

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

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

### FINAL

### ORDER

#### Child Care Subsidy Program

#### 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. 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 March 2008 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2008 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 regulatory action is to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program – Purchase of Care federal minimum wage requirements.

#### Statutory Authority

7 CFR §273.7(h)(1)(i), *Suitable Employment*

#### Summary of Proposed Change

This rule modification clarifies that the Purchase of Care minimum wage requirements are based on **federal** requirements in the following sections of the Division of Social Services Manual (DSSM): DSSM 11002.9, *Definitions and Explanation of Terms*; DSSM 11003.5, *In-Home Child Care*; and, DSSM 11003.9.1, *Income*.

#### Summary of Comments Received with Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DSS has considered each comment and responds as follows.

As background, the CCDBG program is funded by the federal government through the Child Care and Development Block Grant with regulations published at 45 C.F.R. Parts 98 and 99. See §11002.9E of the DSS regulations. The federal regulations require states to establish and periodically revise a sliding fee scale based on income and family size. See 45 C.F.R. §98.42. The latest DSS child care gross income limits are based on 200% of the federal poverty level. See §11002.9AA. The amendments are as follows.

1) In §11003.5, DSS proposes to clarify that domestic services workers must be paid the federal minimum wage. This is accurate. Consistent with the attached U.S. DOL fact sheet, domestic workers are covered by the federal minimum wage law. In contrast, the Delaware minimum wage law does not apply to domestic workers. See Title 19 **Del.C.** §901(3). Parenthetically, the State minimum wage is currently 7.15/hour while the federal minimum wage is currently \$5.85/hour. By July 24, 2009, there will be little difference between the State and federal minimum wages since the federal minimum wage will increase to \$7.25/hour.

2) In §11002.9Q, DSS defines employment as "wages equal to the federal minimum wage or an equivalent". This does not appear objectionable.

The Council did not identify any concerns with the proposed changes.

**Agency Response:** Your participation is appreciated. Thank you for your comments.

### Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2008 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual regarding the Child Care Subsidy Program – Purchase of Care federal minimum wage requirements is adopted and shall be final effective May 10, 2008.

Vincent P. Meconi, Secretary, DHSS, April 14, 2008

### DSS FINAL REGULATIONS #08-15 REVISIONS:

#### 11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

A. TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the **Delaware Code** to provide benefits to needy children who are deprived of parental support and care. While on TANF, families are eligible for child care only as long as they are working or participating in a TANF Employment and Training activity (Categories 11 and 12).

B. Authorization - Form 618d is the parents/caretakers authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parents/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider, and what parents/caretakers must pay as part of their fee.

C. Caregiver/Provider - The person(s) whom DSS approves to provide child care services or the approved place where care is provided.

D. Caretaker - The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.

E. CCDBG - Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:

1. provide child care to low income families,
2. enhance the quality and increase the supply of child care,
3. provide parents the ability to choose their provider, and
4. increase the availability of early childhood programs and before and after school services.

Under the Division's DCIS II Child Care Sub system, CCDBG is part of Categories 31 and 41.

F. CFR - Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.

G. CCMIS - Child Care Management Information System, the name used to describe the Division's payment system for child care.

H. Child - A person under the age of 13, or children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves or in need of protective services.

I. Child Care Category - The DCIS II Child Care Sub system code for the child care funding source. Case Managers choose category codes based on the parents/caretaker's technical eligibility for service. The codes are:

- 11 -- Participants receiving TANF and not working, but participating in TANF E&T;
- 12 -- Participants receiving TANF and working;
- 21 -- Participants receiving Food Stamps who are mandatory or voluntary participants in E&T and

not receiving TANF;

31 -- SSBG, CCDBG, and State funds: Income eligible participants. Participants who receive FS and are not E&T mandatory or voluntary;

41 -- A participant who is a qualified alien or U.S. citizen is coded as a category 41 when his or her eligibility allows a non U.S. citizen or nonqualified alien to receive child care services. (Example: One child is a citizen and one is not. The citizen child is a 41.)

51 -- A participant is coded category 51 when s/ he is not a U.S. citizen or legal alien but receives Child Care services due to a family member in category 41.

J. Child Care Certificate - A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.

K. Child Care Parent Fee - The amount the parent/ caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.

L. Child Care Services - Those activities that assist eligible families in the arrangement of child care for their children.

M. Child Care Centers - A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.

N. Child Care Type - Refers to the setting or place where child care is provided. The four types of care are:

1. Center based (under DCIS II Child Care Sub system Site #17 or 18),
2. Group Home (under DCIS II Child Care Sub system Site #16),
3. Family Home (under DCIS II Child Care Sub system Site #15), and
4. In-Home (under DCIS II Child Care Sub system Site #19).

