

**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 11004

**FINAL**

**ORDER**

**Application Processing and Copay for the Child Care Subsidy Program**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services ("DSS") initiated proceedings to amend the Division of Social Services Manual ("DSSM") regarding Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care ("POC") program, including the process for determining and assigning copayments for families who receive a child care subsidy. 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 August 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2020 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after December 11, 2020 the Department/DSS proposes to amend the DSSM regarding Child Care Subsidy Program specifically, to explain the application processing standards for the POC program, including the process for determining and assigning copayments for families who receive a child care subsidy.

**Statutory Authority**

- 42 U.S.C. 9858
- 42 U.S.C. 618
- 45 CFR 98.20
- 45 CFR 98.21
- 45 CFR 98.45 (k)

**Background**

In 2014, the Child Care and Development Block Grant ("CCDBG") Act was signed into law. The CCDBG Act authorizes the Child Care and Development Fund, which is the primary federal funding source that provides eligible low-income families with child care assistance and improves the overall quality of child care. The CCDBG Act mandates new child care eligibility requirements for states. DSS is proposing to amend DSSM policies 11004.5, 11004.7, and 11004.7.1 to meet the requirements of the CCDBG Act.

DSS revised DSSM 11004.5 to update the case processing procedures for determining eligibility for child care. DSS removed the name of the obsolete eligibility system, DCIS II, and added steps that DSS case workers must complete once child care has been approved, including authorizing cases for 12 months, entering copayments, and notifying families of their eligibility determinations.

DSS revised DSSM 11004.7 to replace the policy on parent fees with a copayment policy to provide guidance on the new copayment structure that was developed for families receiving child care subsidy. Previously, families contributed to the cost of child care by paying a parent fee. Beginning in 2019, DSS transitioned from the parent fee to a copayment model. The revised policy explains how DSS determines a family's copayment and lists reasons DSS will waive a copayment.

DSS revised DSSM 11004.7.1 to replace the obsolete policy on parent fees with a new policy on determining excessive financial burden for families receiving child care subsidy. DSS considers a family to have an excessive financial burden for the POC program when the family's disposable income is below 40% of the Federal Poverty Level prior to or after certain expense deductions. The policy explains the criteria for the excessive financial burden test. DSS will waive child care copayments for families who are determined to have an excessive financial burden.

**Purpose**

The purpose of this proposed regulation is to explain the application processing standards for the POC program, including the process for determining and assigning copayments for families who receive a child care subsidy.

## 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, the Department/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 proposed regulation. Comments were to have been received by 4:30 p.m. on August 31, 2020.

## Fiscal Impact Statement

	Federal Fiscal Year 2018	Federal Fiscal Year 2019	Federal Fiscal Year 2020
General (State) funds	\$ 41,576,384.00	\$ 40,787,434.00	\$ 48,270,561.00
Federal funds	\$ 30,286,639.00	\$ 32,417,140.00	\$ 40,584,489.00

The proposed regulation does have foreseeable fiscal implications. Delaware's cost for child care has increased due to the federal mandate to eliminate the cost of care payment and switch to a copayment model. In addition, DSS now waives copayments for families that are determined to have an excessive financial burden in accordance with proposed policy, DSSM 11004.7.1.

In April 2019, DSS eliminated the excessive financial burden test when determining family copayments for POC. An overall sample size of 78% of DSS child care cases determined that eliminating the excessive financial burden test increased the total amount for family copayments by an average of \$3,095 per month. The new copayment model and the resulting increase to copayment amounts caused a hardship on many families receiving child care subsidy. In October 2019, DSS reinstated the excessive financial burden test to decrease the financial burden on families. This change increased the State's cost by approximately \$65,597 per month.

Another contributing factor to the cost increase for child care is that POC providers received two payment increases in FY 2019. The total amount paid for POC services from July 2019 – January 2020 increased by \$6,702,002 from the same period in FY 2019.

## Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

**Comment:** One commenter suggested that written notices confirming a family's eligibility for the POC program include an explanation of how DSS determined a family's copayment amount.

