

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 11006

FINAL

ORDER

Relative Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*. 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 November 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 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 Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*.

Statutory Authority

- Child Care Development Fund (CCDF)
- Child Care Development Block Grant CFR 98.2, 98.41

Background

Relative Child Care is one of several child care options for parents who receive a child care subsidy. The original intent of the program was to provide a child care option for parents who worked during "non-traditional" hours (i.e. shift work, weekends); however, this intent was never formally established through policy. As this type of care is unlicensed, the Division of Social Services (DSS) seeks to revise the current policy to restore the original intent and integrity of the program. In addition, new federal regulations have been established to ensure the health and safety of all children who receive subsidy. DSS is responsible for ensuring that all Purchase of Care providers comply with these new regulations. The revised Relative Child Care policy will enable the Division to better determine who is eligible to participate as a provider, confirm relationships, and fully comply with the new federal health and safety regulations. There are no budget implications as a result of this policy revision.

Summary of Proposal

Purpose

To establish a structured policy regarding Relative Child Care and to ensure sufficient monitoring of this type of care.

Summary of Proposed Changes

Effective for services provided on and after February 11, 2018 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual to outline participation requirements, documentation and training.

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 proposed regulation. Comments were to have been received by 4:30 p.m. on March 1, 2018.

Fiscal Impact Statement

The policy revision will have no fiscal impact since the purpose is simply to restore the program to its original intent.

The policy revision does not require any additional staff, system changes, or additional costs.

Summary of Comments Received with Agency Response and Explanation of Changes

The State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

SCPD commented that there is an ostensible error in Section 5 on p. 378. The first bullet literally allows care in a child's home only for 4-5 children. The reference to "minimum of four children in the home" should be "minimum of one child in the home". Compare Section 6.

Agency Response: The Division of Social Services (DSS) appreciates the council's comment regarding the requirement of a minimum number of children to be cared for in the child's home. DSS policy **11003.5 In-Home Child Care** dictates the following:

The Fair Labor Standards Act requires that in-home child care providers be treated as domestic service workers. As a result, DSS must pay these providers the federal minimum wage. Paying the federal minimum wage would make the cost of in-home care disproportionate to other types of care. As a result, DSS has placed a limit on parental use of the in-home care option.

A. As of July 1994, in-home care has been limited to:

1. Families in which four or more children require care, or
2. Families with fewer children only as a matter of last resort.

B. Examples of "last resort" may include:

1. The parent works the late shift in a rural area where other types of care are not available,
2. There is a special needs child for whom it is impossible to find any other child care arrangement.

Therefore the DSS statement regarding the minimum number of children is correct. There must be a minimum of four children in the home in order for children to be cared for in the children's home; but not more than five. When the care is provided in the caregiver's home the minimum requirement is one child.

Second, Section 3 requires a relative provider to be "21 years of age or older". In contrast, the applicable federal regulation defines relative child care providers as "18 years of age or older". See 45 CFR 98.2. Moreover, states are restricted in their discretion to add requirements not included in the federal regulations:

- (b) Lead agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in §98.3(f).
45 CFR 98.41(b)

Agency Response: DSS appreciates the council's comment regarding restrictions on the lead agency in their discretion to add requirements not included in the federal regulations. As we have been receiving a substantial number of requests for relative care for providers who were not suitable for a myriad of reasons DSS, in its effort to ensure the health and safety of children, proposes this and other revisions to the Relative Care Policy. We understand that the state is restricted in its discretion to add requirements not included in the federal regulations and we have reached out to the Administration for Children and Families, who administers the Child Care and Development Fund, for further guidance regarding this issue.

Third, Section 3 includes the following limit: "Relative child care is limited to evening and weekend shift work hours only." This is ill- conceived given the overall shortage of child care providers. Moreover, "special needs" parents and children are eligible for the State child care program. See 16 **DE Admin. Code** 11003.7.8. It may be extremely difficult for a parent of a special needs child ages 13-18 to identify a licensed provider to add a 13-18 year old to their daycare. Moreover, "special needs" parents often rely on relatives for parenting assistance and federal law requires states to accommodate that reliance. See Joint DOJ/HHS LOF to Mass. Dept. Of Children & Families (1/29/15), published at https://www.ada.gov/ma_docf_lof.pdf. See also U.S. DOJ/HHS Joint Guidance, "Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (8/15)", published at https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf. At a minimum, Section 3 should be revised to allow relative child care for special needs children and adults apart from evening and weekend shifts. It would also be prudent to authorize exceptions for all parents with the approval of DHSS.

