

# OFFICE OF THE CHILD ADVOCATE

Statutory Authority: 29 Delaware Code, Section 9011A (29 **Del.C.** §9011A)

**FINAL**

**ORDER**

## **904 Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care**

### **I. NATURE OF THE PROCEEDINGS**

Pursuant to its authority under Title 29 of the **Delaware Code**, Chapter 90A, Section 9011A(h), the Office of the Child Advocate (OCA) proposed to enact regulations regarding the administration of the Driver Education, Driver's License, and Motor Vehicle Insurance Program (the Program). The Program was established by the General Assembly in June 2022 to assist youth and young adults who have experienced foster care with the costs of obtaining a driver's license and motor vehicle insurance. The proposed regulation sought to establish eligibility requirements, eligible expenses, the application process, and the funding determination and payment process. In accordance with 29 **Del. C.** §10118(a), notice of the proposed regulation was published in the *Delaware Register of Regulations* on January 1, 2023, and provided for a public comment period through February 1, 2023. OCA received and considered written comments from five parties. This is OCA's Decision and Order adopting the proposed regulation.

### **II. SUMMARY OF EVIDENCE**

In accordance with law, public notice regarding the proposed regulation was published in the *Delaware Register of Regulations*. The public comment period was open from January 1, 2023 through February 1, 2023. During this period, OCA received written comments from three individuals and two organizations - the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD).

*Comment:* The individual comments were primarily seeking clarification regarding eligibility.

*Agency response:* As outlined in the proposed regulations, individuals who are or have been in the legal custody of the Department of Services for Children, Youth and Their Families (DSCYF), and who meet the additional eligibility criteria, are eligible to apply for the Program. Individuals need not be in foster placement as long as they are in the legal custody of DSCYF under 13 **Del. C.** Ch. 25.

*Comment:* Two individual comments as well as the comments from GACEC and SCPD urged OCA to take a broader view of eligible expenses incidental to licensure.

*Agency response:* OCA would like to clarify that the enabling legislation for the Program, 83 **Del. Laws**, c. 453, waives all DMV fees for individuals who are or have been in the legal custody of DSCYF. However, OCA agrees the enabling legislation intends a broad view of expenses incidental to licensure and that clarification of qualifying expenses is necessary. Therefore, OCA makes the following non-substantive change as indicated in bold bracketed text:

**~~4.1.2 [Costs related to driving lessons if necessary for the individual to achieve the required number of driving hours to be eligible for licensure or if the individual needs additional driving practice. Costs related or incidental to licensure based on the individual needs of the applicant.]~~**

A copy of the published rule with the above minor, non-substantive change is attached hereto.

*Comment:* The GACEC and SCPD comments also focused on a concern about potential termination from the program for unsafe driving practices and urged OCA to allow for the consideration of all facts and individual circumstances to ensure that youth are not being unfairly punished for unavoidable accidents or for incidents that occur while driving that may in some way be attributable to the youth's disability. The comments requested further clarification as to when an individual's participation in the program may be terminated.

*Agency response:* OCA intends to consider all facts and individual circumstances when making determinations regarding potential termination from the program. OCA will provide further clarification regarding when an individual may be

terminated from the program due to unsafe driving practices in the policy to be distributed to Program participants.

*Comment:* The GACEC and SCPD comments also suggested additional detail regarding the application process, including required documentation.

*Agency Response:* OCA anticipates the application process will evolve after Program implementation, and will consider providing further clarification once the Program has been implemented.

### III. FINDINGS OF FACT

1. The public was given the required notice of OCA's intention to adopt the proposed regulation and was given opportunity to submit comments.
2. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation was submitted.
3. OCA received and considered comments regarding eligibility, eligible expenses, termination policy, and application procedure.
4. OCA finds it is appropriate to amend the proposed regulation relating to eligible expenses incidental to licensure to provide further clarification. OCA further finds this is a non-substantive change.
5. OCA finds the proposed regulation, as set forth in the January 2023 *Register of Regulations* and with the minor non-substantive change addressed herein, addresses the anticipated administration of the Program.
6. Thus, OCA finds that the proposed regulation should be adopted.

### IV. DECISION AND ORDER

For the foregoing reasons, OCA concludes that it is appropriate to adopt the proposed regulation for administration of the Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care, as established by 29 **Del. C.** §9011A. The regulation will be effective April 1, 2023.

