

# 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 & 11006

### FINAL

### ORDER

#### POC – Changing Providers And Charging Fees

#### 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 the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care ("POC") families. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the October 2020 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 2, 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 January 11, 2021 the Department/DSS proposes to amend Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to POC families.

#### **Statutory Authority**

- 42 U.S.C. 9858
- 45 CFR 98.30
- 45 CFR 98.45

#### **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 regulations so that the policy is easier for DSS staff, stakeholders, and the public to understand.

DSS amended DSSM 11004.9.3 Changing Child Care Providers to clarify parental rights and when it is appropriate to change or add a child care provider to a family's POC case. DSS added a section to the policy to provide procedures for DSS eligibility staff.

DSS amended DSSM 11006.4.2 Charging Fees to Purchase of Care Families to provide guidance to child care providers regarding the fees they may charge POC families. The policy explains that a fee policy must be developed, presented, and explained to families. DSS also added a section regarding the Purchase of Care Plus program, with procedures and documentation that must be available.

#### **Purpose**

The purpose is to update policy related to changing child care providers and charging fees to POC families.

#### **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 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 November 2, 2020.

#### **Fiscal Impact Statement**

DSS amended these regulations to provide clear and accurate directions on parental choice and fees for the Child Care

Subsidy Program. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

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

No comments were received during the public comment period.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2020 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual regarding the Child Care Subsidy Program, specifically, to update policy related to changing child care providers and charging fees to Purchase of Care families, is adopted and shall be final effective January 11, 2021.

12/17/2020

Date of Signature

Molly K. Magarik, Secretary, DHSS

### **POLICY – AMENDMENT**

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

### **11004.9.3 Changing Provider ~~Child Care Providers~~**

45 CFR 98.30

~~DSS designed the CCMIS so that there would not be two "active" authorizations for one child at the same time. However, there is one exception: when a parent/caretaker wishes to change providers. In this instance, enter the change of provider and the CCMIS will (1) change the old authorization to close it effective the end of the current month, and (2) create a new authorization effective the date of the change in provider. Both authorizations will remain in effect until the first expires. This will allow DSS to pay both providers.~~

~~However, because DSS requires that providers be given at least five days notice of this change, there may be instances when the original authorization will remain in effect until the last day of the next month. Since the Change Authorization will be mailed to the provider, do not send a separate notice. Ensure that parent/caretakers pay any fees they may owe the old child care provider.~~

Parents and caretakers who receive child care subsidy for their children have parental choice in selecting child care providers. DSS case workers will follow the procedures in this policy when a parent or caretaker requests to change or add a child care provider.

#### **1. Parents and caretakers have parental choice to change and add child care providers during their eligibility period for the Purchase of Care program.**

- A. A parent or caretaker who wants to change child care providers must give a five-day notice to their current child care provider prior to withdrawing the child from the child care site.
- B. A parent or caretaker may add an alternate child care provider in the event the primary child care provider is unable to care for the child.
  - i. The alternate child care provider cannot receive payments for absent days.
- C. A parent or caretaker may use two child care providers if care is needed during different hours or at different locations.
  - i. DSS will authorize each provider only for the days and hours that the child attends each child care site.
  - ii. Examples:
    - a. A parent is employed and works day and evening hours. The parent may use one provider during the day and a second provider during the evening.
    - b. A parent is employed and works two days at one location and three days at another location. The parent may use one provider near one location and a second provider near the other

location.

**2. DSS will remove and add child care provider authorizations in a family's Purchase of Care case when the parent or caretaker requests to change providers.**

- A. DSS case workers will end the authorization in the eligibility system for the child care site that the child will no longer attend effective the last day of the month the authorization will end.
- B. DSS case workers will add the authorization in the eligibility system for the new child care site effective the first day the child will attend the site.

**3. DSS will add an additional child care provider authorization to a family's Purchase of Care case when the parent or caretaker requests an alternate provider or two providers.**

- A. DSS case workers will confirm a parent's or caretaker's need when a parent or caretaker requests two child care providers.
- B. DSS case workers will add the authorization in the eligibility system for the new child care site effective the first day the child will attend the site.

**POLICY – AMENDMENT**

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

**11006.4.2 Fee Paying Clients Charging Fees to Purchase of Care Families**

45 CFR 98.45

~~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.~~

Purchase of Care (POC) providers may charge certain fees to families receiving the POC child care subsidy.

**1. POC providers can charge families receiving POC only for the following fees:**

- A. The parent copayment that DSS determines based on the family's household size and income.
- B. Purchase of Care Plus (POC+) fees that are determined by subtracting the State's daily payment rate from the provider's private daily payment rate. Families in the POC+ program must pay the difference between the two rates.
- C. Late pick-up fees charged when a child is picked-up after the family's authorized hours for care.
- D. Field trip fees charged for a child to participate in an activity.
  - i. The provider must present the activity, the date of the activity, and the cost of the activity to the family prior to the field trip.
  - ii. The provider must allow the family to choose if the child will participate in the field trip.
  - iii. If the child does not participate in the field trip, the provider cannot charge the family for the field trip date if child care services are not available to the child because the provider's site is closed during the activity.

E. Returned check fees charged when the family's payment cannot be collected.

**2. Fees not listed in section (1) must be approved by DSS before the provider can charge the family.**

**3. A family that receives POC is responsible for paying their parent copayment (if applicable) and the fees listed in section (1) when the fee is charged by the POC provider.**

A. A family must continue to pay their parent copayment during instances when their POC provider is closed, unless DSS waives the family's copayment for an approved reason.

i. A family will pay their copayment when their provider is closed due to:

- Vacation;
- Illness;
- Training; or
- A provider holiday that replaces a DSS approved holiday.

**4. POC providers are responsible for collecting fees from the families that they serve.**

**5. POC providers must develop a fee policy, discuss the policy with families at initial enrollment, and review the policy with families at least every 12 months.**

A. The provider's fee policy must state:

- i. The fees that the provider will charge to families prior to, during, and after delivery of service;  
and
- ii. The provider's fee collection schedule.

B. Providers who are approved by DSS to charge POC+ fees must:

- i. Display the POC+ certificate;
- ii. Inform families of regular POC slots as slots become available;
- iii. Review the POC+ contract with families;
- iv. Complete a budget with families that agree to pay POC+ fees; and
- v. Maintain copies of executed POC+ contracts signed by families and the provider.

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

**24 DE Reg. 696 (01/01/21) (Final)**