

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

### FINAL

### ORDER

#### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding *Absent Days*. The Department's proceedings 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 public comment pursuant to 29 **Delaware Code** Section 10115 in the May 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Change

The proposed change described below amends Child Care Program policies in the Division of Social Services Manual (DSSM) regarding *Absent Days*. The purpose of this change is to clarify the *Absent Day Policy* as it relates to the number of absent days authorized and who cannot get paid absent days.

#### Statutory Authority

- 45 CFR Part 98, *Child Care and Development Fund*

#### Summary of Proposed Change

Amended **DSSM 11006.4.1**, *Absent Day Policy* clarifies that providers will not be paid for holidays that occur before the start date of the authorization. The Division of Social Services (DSS) may pay for up to five absent days in a month.

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

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

First, the current regulation authorizes payment for holidays if a child attended at least one day during the month. The amendment clarifies that no payment will be made if the holiday actually precedes the start date of the authorization at that provider's site. This is ostensibly a justified limitation.

**Agency Response:** The absent day policy clarification as stated in the amended regulation is sufficient. The application of this policy will be an appropriate and fair process.

Second, the current regulation has two standards. One sentence authorizes payment for up to five absent days per month. Another sentence indicates that the number of paid absent days is indicated on a DSS authorization form. The amended regulation effectively authorizes compensation for the lower of the following: 1) the specific number of paid absent days listed on each child's Authorization form; or 2) the number of absent days authorized in

one week (up to a maximum of five days per month). For clarity, in Section 11006.4.1, second sentence, Council recommends that DSS consider inserting "paid" between "of" and "absent". Alternately, DSS may wish to consider the following substitute for the second and third sentences in Section 11006.4.1:

***DSS pays for absent days based on the lower of the following: 1) the specific number of paid absent days listed on each child's Authorization form; or 2) the number of absent days authorized in one week (up to a maximum of five days per month).***

We would like to emphasize the importance of ensuring that regulations regarding the language in the authorization forms are consistent.

**Agency Response:** There are not two standards. DSS authorizes payment for up to five absent days per month. The other sentence indicates how a client is informed of his or her specific number of paid absent days. The number of paid absent days per month is the same as the number of authorized care days in one week (up to a maximum of five). If a client is authorized for 3 days of child care per week DSS will authorize 3 paid absent days per month. For clarity we are accepting your recommended language change. The revised text reads:

"The number of paid absent days per month is the same as the number of days authorized for care in one week (up to a maximum of five days per month)."

#### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the May 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Absent Days* is adopted and shall be final effective July 10, 2009.

Rita M. Landgraf, Secretary, DHSS

#### **DSS FINAL ORDER REGULATION #09-23 REVISION:**

##### **11006.4.1 Absent Day Policy**

~~Payments are made~~ DSS pays for up to five absent days per month. The number of [paid] absent days per month is the same as the number of days authorized [for care] in one week (up to a maximum of five [days per month]). The specific number of paid absent days is indicated on each child's ~~Form 618d~~ Authorization Form.

~~EXAMPLE: A child is authorized to attend three days a week. Therefore, the provider will be paid for up to three absent days a month.~~

Payment may be made for the major holidays listed in the contract for any child who attended at least one day during the month. No payment is made to a provider for a holiday that occurs before the start date of the authorization at that provider's site.