**IT IS SO ORDERED** this 13th day of February, 2023.

Tania Culley, Esq., Child Advocate  
Office of the Child Advocate

### **904 Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care**

#### **1.0 Legal Basis and Purpose**

The purpose of this regulation is to provide criteria for the Driver Education, Driver's License, and Motor Vehicle Insurance Program under 29 Del.C. §9011A, and to encourage individuals who have been in the custody of DSCYF to obtain a driver's license and motor vehicle insurance coverage.

#### **2.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning:

"DSCYF" means the Delaware Department of Services for Children, Youth and their Families as established under Title 29, Chapter 90 of the Delaware Code.

"DSCYF Custody" means legal custody of a child that is granted to DSCYF by Delaware's Family Court under Title 13, Chapter 25 of the Delaware Code.

"Office" means the Office of the Child Advocate as established under Title 29, Chapter 90A of the Delaware Code.

"Program" means the Driver Education, Driver's License, and Motor Vehicle Insurance Program as established 29 Del.C. §9011A.

"Permanency" means guardianship, permanent guardianship, adoption, or placement with a fit and willing relative.

"Youth in Transition Unit" means the unit within the Office of the Child Advocate designated to administer the Program.

#### **3.0 Eligibility**

3.1 Applicants must meet one of the following eligibility requirements to be considered for the Program:

3.1.1 Children in DSCYF custody who are at least 15 years old are eligible to be considered for the Program until they turn 18 years old or achieve permanency.

3.1.2 Individuals who were in DSCYF custody when they turned 18 years old are eligible to be considered for the Program as follows:

3.1.2.1 For 1 year after turning 18, if the individual is not receiving independent living services.

3.1.2.2 For any period of time the individual is receiving independent living services.

3.1.3 Individuals who were in DSCYF custody and were at least 16 years old when they achieved permanency are eligible to be considered for the Program as follows:

3.1.3.1 For 1 year after achieving permanency, if the individual is not receiving independent living services.

3.1.3.2 For any period of time the individual is receiving independent living services.

#### **4.0 Eligible Expenses**

4.1 Expenses eligible under the Program are as follows:

4.1.1 Costs related to a driver education course if the individual did not complete such a course in school.

4.1.2 ~~Costs related to driving lessons if necessary for the individual to achieve the required number of driving hours to be eligible for licensure or if the individual needs additional driving practice. Costs related or incidental to licensure based on the individual needs of the applicant.]~~

4.1.3 Costs related to motor vehicle insurance premiums for individuals with a motor vehicle insurance policy or individuals added to the private passenger motor vehicle insurance policy of another person or agency. If a person or agency adds an individual eligible for the Program to the person's or the agency's motor vehicle insurance policy, the Office will not pay an amount that exceeds the increase in cost attributable to the addition of the individual.

4.1.4 At the discretion of the Youth in Transition Unit, costs related to vehicle purchase, maintenance, or repair.

#### **5.0 Application Submission and Acceptance**

5.1 Applications must be submitted online via the Office's website.

5.2 Applications will be accepted on a continuous basis.

#### **6.0 Funding Determination and Payment**

6.1 There is no fixed funding amount. The Youth in Transition Unit determines the funding amount, if any, based on the available funds and financial needs of the applicants. The Office may set a maximum funding amount per individual in its discretion.

6.2 The Office will issue a written communication that reflects the amount of funding, if any, to the individual.

6.3 Payment for costs related to driver education and driving classes may be made directly to the institution providing the service or may be reimbursed to the person or agency responsible for payment.

6.4 Payment for costs related to motor vehicle insurance premiums for a person or agency who adds an eligible individual to the person's or the agency's motor vehicle insurance policy may be made directly to the insurance company or may be reimbursed to the person or agency.

6.5 Payment for costs related to motor vehicle insurance premiums for an individual who carries the individual's own insurance policy may be made directly to the insurance company or may be reimbursed to the individual.

6.6 The Office may terminate an individual's participation in the program if the individual demonstrates unsafe driving practices resulting in increased insurance premiums. The Office will maintain and distribute a policy that outlines safe driving expectations and the consequences of failure to meet these expectations. This policy will be distributed with an individual's funding communication and will be available to the public via the Office's website.

**26 DE Reg. 772 (03/01/23) (Final)**