

## **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 regarding *Overpayments*. 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 July 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **SUMMARY OF PROPOSED CHANGES**

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding *Overpayments*.

#### **Statutory Authority**

45 CFR §98.11, *Administration under contracts and agreements*

#### **Summary of Proposed Changes**

**DSSM 11005.4, 11005.4.1, 11005.4.2 and 11005.4.3 [Reserved], Child Care Overpayments:** The purpose of this rule change is to clarify current policy guidelines regarding overpayments and to remove the examples. The original text is also reformatted to simplify language and improve readability.

#### **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 observation and recommendation summarized below. DSS has considered each comment and responds as follows.

First, the introduction, last sentence, reads as follows: “Each in the adult child care household is liable for repayment of the overpayment.” There is ostensibly a word missing from the sentence. Alternatively, perhaps the sentence was intended to read as follows: “Each adult in the child care household is liable for overpayment.” Apart from the wording, we have multiple substantive concerns with the concept embodied in the sentence.

**Agency Response:** DSS thanks you for your recommendation and will revise the sentence to read as follows: “*Each adult in the child care household is liable for the overpayment.*”

A. There is no definition of “child care household”. There are references to “a family” [§§11003.6, 11003.7.2, and 11003.9]. In particular, §11003.9.3 recites as follows:

The people whose needs and income are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family’s financial eligibility and the child care parent fee.

Imposing liability on everyone in an undefined "household" will predictably result in confusion and fair hearings.

**Agency Response:** The Division thanks you for your response however, the definition of "family size and child care household," are synonymous. The same people in the "family," and the child care household, are defined as the people whose needs and income comprise the definition of family size. Therefore, these same people along with their income make up the "child care household."

B. Section 11003.9.4 identifies minor parents as separate eligibility units under the program "even if they live with their legal guardian or parents". There is some "tension" between the regulatory establishment of a separate eligibility unit for minor parents and the recital that "each in the ...household is liable for overpayment. The co-habiting legal guardian or grandparent of children served in the program should not be liable for overpayments. Moreover, the legal basis for imposing liability of other non-applicant co-habiting persons is also questionable.

**Agency Response:** DSS thanks you for your response. DSS does not permit dependent minors to apply for benefits on their own. The responsible adult(s) in the home must sign any application. As such, they take responsibility for any overpayments that occur subsequent to that application.

C. There is a lack of due process if everyone in a "household" is liable for an overpayment while notice and opportunity for hearing is only offered to the parent/caretaker under §11005.4.2.

**Agency Response:** The household issue is addressed in the responses above. In the case of a responsible adult signing the application for a minor parent the notice and opportunity for hearing is sent to that adult. The notifications are not sent to the minor.

Second, in the last paragraph in the regulation, the term "over payments" should be "overpayments".

**Agency Response:** DSS has reviewed your comments and agrees with your recommendation. The term, "over payments," will be changed to "overpayments."

Third, DSS is eliminating all examples from the regulation. We encourage the Division to reconsider the value or retaining the examples. Much of the State workforce is aging and retiring. New DSS employees would benefit from the examples which provide easily-understood guidance reflecting long-term practice.

**Agency Response:** The examples were removed from the policy because with the policy rewritten for clarification, there is no need for them. Over time the examples become inaccurate and misleading. The DSS has plans to provide a compilation of examples for staff use outside of the policy manual.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the July 2010 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding *Child Care Overpayments* is adopted and shall be final effective September 10, 2010.

Rita M. Landgraf, Secretary, DHSS

#### **DSS FINAL ORDER REGULATION #10-38 REVISIONS:**

##### **11005.4 Child Care Overpayments**

##### **45 CFR 98.11**

A child care overpayment occurs when DSS pays providers for more child care service than parents/caretakers are eligible to receive. The overpayment may result because of agency or parent/caretaker error.

~~EXAMPLE 1: A Case Manager incorrectly enters parent income information resulting in a lower parent fee. After~~

several months, the Case Manager realizes the mistake. Because DSS has already made payment to the provider, the Case Manager must process this change as an overpayment.

~~EXAMPLE 2: A parent reports income of \$500.00 for a family size of three. However, after several months, the Case Manager discovers income actually was \$750.00. The lower income resulted in the parent paying a smaller fee than the parent should have paid. Because DSS has already made payment to the provider, the Case Manager must process this change as an overpayment.~~

The CCMIS will not process changes to an authorization for a prior period of time through the Correct Transactions function when the result is negative. A negative change means parents/caretakers receive less service because of a change in circumstances; for example, the change results in the parent paying a higher fee. In these situations, process an overpayment, using the child care overpayment notice and complete a Change Authorization to correct the error for future authorizations.