Agency Response: DSS appreciates the Council's comment regarding the limitations on the Relative Care choice for parents. At this time the Division is not aware of any factual documentation regarding a child care shortage in our state. We are, however, setting the stage to conduct some research to determine if in fact the child care demand is greater than the supply, and where services may be lacking. Moreover, the division has seen a significant increase in the request for relative care by providers who are unsuitable for a myriad of reasons. We have had a rash of parents pulling their children from centers to allow relatives to provide care, parents attempting to get people other than relatives to provide care, people other than the authorized relatives actually caring for the children when site visits are conducted (which means they have not been finger printed), relative providers caring for the children at sites other than the authorized sites, relative providers/

children who are unable to be located when attempting to conduct site visits, relative care providers allowing other adults who have not been fingerprinted, in the home, around the children, relatives providing care in environments that were not safe for children, etc. In its efforts to, as best it can, ensure the health and safety of children the division has made the decision to restore the integrity of the relative care program by limiting this choice to parents who need care during non-traditional hours such as weekends, and evening shifts. The agency is fully aware that there may be circumstances where exceptions must be made, particularly, for those families who may have a special need. The agency is amenable to addressing these exceptions as they present themselves.

Fourth, DMMA is imposing the following requirements on relative providers: 1) completion of orientation class on relative child care rules and regulations; 2) 28 hours of approved training within 12 months; 3) 3 hours of health and safety training annually; and 4) completion of both CPR and first aid courses resulting in certification followed by recertification every 2 years. See Section 4. DMMA is treating relative child care providers as if they were licensed day care providers even though they are exempt from licensing. See 16 DE Admin. Code 11004.4.1. Asking a typical grandparent to spend an estimated 40 hours in training to care for a grandchild is "overkill".

Agency Response: DSS appreciates the Council's comment regarding the required training for Relative Care Providers. Although these providers are exempt from licensing standards the division believes that best practices and health and safety standards are the foundation of quality child care. Meeting the basic health and safety needs of all children sets the stage for positive child outcomes. The pre-service, training and annual training modules provide caregivers with an overview of basic health and safety information and ensures that caregivers continue to be knowledgeable about current and best practices regarding child care.

No change to the regulation was made as a result of these comments.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given by the State Council for Persons with Disabilities.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding Relative Child Care, specifically, *to outline participation requirements, documentation and training*, is adopted and shall be final effective February 11, 2018.

1/18/18

Kara Odom Walker, MD, MPH, MSHS
Secretary, DHSS

FINAL

11006.7 Determining Relative Child Care

45 CFR 98.2, 98.41

This policy applies to families who request Purchase of Care funding for a relative to provide child care.

1. The relative providing child care must be related to the child by:

- Marriage.
- Blood relationship, or
- Court decree.

2. The relative providing child care must be related to the child in one of the following relationships:

- Great-Grandparent.
- Grandparent.
- Adult Sibling.
- Aunt, or
- Uncle.

3. The relative provider shall:

- Be 21 years of age or older;
- Only provide care for the children of one family member;
- Not reside in the same home as the children needing care; and
- Only provide care during non-traditional hours that are not normally offered through a licensed child care provider. Relative child care is limited to evening and weekend shift work hours only.

4. The relative provider must successfully complete:

- The "Criminal History, Child Abuse, and Neglect Background Check Request Form". This form must be completed for the relative provider and each individual 18 years of age or older who is living in the relative provider's home;
- The orientation class on relative child care rules and regulations;
- 28 hours of approved training within 12 months of completing the relative child care orientation class;
- Three hours of health and safety training annually; and
- CPR and first aid courses. The relative provider's certifications must be current and re-certifications must be completed every two years.

5. In the children's home, the relative provider shall:

- Care for a minimum of four children in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
- Care for no more than two children under two years of age.
- Care for the children of one family member. The children must be related as siblings.

6. In the relative provider's home, the relative provider shall:

- Care for a minimum of one child in the home. The total number of children who are cared for in the home may not exceed a maximum of five children.
- Care for no more than two children under two years of age.
- Care for the children of one family member. The children must be related as siblings.

<p>Note: Parents and caretakers who need child care during non-traditional hours shall be referred to Delaware's statewide Resource and Referral Agency for assistance in finding a provider.</p>
