



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: August 29, 2013

TO: Ms. Elizabeth Timm, DFS
Office of Child Care Licensing

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 186 [DFS Proposed Residential Child Care & Day Treatment Program Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's proposal to amend the *Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs*. SCPD commented on an earlier version of this proposed regulation. A copy of the June 24, 2013 SCPD memorandum is attached for facilitated reference. DFS later conducted a teleconference with the Disabilities Law Program (DLP) and SCPD on related regulations which provided the opportunity for supplemental dialog. DFS has now issued a revised set of proposed regulations which was published as 17 DE Reg. 186 in the August 1, 2013 issue of the Register of Regulations. SCPD has the following observations on the latest version of the regulations.

First, consistent with the June 24 commentary, the Division is substituting "regulation" for "requirement" throughout the standards. The Division corrected two references (§§5.11 and 7.11) as recommended by the June 24 commentary.

Second, the Division corrected the reference in §10.4.2 as recommended by the Council.

Third, the Division did not revise its proposed ban on the presence of any toy in a crib with a sleeping infant in §11.11.2.8.

Fourth, in response to the Council's observation that the regulation lacked a definition of "infant", the Division added a definition of "infant" in §1.3. However, unlike the balance of definitions, DFS did not number the definition of "infant". The numbering of the definitions

runs from Rule 1.01 through Rule 1.42. This observation is part of a larger concern. The Administrative Code Drafting and Style Manual, §3.12, contains the following admonition: “Do not number individual definitions.” Therefore, the Division may wish to consider revising the format of its definitions section.

Fifth, in response to the supplemental dialog among DFS, SCPD and DLP, DFS is revising its definition of “child” in §1.3. It proposes to delete the inclusion of a person in a facility “who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25.” At one time, this was an important safeguard for young adults placed at AdvoServ which had no licensing standards applicable to adults. Since the DLTCRP has adopted regulations covering adult AdvoServ residents, the DFS deletion of overlapping regulations is not as problematic. However, it could prove troublesome for individuals who receive extended DFS services through age 21 consistent with H.B. 163. If a covered individual continued residency in a residential child care facility or participated in a day treatment program, the deletion of the above sentence could result in an absence of protections and standards applicable to the individual. DFS should reconsider the deletion.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Vicky Kelly
Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg186 dscyf-dfs residential child care facility 8-29-13



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MEMORANDUM

DATE: June 24, 2013

TO: Ms. Elizabeth Timm, DFS
Office of Child Care Licensing

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities
DM P/20

RE: 16 DE Reg. 1257 [DFS Proposed Residential Child Care Facility & Day Treatment Programs Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's proposal to amend the Delaware Requirements for Residential Child Care Facilities and Day Treatment Programs. The proposed regulation was published as 16 DE Reg. 1257 in the June 1, 2013 issue of the Register of Regulations.

As background, the Governor issued Executive Order 36 on January 4, 2012 establishing a schedule for agencies to solicit input from the public on regulations in effect for more than three years. DFS notes that it received few comments on its "Delacare" standards covering residential child care facilities and day treatment programs. Consistent with the Summary, it intends to initiate a comprehensive review of its standards in the Fall of 2013. SCPD has the following technical observations on the proposed regulation.

First, the Division is substituting "regulation" for "requirement" throughout the standards. The substitutions are generally acceptable. However, in a few contexts, the substitution results in "odd" or incomplete references. See, e.g., reference to "Regulations of 1.0, 2.0, 3.0 and 4.0" (§5.1.1 and §7.1.1); and reference to "Regulations of 1.0, 2.0, and 3.0" (§8.1.1). We suspect the Division intended to refer to "Regulations of Chapters 1.0, 2.0, ...". Compare §9.1.1, §10.1.1, and §11.1.1.

Second, the Division may wish to reconsider the substitution of "regulations" for "requirements" in §10.4.2.

Third, §11.11 requires all toys to be confirmed to be “of safe construction, non-toxic, and free of hazards” and checked with a “choker tube” to ensure parts cannot be swallowed by a child under age 3. Section 11.11.2.8 disallows the presence of any toy in a crib or playpen when an infant is asleep. There is no definition of “infant” but the OCCL licensing regulations for day care centers (Part 101) define an infant as a child under age one. Our concern is that some infants may be very “attached” to a particular toy as a “comfort” item and may not be predisposed to sleep without it. If all toys are checked for hazards, query whether the presence of a single toy in a crib or playpen is a realistic danger. DFS may wish to reconsider the total ban on any toy in a crib or playpen when an infant is asleep.

Fourth, given the anticipated thorough review of the standards in the Fall and “involvement of a wide cross-section of stakeholders”, SCPD would like to offer technical assistance to the process.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulations.

cc: Ms. Vicky Kelly
Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

16reg1257 dscyf-dfs-residential child care facility 6-24-13