**Agency Response:** The POC approval, continuance, and change notices are prioritized to be revised to reflect budget details (including deductions) similar to Supplemental Nutrition Assistance Program ("SNAP") notices. Detailed budget information will appear on POC notices after the eligibility system is updated with the new notice format. DSSM 11004.5 (5)(A) will be revised to include an explanation of the budget and copayment information that will appear on POC notices.

**Comment:** One commenter suggested the regulation set out more fully how DSS will determine a family's copayment and explain the sliding fee scale.

**Agency Response:** The sliding fee scale is updated each October to reflect the new POC eligibility income guidelines based on the current Federal Poverty Level and the State Median Income. DSS publishes POC income guidelines and the sliding fee scale in the annual DSS Administrative Notice on Cost of Living Adjustments for Food Benefits, Cash Assistance, and Child Care. This Administrative Notice is available on the DSS website at <https://www.dhss.delaware.gov/dhss/dss/pubs.html>. DSS will also publish the sliding fee scale chart on the DSS Child Care webpage at <https://www.dhss.delaware.gov/dhss/dss/childcr.html>. DSSM 11004.7 will be revised to include the information about the DSS Administrative Notice, as well as to include redeterminations in the Note section of the policy.

**Comment:** One commenter recommended that DSS consider importing a family's financial data from Temporary Assistance for Needy Families, SNAP and/or Medicaid in order to streamline the application and eligibility process.

**Agency Response:** DSS currently uses all applicable, verified information within the eligibility system when determining eligibility for health and social service programs.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by:

- Community Legal Aid Society, INC.

## FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the August 2020 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the Administrative Procedure Act because the amendments are non-substantive pursuant to 29 Delaware Code Section 10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding

Child Care Subsidy Program specifically, to explain the application processing standards for the Purchase of Care program, including the process for determining and assigning copayments for families who receive a child care subsidy, is adopted and shall be final effective December 11, 2020.

11/12/2020  
Date of Signature

Molly K. Magarik  
DHSS Cabinet Secretary

## **POLICY – AMENDMENT**

Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

### **11004.5 Determination of Processing Eligibility for Child Care**

45 CFR 98.20; 45 CFR 98.21

~~DSS programmed the DCIS II Child Care Sub system to make eligibility decisions. As Case Managers enter the appropriate parent/caretaker information, the DCIS II Child Care Sub system will notify Case Managers whether they can proceed to authorize service. As a case is determined either eligible or ineligible, the DCIS II Child Care Sub system will send the appropriate notice to inform the parent/caretaker of the DSS child care eligibility decision. Parents/caretakers, whether eligible or not, will always receive a written decision regarding their official request for child care services. The DSS eligibility system determines if families applying for the Purchase of Care (POC) program are eligible for child care subsidy based on federal and state rules.~~

- 1. DSS case workers will enter a family's financial and technical information into the DSS eligibility system at application, at redetermination, and when a family reports a change in circumstances.**
- 2. DSS case workers will enter child care authorization information into the DSS eligibility system once a child has been determined eligible for the POC program.**
- 3. DSS case workers will authorize eligible children for 12 months of care.**
  - A. An authorization may be set for less than 12 months if the authorization period is requested in writing by:
    - i. The parent or caretaker;
    - ii. A medical professional verifying the length of time child care is required for a special need; or
    - iii. The Delaware Division of Family Services (DFS) verifying the length of time child care is needed to prevent child abuse or neglect.
- 4. DSS case workers will enter the child care copayment amount in the Dependent Care Expense screen of the DSS eligibility system after the copayment has been assigned to each authorization.**
- 5. DSS will send notification to the family of their eligibility and authorization status for the POC program.**
  - A. DSS will send a written [eligibility] notice to the family ~~[to confirm or deny eligibility for the POC program].~~ that will include:
    - i. **The POC eligibility approval or denial determination;**
    - ii. **The family's income budget and expense deductions; and**
    - iii. **The copayment calculation if the family is approved for POC.]**
  - B. DSS will send a letter of authorization for each authorized child to the family. The letter will include:
    - i. The child's name;
    - ii. The child's Master Client Index (MCI) number;
    - iii. The child care provider's name;

- iv. The type of care (full-time, part-time, or time and a half);
- v. The number of days of care; and
- vi. The family's copayment amount.

