

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

11002.9 Definitions and Explanation of Term;

11004.4.1 Explanation of Certificates;

11004.7.2 Paying the Child Care Fee;

11006.4.2 Fee Paying Clients

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512 (31 Del.C. Ch.5, §512)

FINAL

ORDER

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 child care purchase of care policy, as it relates specifically to compensation, method of payment, and collection of fees. 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 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Statutory Authority

- 42 USC §§ 9858-9858q, Child Care and Development Block Grant
- 31 *Delaware Code*, Ch 3, Subchapter VII, Child Day-Care Centers

The proposed rule will allow providers to charge DSS fee paying clients the difference between the DSS determined co-pay and the provider’s private fee. Providers will not be allowed to charge non-fee paying clients the difference.

The proposed changes will also allow self-arrange parents whose provider does not have a subsidy slot available to opt to pay only the difference between the DSS rate and the provider’s private rate. Thus eliminating the 4 to 6 week wait for DSS client reimbursement.

The proposed changes will be incorporated into the Division of Social Services Child Care Contract (Section IV, Method of Payment, and Collection of Fees, Paragraph J) and the Division of Social Services Child Care Certificate Provider Agreement and Registration Form (Section II, Fees, Paragraph C).

Implementation of the proposed provisions on November 10, 2004 is contingent upon promulgation of this rule.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor’s Advisory Council for Exceptional Citizens (GACEC), and the State Council for Persons with Disabilities (SCPD) provided the following observations and position statement, summarized below, and responds as follows:

First, as background, in January 2004, the Department of Services for Children Youth and Their Families (DSCYF) issued proposed regulations to prompt improvements in day care centers [7 DE Reg. 911 (January 1, 2004)]. It is our understanding that at the FY 04 JFC Hearings, the Governor’s Office requested that a budget analysis be conducted to determine the effect of the aforementioned proposed regulations, which included purchase of care rates. If possible, SCPD respectfully request a copy of such an analysis.

DSS Response: Please contact the Office of Child Care Licensing for a copy of the budget analysis.

Second, the most significant change in the regulations is the creation of a new option known as “Purchase of

Care Plus". In a nutshell, the provider receives the regular DSS subsidy, the DSS-determined parent fee, and the shortfall up to the provider's private rate. If the provider is unwilling to accept regular "Purchase of Care" or the new "Purchase of Care Plus", the parent can opt to self-pay the provider and the parent is then reimbursed up to the DSS statewide limit.

This system will help some parents and hurt others. It will help parents who cannot find a provider willing to accept the State "Purchase of Care" rate and who have funds to pay the difference. It will hurt indigent parents who have no funds to augment the "Purchase of Care" rate. The Councils believe it would have been simpler to raise the State reimbursement rate across the board.

In summary, the Councils would have preferred a general increase in the DSS reimbursement rates payable to providers to promote enhanced provider participation in the State system. In the long run, this would result in greater availability of child care for eligible parents. In the absence of such a general rate increase, we the proposed regulation insofar as they result in more options and flexibility for parents.

DSS Response: Thank you for your endorsement. DSS was successful with a budget initiative that added \$1.1 million State dollars to the Purchase of Care program to increase reimbursement rates statewide for infants and toddlers. The DSS budget request for fiscal year 2006 includes \$800,000 to increase rates for preschool age children statewide.

Findings of Fact:

The Department finds that the proposed changes as set forth in the September 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Child Care Subsidy Program is adopted and shall be final effective February 10, 2005.

Vincent P. Meconi, Secretary, DHSS, January 13, 2005

DSS FINAL ORDER REGULATIONS #05-06

REVISIONS:

11002.9 Definitions and Explanation Of Terms

(Break in Continuity of Sections)

AA. Income Limit - 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.

AB. Job Training - 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 Stamp Employment & Training contracted programs, JTPA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

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

AF. Parental Choice - The right of parent/caretakers to choose from a broad range of child care providers, the type and location of child care.

AG. 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.

AH. 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.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by

TANF policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the CCMIS, this is Category 31 child care.

AM. 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.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parent/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. Parent/Caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under 18 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 competence to do so.

AQ. 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 competence to do so.

AR. Technical Eligibility - Parent/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Purchase of Care Plus (P.O.C. +) - Care option that allows providers to charge fee paying 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 parent fee and any additional provider-determined co-pay.

(Break in Continuity of Sections)

11004.4.1 Explanation of Certificates

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

A. Parent/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, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, 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.

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
4. relatives who provide care cannot be part of the welfare grant.

D. Once parent/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).

Parent/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 or 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.

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

G. Allow parent/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parent/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.

(Break in Continuity of Sections)

11004.7.2 Paying the Child Care Fee

Parent/caretakers will pay their child care fee directly to the child care provider. This fee, in combination with what DSS pays the provider, represents the reimbursement limit DSS allows for child care services. These limits are based on the child care type and the age of the child. DSS ~~either~~ has contracts with providers for these rates ~~or providers agree to accept them as their rates~~ which include purchase of care plus option. If, however, providers do not accept these rates or the purchase of care plus option, parent/caretakers will self-arrange care directly with the provider. In this instance, the parent/caretaker will not only pay their fee, but also the provider's full charge for care. The parent/caretaker will submit an original receipt for reimbursement, at which time DSS will reimburse the parent/caretaker in an amount up to the statewide limits (see 11004.4.1 above), less the child care fee.

Parent/caretakers who fail to pay their child care fee or who fail to make arrangements to pay past fees owed will have their child care services terminated. Providers are responsible for informing DSS of the parent/caretaker's failure to pay the fee. Obtain such information in writing from providers whenever possible. However, it is acceptable to obtain this information verbally if the following procedures are used.

A. Accept and document (e.g. note the date and time of the call/conversation and the information given in the case record) the information from the provider.

B. Request that the provider follow up this information in writing to the child care monitor in their county.

C. Send the Failure to Pay Child Care Fee Closing (CCMIS Notice 4060) to the parent/caretakers informing them that service will terminate due to non-payment of the fee unless arrangements are made with providers to pay past fees owed.

NOTE: Allow timely (10 days) and adequate notice.

D. Require parent/caretakers to submit information in writing which details the arrangements they made with providers to pay past fees owed.

Parent/caretakers whose child care case closes because of failure to pay child care fees cannot receive a new authorization for service until they satisfy or make arrangements to pay past fees owed.

(Break in Continuity of Sections)

11006.4.2 Fee Paying Clients

The client fee is based on the DSS scale according to the client's income. The provider is responsible for collecting fees from their private and DSS fee-paying clients. The provider must develop a fee collection policy that states the fees collected prior to or after delivery of service and the frequency of collection, such as weekly, biweekly, or monthly. The provider's fee collection policy should be discussed with the parent/caretaker upon initial enrollment at the facility and should be reviewed periodically.

The provider must ensure that enrollment procedures include how the provider informs parent/caretakers of the

availability of purchase of care slots for non-fee paying clients.
8 DE Reg 1154 (2/1/05)