DSS is to attempt recovery in all cases of suspected fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

#### **11005.4.1 Determine the Overpayment Amount**

Determine the amount of the overpayment by:

- A. subtracting the difference between what DSS paid the provider versus what DSS should have paid, or
- B. subtracting the difference between the fee the parent paid and the fee the parent should have paid.

~~EXAMPLE: A child over age two in a center is paid \$13.00/day or \$299.00 (\$13.00 x 23 days) for a full month of child care. The parent paid no fee; DSS paid the full fee. However, the parent should have paid a fee amounting to \$1.00/day. DSS should have paid \$12.00/day if the parent paid \$1.00/day fee, or \$276.00 monthly.~~

\$299.00 DSS paid  
276.00 DSS should have paid  
23.00 Overpayment

If this overpayment continued for six months, the total overpayment is \$138.00. The Case Manager must complete an overpayment notice, noting the amount of the overpayment and the child care category under which the child received service.

DCIS provides case managers with access to the Claims Management function of the CCMIS to assist in determining the overpayment amount. Access is limited to child transactions and is inquiry only. The Claims Management function provides access to the actual provider payment.

#### **11005.4.2 Overpayment Notices**

Once the overpayment amount is determined, complete an overpayment notice in detail. Submit the notice to the supervisor who will check it for accuracy.

Send the original notice to the parent/caretaker and, after waiting 10 days, send a copy to the Audit and Recovery Unit. Audit and Recovery are responsible for establishing repayment agreements with parents/caretakers and for collecting and tracking payments on overpayment debts.

To provide parent/caretakers who disagree with the overpayment amount the opportunity to request a fair hearing, wait 10 days before sending the copy of the overpayment notice to Audit and Recovery. This allows parents/caretakers with an opportunity to contact case managers to possibly resolve the matter before intervention by Audit and Recovery.

#### **11005.4.3 Role of Audit and Recovery**

Collection of the overpayment by Audit and Recovery follows current policy as noted in DSSM 7000. Note that DSS can only recoup child care payments from child care benefits. Any attempt to recover child care overpayments from AFDC benefits can only occur if there is a voluntary request from the recipient family. The recipient family can only make such a voluntary request if the child care they were receiving was Food Stamp Employment & Training (FS E&T) AFDC Child Care, At Risk, or Transitional Child Care.

In addition to establishing repayment agreements and overseeing the collection of overpayments, Audit and Recovery also investigate overpayments for suspicion of fraud. Case managers will not make fraud determinations, but in cases where they suspect fraud, they should notify Audit and Recovery of their suspicions.

The Provider Administrator, along with Child Care Monitors, will continue to assume responsibility for situations involving provider overpayments.

A child care overpayment occurs when DSS pays for more child care service than parents/caretakers are eligible to receive. Overpayments may be the result of an agency, provider or parent/caretaker action.

DHSS will attempt recovery in all cases of suspected fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery. Each [adult] in the [adult] child care household is liable for repayment of the overpayment. [In instances where a legal guardian or parent is required to sign the child care application, the legal guardian(s) or the parent(s) in the home is responsible for the overpayment even though the parent(s) or guardian(s) is not technically part of the child care household.]

#### **11005.4.1 Determining the Overpayment Amount**

To determine the amount of the overpayment subtract the amount that the parent should have paid the provider from the DSS calculated parent fee. The difference is the overpayment amount.

#### **11005.4.2 Overpayment Notices**

Notify parents/caretakers in writing of any overpayment. The overpayment notice will contain:

1. a statement of the client's right to a fair hearing as provided in DSSM 5300
2. the method by which s/he may request a fair hearing
3. what to do to continue receiving your benefits after requesting a fair hearing
4. a statement that s/he may represent him/herself or that s/he may be represented by counsel or by another person
5. the reason for the overpayment
6. the amount of the overpayment
7. the overpayment time period
8. the name of the child/ren associated with the overpayment.

DSS can only recoup child care [over payments overpayments] from child care benefits. Any attempt to recover child care overpayments from TANF benefits can only occur if there is a voluntary request from the recipient family. Audit and Recovery Management Services (ARMS) is the agency responsible for establishing repayment agreements and the collection of overpayments.

#### **11005.4.3 RESERVED**