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

**POLICY – AMENDMENT**  
 Delaware Department of Health and Social Services  
 Division of Social Services  
 Policy and Program Development Unit

**11004.7 Determination Of The Determining Child Care Parent Fee and Fee Waiving Situations Copayments**  
 45 CFR 98.45 (k)

~~Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.~~

~~Child care fees may be waived if the family meets one of the five (5) conditions below.~~

- ~~1. On a case by case basis, families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.~~
- ~~2. Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.~~
- ~~3. Caretakers in Category 31 caring for a child/ children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).~~
- ~~4. When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below 40% of the federal poverty level. Deductions are limited to:
 
  - ~~rent, mortgage, lot rent;~~
  - ~~any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);~~
  - ~~actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fee's and past due amounts are not included.~~
  - ~~telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;~~
  - ~~un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)~~~~

**EXAMPLE:**

~~A family of three has gross monthly income of \$1,300.00. The parent fee for this family would be 16% of the cost of care. The rent payment for this family is \$600/ month. Utility expenses are \$20 for phone and \$165 for electric.~~

Total income per month equals:	\$1,300.00
Total expenses are:	\$785.00
After deductions:	\$515.00

~~\$515.00 is less than \$553.00, 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.~~

**EXAMPLE:**

~~A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/month. Utility expenses are \$20 for phone and \$165 for electric.~~

Total income per month equals:	\$2,203.00
Total expenses are:	\$785.00
After deductions:	\$1,418.00

\$1,418.00 is more than \$666.00, 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

5. ~~Teen parents 18 years old or younger attending high school or a high school equivalent.~~

~~All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.~~

~~As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.~~

DSS determines and assigns copayments for families who receive the Purchase of Care (POC) child care subsidy.

**1. DSS determines copayments for the POC program according to:**

- A. The family's household size;
- B. The family's gross monthly income;
- C. The family's shelter and utility expense deductions; and
- D. A percentage of the family's gross monthly income compared to the Federal Poverty Level (FPL) [guidelines as listed in the current POC sliding fee scale that DSS publishes in the annual October Cost of Living Adjustments Administrative Notice].

**2. DSS will waive the copayment if one of the following conditions applies to a family:**

- A. The family has net income below 40% of the FPL and is determined to have an excessive financial burden in accordance with DSSM 11004.7.1.
- B. The family has gross income at or below 70% of the FPL.
- C. The family is active with and referred by the Delaware Division of Family Services (DFS), including foster care families.
- D. The family is participating in Delaware's Temporary Assistance for Needy Families (TANF) program.
- E. The child receives TANF and is being cared for by a caretaker who is not the child's natural or adoptive parent.
- F. The parent is age 18 or younger and is attending high school or a high school equivalent.

**3. DSS may assign a copayment to a case with a caretaker if the eligible child receives income and does not meet one of the waiver conditions listed in section (2) of this policy.**

**4. DSS will calculate the family's assigned copayment as a monthly amount.**

- A. The copayment will not increase beyond the initial copayment amount during the eligibility period if the family reports an increase in income.
- B. The copayment will decrease during the eligibility period if the family reports a decrease in income.

Note: If a family's copayment decreased during the eligibility period, and then the family reports an increase in income during the same eligibility period, the copayment may increase up to the initial copayment amount assigned at application [or redetermination].

8 DE Reg. 1310 (03/01/05)  
10 DE Reg. 1007 (12/01/06)

**POLICY – AMENDMENT**  
Delaware Department of Health and Social Services  
Division of Social Services  
Policy and Program Development Unit

**11004.7.1 ~~Child Care Parent Fee Scale and Determination of Fee~~ Determining Excessive Financial Burden for Child Care**

45 CFR 98.45 (k)

The assessed child care parent fee is based on family size, family income as a percentage of the poverty scale and the cost of care. The current child care fee scale used to determine the child care parent fee is located in Administrative Notices as the Child Care Sliding Fee Scale Appendix III of the Cost of Living Adjustment Notice.

To arrive at the actual fee, look at the current Child Care Sliding Fee Scale (noted above) and use the following steps.

