

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 11003

PROPOSED

PUBLIC NOTICE

Determining Special Needs and Income Eligibility for Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), 42 CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning, Policy and Quality Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to Nicole.M.Cunningham@delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2020. Please identify in the subject line: Determining Special Needs and Income Eligibility for Child Care.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services/Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

Statutory Authority

- 45 CFR 98.20(a)
- 45 CFR 98.21(c)

Background

DSS is revising the eligibility requirements for the Child Care Subsidy Program based on the reauthorization of the Child Care and Development Block Grant Act, which mandated new eligibility requirements for child care assistance. DSS has changed the formatting of the policies so that the policies are easier for DSS staff, stakeholders, and the public to understand.

DSS is proposing to remove DSSM 11003.6 "Determining Income Eligibility" as it is a redundant policy and the information can be found in DSSM 11003.9.1 "Determining Income Eligibility for Child Care" and DSSM 11003.7.8 "Determining Special Needs for Child Care".

DSS is proposing to remove DSSM 11003.7.7 "Income Waiver" as it is a redundant policy and the information can be found in DSSM 11003.7.8 "Determining Special Needs for Child Care".

DSS is proposing to amend DSSM 11003.7.8 "Determining Special Needs for Child Care" to include the current process that DSS staff are to follow when determining eligibility for Special Needs Child Care. The policy explains the requirements and documentation needed in order to qualify for Special Needs Child Care. DSS added a section to the policy to provide direction to DSS eligibility workers on coding within the DSS eligibility system.

DSS is proposing to amend DSSM 11003.9.1 "Determining Income Eligibility for Child Care" to include the current process that DSS staff are to follow when determining financial eligibility for the Child Care Subsidy Program. DSS updated the countable and excluded income sections to include current income requirements for the program, and a section on the net income test for parent copayments was added.

Summary of Proposal

Purpose

The proposed rules explain technical and financial eligibility requirements for the Child Care Subsidy Program.

Summary of Proposed Changes

Effective for services provided on and after March 11, 2020 Delaware Health and Social Services/Division of Social

Services proposes to amend sections 11003.6, 11003.7.7, 11003.7.8 and 11003.9.1 of the Division of Social Services Manual regarding Child Care, specifically, to determine special needs and income eligibility for child care.

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/Division of Social Services (DHSS/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 must be received by 4:30 p.m. on January 31, 2020.

Fiscal Impact

DSS amended the eligibility policies to provide clear and accurate directions on the eligibility requirements for the Child Care Subsidy Program. These policies are currently in place and there are no new financial responsibilities associated with the amended eligibility policies.

POLICY – AMENDMENT

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

11003.6 Determining Income Eligibility

45 CFR 98.20

~~This policy applies to applicants for and recipients of child care assistance.~~

1. Gross Income Is Capped

~~Gross monthly income must be equal to or less than 200% of the Federal Poverty Limit for the family size.~~

2. Income Requirement

~~The income requirement applies to all income eligible child care programs.~~

~~Exception: Families referred by and active with the Division of Family Services do not have to meet the income limit.~~

16 DE Reg. 213 (08/01/12)

POLICY – AMENDMENT

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

11003.7.7 Income Waiver

~~DSS will waive the 200 percent income eligibility limitation for families when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.~~

POLICY – AMENDMENT

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

11003.7.8 Determining Special Needs for Child Care

45 CFR 98.20(a)

Eligibility

Families requesting Special Needs Child Care must be technically and financially eligible.

EXCEPTION: DFS referrals do not have to meet financial criteria.

The parent/caretaker must meet the need criteria as listed in 11003.8.

To be eligible for Special Needs care the parent/caretaker must meet the definition of need as explained below.

This policy applies to parents and caretakers requesting Special Needs Child Care for themselves or for their children.

1. Families requesting Special Needs Child Care must meet the Special Needs eligibility requirements.

Adults with Special Needs:

A parent/caretaker may be eligible for Special Needs Child Care services if the parent/caretaker has a condition which makes him/her unable to care for his/her child for some portion of the day.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

- A. DSS will determine a parent or caretaker to be eligible for Special Needs Child Care if:
- i. The parent or caretaker has a condition that causes the parent or caretaker to be unable to care for his or her child for some portion of the day; and
 - ii. The parent or caretaker is financially eligible for child care assistance.

