding, is adopted and shall be final effective April 11, 2017.

Kara Odom Walker, MD, MPH, MSHS, Secretary, DHSS
3/17/17

DSS FINAL ORDER #17-015a
REVISION:

11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parents/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or that is exempt from licensing requirements.

B. Licensed Care: ~~In Delaware, all~~ family child care homes **[, large family child care homes]** and child care centers must have a license to operate in Delaware. Do not allow a parent to select an unlicensed family **[or large family child care home]**, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
- ~~3. public or private school care,~~
- ~~4. preschools and kindergarten care, and~~
- ~~5. before and after school care programs.~~

6. Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided **[must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), are required to submit to a fingerprinted background check and must not have any prohibited criminal convictions or prohibited child abuse and neglect substantiations as designated under 31 Delaware Code, Section 309, 16 Delaware Code, Section 923 and the Child Care Development Block Grant Act of 2014;]** and
4. relatives who provide care cannot be part of the welfare grant.

D. Once parents/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parents/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

~~**[E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.]**~~

E. The provider will need to complete and return the original copy of the actual child care certificate before case managers can authorize care. Relative care providers will also complete and return the yellow copy of the License Exempt Provider Criminal History and Child Abuse and Neglect Background Check Request for all persons 18 and older living in the home. If this form is not returned, discontinue care.]

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parents/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parents/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parents/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

I. The client has 60 days from confirmation of eligibility to provide the DSS Case Manager with the name of his/her provider. If the client fails to provide this information his/her case will close.

8 DE Reg. 1153 (02/01/05)

9 DE Reg. 572 (10/01/05)

13 DE Reg. 1088 (02/01/10)

**DSS FINAL ORDER #17-015b
REVISION:**

11004.9 Authorizing Child Care Services

45 CFR 98.11

All child care services must be authorized before parents/caretakers can receive subsidized child care. Parents/caretakers can choose any provider who is: ~~either~~

A. licensed, licensed exempt, or self arranged, and

B. approved to receive purchase of care.

No parent/caretaker can receive POC funds to provide child care services to their own children in a home or any other child care facility where the parent/caretaker provides direct care to that child. These parents may be able to get child care assistance if their children are placed in another child care setting.

Authorizations always start after service has been approved. The exact date is selected by the parent/caretaker. An authorization ends on the last day of the month of the authorization period. At no time can the authorization period exceed the review date. Child care may be authorized only for the days and hours that parents/caretakers need care. The types of care that can be authorized are part time (P), full day (X), and day and a half (T) ~~and double time (D) which is two days~~. All licensed and licensed exempt child care providers can receive up to five (5) absent days, depending on the number of days the child is authorized to attend. Children in self arranged care and children authorized for seven (7) days do not receive absent days.

9 DE Reg. 572 (10/01/05)

14 DE Reg. 182 (09/01/10)

20 DE Reg. 810 (04/01/17) (Final)