- A. Determine the family size as outlined in section 11003.9.3.
- B. From the family size column, determine the income range of the parent/caretaker.
- C. At the top of the income ranges are percentages from 0% to 36% all the way up to 190% to 200%. These are the percentages of the federal poverty scale as it relates to family income by family size. It means that a family's income can range between 0% to 36% all the way up to 190% to 200% of the federal poverty scale. Find the appropriate percentage column for your family.
- D. Finally, based on family size and income at that appropriate percentage range, look at the percentages below (these are ranges from 1% to 80%). This is the percentage of the cost of care that this family will pay per child based on the percentage of their income as it relates to the federal poverty level.

Families with income between:

Poverty — percentage ranges — based — on income-	Percentage of the cost of care paid
0% and 36%	1%
36% and 45%	5%
45% and 55%	7%
55% and 65%	8%
65% and 75%	10%
75% and 85%	12%
85% and 95%	14%
95% and 100%	16%
100% and 105%	21%
105% and 115%	23%
115% and 120%	25%
120% and 125%	30%
125% and 135%	32%
135% and 145%	44%
145% and 155%	46%
155% and 160%	48%
160% and 170%	50%
170% and 180%	60%
180% and 190%	70%
190% and 200%	80%

E. Finally, based upon the type of care (i.e., home, center, etc.) a parent/caretaker selects, multiply the percentage of the cost of care by the cost for that type of care. This is the parent fee the parent/caretaker will pay.

This is a per child fee. If more than one child is in care, repeat the calculations for each child, then combine all the per child fees to arrive at the total fee.

**EXAMPLE:** Based upon income and family size, a parent is to pay seven percent of the cost of care for a three year old child in a contracted child care center. If the cost of care for a child over two in a center is \$12.40 per day, multiply \$12.40 by .07, giving the parent a fee of .87 cents per day for that child.

~~NOTE: Use the same rules for determining family size for the child care fee scale as done for determining family size for income. Include all of the family's children under age 18 in the family size even if not all will need child care services. In other words, the people whose needs and income are included together are counted together to comprise the definition of family size. Review Section 11003.9.3 for further guidance.~~

~~DSS programmed the DCIS II Child Care Sub system to do the actual child care parent fee calculation.~~

~~The child care parent fee which shows in the DCIS II Child Care Sub system is the actual amount of care that is authorized. The actual fee the parent/caretaker pays for that child is indicated on the authorization form.~~

DSS determines if a family has an excessive financial burden when establishing the family's copayment for the Purchase of Care (POC) program.

**1. DSS considers a family to have an excessive financial burden for the POC program if the family's net income is below 40% of the Federal Poverty Level (FPL) prior to or after DSS deducts certain household expenses from the family's gross income.**

- A. When determining excessive financial burden, expense deductions are limited to:
  - i. Rent, mortgage, and lot rent;
  - ii. Any mandatory expense required by a landlord or a mortgage holder (e.g., homeowners insurance, property taxes, and school taxes);
  - iii. Current monthly utility expenses (e.g., electric, gas, trash, water, and sewer), excluding late fees and past due amounts;
  - iv. Telephone expenses, which are capped at the same rate as the Food Supplement Program's standard allowance; and
  - v. Unreimbursed medical costs.
    - a. Before ~~considering~~ DSS can consider medical costs as a deduction, a family not already receiving Medicaid or the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or DHCP.
    - b. The DHCP premiums are included in the unreimbursed medical cost deduction.
    - c. DSS will consider any unreimbursed medical costs not covered by Medicaid or DHCP as a deduction to determine the family's income for excessive financial burden.
- B. Case workers must verify all expenses by using:
  - i. The documentation of the actual billed expense;
  - ii. A receipt of payment;
  - iii. A signed lease; or
  - iv. A DSS approved form detailing the expense.
- C. DSS will apply one of the following utility allowances as a deduction to a family's gross income when applicable:
  - i. The heating and cooling standard utility allowance (HCSUA);
  - ii. The limited utility allowance (non-heating/non-cooling);
  - iii. The one-utility allowance; or
  - iv. The telephone allowance.

**2. DSS will deduct allowable and verified expenses from a family's gross income to determine if the family's net income falls below 40% of the FPL for excessive financial burden.**

**3. DSS will waive child care copayments for families who are determined to have an excessive financial burden.**

10 DE Reg. 564 (09/01/06)

24 DE Reg. 589 (12/01/20) (Final)