14 DE Reg. 1373 (06/01/11)

Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's parent/caretaker has a need and is financially eligible. The child's physical, medical or emotional condition must be such that the child is unable to care for himself or herself.

A child that is younger than 13 years of age who has a special need may be eligible for care if the child's parent/caretaker has a need and is financially eligible.

Documentation of the condition may be provided on the Special Needs Form or any other written correspondence submitted by a physician or medical professional with the authority to do so.

- B. DSS will determine a child to be eligible for Special Needs Child Care if:
- i. The child is under 19 years of age;
 - ii. The child is physically or mentally incapable of self-care; and
 - iii. The parent or caretaker has a need per DSSM 11003.8 and is financially eligible for child care assistance.
- C. DSS requires documentation of the special need.
- i. The family can verify the special need by submitting:
 - : DSS Form 611 "Child Care Medical Certification Form"; or
 - : Written correspondence completed by a physician or medical professional that details the special need and the required care.

14 DE Reg. 1373 (06/01/11)

Families with Protective Child Care Needs:

Children referred by the Division of Family Services (DFS) may be eligible for Special Needs Child Care.

A child that is active with and referred by DFS for child care:

1. ~~is considered to have met the need criteria;~~
2. ~~does not have to meet the financial criteria;~~
3. ~~may receive child care regardless of citizenship status.~~

- D. DSS considers children who are active with and referred by the Division of Family Services (DFS) to have met the need criteria for Special Needs Child Care.
- i. Children referred by DFS:
 - : Are not required to meet the financial criteria for child care assistance; and
 - : May receive child care services regardless of their citizenship status.

Families with Transitional Work Program Needs:

~~Children referred by the Transitional Work Program (TWP) may be eligible for Special Needs Child Care.~~

~~A parent/caretaker that is active with and referred by TWP for child care:~~

- ~~1. is considered to have met the need criteria;~~
- ~~2. must have gross household income at or below 200% FPL;~~
- ~~3. is not required to provide a Medical Certification Form or a Special Needs Form.~~

~~DSS staff will authorize childcare for 5 days part time with extended care. Please refer to policy section 11004.9 Authorizing Service. Authorize care for additional time if the parent's/caretaker's activities with TWP require more than part time care.~~

- E. DSS considers parents and caretakers who are active with the Transitional Work Program (TWP) to have met the need criteria for Special Needs Child Care.
- i. Parents and caretakers participating with TWP:
 - : Must be financially eligible for child care assistance; and
 - : Are not required to submit documentation of a special need to DSS.
 - ii. TWP staff will request child care for clients who are participating with the program and will determine the amount of care needed.

Note: DSS case workers must select the individual approved for the Special Needs Child Care in the "Child Care Additional Demographics" screen in the eligibility system. Selection of the incorrect individual will result in an improper payment error.

- 9 DE Reg. 572 (10/01/05)**
- 10 DE Reg. 1007 (12/01/06)**
- 13 DE Reg. 97 (07/01/09)**
- 13 DE Reg. 1339 (04/01/10)**
- 14 DE Reg. 1373 (06/01/11)**

POLICY – AMENDMENT

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

11003.9.1 Determining Income Eligibility for Child Care

~~45 CFR 98.11(b)(2) 45 CFR 98.21(c)~~

~~A. Countable income. All sources of income, earned (such as wages) and unearned (such as child support, Social Security income, etc.) are countable income when determining a family's monthly gross income. Monthly gross income includes the following:~~

- ~~1. Money earned from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses. Count the amount earned before deductions are made for taxes, bonds, pensions, union dues, etc. This is gross income. Wages need to be equal to the federal minimum wage or an equivalent.~~

Earnings from self-employment are counted after applying a standard deduction for self-employment expenses. To get the self-employment deduction, self-employed households must verify at least one business cost to produce income.

Self-Employment Standard Deduction for Producing Income

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October. The standard deduction is considered the cost to produce income.

2. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.