O. DCIS II - Delaware Client Information System, the automated client information system for the Department of Health and Social Services.

P. Educational Program - A program of instruction to achieve:

1. a basic literacy level of 8.9;
2. instruction in English as a second language;
3. a GED, Adult Basic Education (ABE), or High School Diploma;
4. completion of approved special training or certificate courses; or
5. a post-secondary degree where the degree is part of an approved DSS Employment and Training program.

The above definition excludes the pursuit of a graduate degree or second four-year college degree. A second associates degree may be attained if it leads to a bachelors degree. The completion of a second associate's degree can be authorized only if it has a significant chance of leading to employment.

Q. Employment - Either part-time or full time work for which the parent/caretaker receives wages equal to the federal minimum wage or an equivalent. It also includes periods of up to one month of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.

R. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.

S. Family Child Care Home - A place where licensed care is provided for one to six children who are not related to the caregiver.

T. TANF Child Care - The name of the child care program for TANF recipients who work or who are participating in a TANF Employment and Training program. Under the DCIS II Child Care Sub system, this is Category 11 and 12.

U. Food Stamp Employment and Training - The program by which certain unemployed mandatory and/ or voluntary Food Stamp recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as Food Stamp Employment & Training (FS E&T). Under the Division's DCIS II Child Care Sub system, this is Category 21.

V. In-Home Care - Care provided for a child in the child's own home by either a relative or non-

relative, where such care is exempt from licensing requirements.

It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.

W. Income - Any type of money payment that is of gain or benefit to a family. Examples of income include wages, social security pensions, public assistance payments, child support, etc.

X. Income Eligible - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.

AB. Job Training/Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Employment & Training (FS E&T) contracted programs, WIA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

AF. Parental Choice - The right of parents/caretakers to choose from a broad range of child care providers, the type and location of child care.

AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.

AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the DCIS II Child Care Sub system, this is Category 31 child care.

AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parents/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parents/caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training (FS E&T) - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under 19 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.

AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.

AR. Technical Eligibility - Parents/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Purchase of Care Plus (POC+) – Care option that allows providers to charge most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined child care parent fee if applicable, and any additional provider-determined co-pay.

AU. Work Force Investment Act (WIA) - Federal Legislation that consolidates Employment and

Training programs and funding streams. This legislation embodies the One Stop Employment and Training Service system under DOL.

**8 DE Reg. 1154 (02/1/05)**

**9 DE Reg. 572 (10/01/05)**

**10 DE Reg. 564 (09/01/06)**

***(Break in Continuity of Sections)***

**11003.5 In-Home Child Care**

See Administrative Notice: A-7-99 Child Care Issues

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, or
  - 2. there is a special needs child for whom it is impossible to find any other child care

arrangement.

Federal regulations define in-home care as child care provided in the child's own home. In-home care also includes situations where the caregiver and the child share a home.

EXAMPLE 1: Ms. Jones lives at 100 Main Street in Newark. Ms. Jones goes to Mrs. Johnson's house at 200 Main Street in Newark to provide dependent care for Mrs. Johnson's children. Because in-home care is provided, Ms. Jones must be paid at least the federal minimum wage. Ms. Jones must, therefore, be providing dependent care to at least four children.

EXAMPLE 2: Ms. Smith and Ms. Kelly live in the same house at 500 DuPont Street in Wilmington. Ms. Smith provides dependent care for Ms. Kelly's only child in this house. The federal minimum wage provisions do not apply. Ms. Smith would receive the established rate for the one child even though the rate is below the federal minimum wage.

***(Break in Continuity of Sections)***

**11003.9 Financial Requirements**

Child care services are available to families who otherwise cannot pay for all or part of the cost of care. This determination of who cannot afford to pay all, or a portion of the cost of care, is always a determination based on income. The financial requirements, which follow, relate to the circumstances which qualify parent/caretakers for child care services based on income. These requirements help determine whose income to count or not count, what is counted, and when and how to count it.

**11003.9.1 Income**

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

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

Gross income from farm or non-farm self-employment is determined by subtracting the self-employment standard deduction for producing income as described below. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.

#### 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. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

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.

#### **9 DE Reg. 564 (10/01/05)**

##### 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 and Food Stamp Act of 1964 as amended;
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 utilized for household consumption;
13. all of the earned income of a minor or minor parent (under 18) who is a full-time student or a part-time 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 Stamp Employment & Training (FS 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.

**9 DE Reg. 564 (10/01/05)**

**11 DE Reg. 1488 (05/01/08) (Final)**