B. Disregarded Income

Monies received from the following sources are not counted:

1. per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims;
2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;
3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);
4. withdrawal of bank deposits;
5. money borrowed or given as gifts;
6. capital gains;
7. the value of USDA donated foods;
8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;
9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;
11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;
12. home produce used for household consumption;
13. all of the earned income of a child under age 18 who is a student who is working but is not a full-time employee (such as high school students who are employed full time during summer);
14. all payments derived from participation in projects under the Food Benefit Employment & Training (FB E&T) program or other job training programs;
15. all Vista income; and
16. all income derived as a Census taker.

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

This policy outlines how DSS determines income eligibility for applicants and recipients of the Child Care Subsidy Program.

1. **DSS will determine income eligibility for the Child Care Subsidy Program when a family submits a completed and signed application and completes an interview for child care assistance.**
2. **Case workers must verify the past 30 days of income received by the family.**
3. **If a family's income fluctuates, DSS will average the last three months of the family's income for eligibility determination.**

4. DSS considers all gross earned and unearned income received by the family when determining child care eligibility.

- A. Gross income is the amount of earned and unearned income before deductions such as taxes, bonds, pensions, and union dues.
- B. To be eligible for child care assistance, a family's gross monthly income must be equal to or less than 185% of the Federal Poverty Level (FPL) for the family size.

5. DSS counts the following income when determining child care eligibility.

- A. Earned income, including, but not limited to:
 - i. Wages and salary;
 - ii. Armed forces pay;
 - iii. Commissions, tips, and piece-rate payments;
 - iv. Self-employment earnings.
 - a. Self-employment earnings are counted after applying a standard deduction for self-employment expenses.
 - b. Self-employed clients must verify at least one business cost to receive the self-employment deduction.
 - c. Self-employment earnings must be equal to the federal minimum wage.
- B. Unearned income, including, but not limited to:
 - i. Social Security benefits, including Social Security Disability Income (SSDI), Supplemental Security Income (SSI), and Retirement, Survivors, and Disability Insurance (RSDI);
 - ii. Veteran's benefits and military allotments;
 - iii. Public assistance payments, including Temporary Assistance for Needy Families (TANF);
 - iv. Net rental income;
 - v. Unemployment compensation;
 - vi. Workers' compensation;
 - vii. Pensions;
 - viii. Railroad retirement;
 - ix. Annuities;
 - x. Alimony and child support.

6. DSS excludes the following income when determining child care eligibility.

- A. The value of U.S. Department of Agriculture (USDA) donated foods.
- B. The value of Supplement Nutrition Assistance Program (SNAP) food benefits.
- C. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the National School Lunch Act, as amended.
- D. The value of homegrown produce used for household consumption.
- E. The earned income of a child under the age of 18 years old who is a student.
- F. All AmeriCorps VISTA income.

- G. Temporary U.S. Census Bureau employment income received during the census period.
- H. Temporary income received by a family that may determine the family to be over 85% of the State Median Income (SMI).
 - i. The family must submit documentation of when the income will end.
 - ii. The temporary work period cannot exceed 90 days.
- I. The money received from the sale of property such as stocks, bonds, a house, or a car.
 - i. If the client is in the business of selling such property, the net proceeds are counted as income from self-employment.
- J. Withdrawals from bank accounts.
- K. Money borrowed or received as a gift.
- L. Capital gains.
- M. Federal income tax returns.
- N. Non-recurring lump sum payments (e.g. a lump sum child support payment).
- O. Any payments derived from participation in activities under the Food Benefit Employment & Training program or other job training programs.
- P. Loans or grants, such as scholarships obtained and used under conditions that preclude their use for current living costs.
- Q. Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act.
- R. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of Indian Claims Commission or the Court of Claims.
- S. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act.
- T. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

7. DSS does not consider resources such as cars, homes, savings accounts, or life insurance when determining income eligibility for child care assistance.

8. Once eligibility has been established, DSS will complete a net income test to determine if the family will have a copayment for child care assistance.

- A. Net income is the total income counted in the child care budget after shelter and utility deductions have been applied.
- B. The net income test determines if the family has an excessive financial burden. DSS will waive the copayment if the family's income falls below 40% of the FPL per DSSM 11004.7.1.

11 DE Reg. 1488 (05/01/08)
14 DE Reg. 178 (09/01/10)
23 DE Reg. 531 (01/01/20) (Prop.)