



DISABILITIES LAW PROGRAM

COMMUNITY LEGAL AID SOCIETY, INC.

100 W. 10th Street, Suite 801
Wilmington, Delaware 19801
(302) 575-0660 TTY (302) 575-0696 Fax (302) 575-0840
www.declasi.org

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Regulatory Initiatives

Date: December 5, 2013

I am providing my analysis of seven (7) regulatory initiatives for the consideration of the Council's P&L or Executive Committee. I understand that the December 12 meeting of the P&L Committee has been cancelled given the small number of regulations published in the Register this month. Given time constraints, the commentary should be considered preliminary and non-exhaustive.

1. DSS Final TANF State Plan Amendment Reg. [17 DE Reg. 638 (12/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in October. A copy of the October 25, 2013 SCPD memo is attached for facilitated reference. The Councils endorsed the initiative with no suggested changes.

The Division of Social Services has now published a final regulation which acknowledges the Councils' endorsements and conforms to the proposed version.

I recommend no further action.

2. DMMA Final Medicaid State Plan Rehabilitative Services Reg. [17 DE Reg. 634 (12/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in October. A copy of the October 25, 2013 SCPD memo is attached for facilitated reference. The Division of Medicaid and Medical Assistance has now adopted a final regulation incorporating amendments prompted by the Councils' commentary.

First, the Councils noted that the definition of "crisis intervention services" could prove problematic since the term is limited to a "face-to-face" intervention and the section contemplates contacts and consultations by phone. The Division responded that "federal policies do not permit billing for phone consultations" but there will be an administrative allowance built into rates to reimburse providers for contacts and consultations by phone.

Second, the Councils suggested that the Division consider adopting a uniform reference other than “consumer”, “client”, and “individual”. The Division agreed and substituted “beneficiary” in fifty-two (52) references.

Third, the Councils recommended revisions to a reference to mental health screeners to conform to a statute and implementing regulation. The Division agreed and amended the reference.

Fourth, the Councils recommended revision of a reference to “advanced practice nurse”. The Division agreed and modified to reference to conform to statute.

Fifth, the Councils recommended amending a reference to “licensed physician assistant”. The Division agreed and adopted the suggested change.

Sixth, the Councils recommended an amendment to correct grammar in the final bullet on Page 6d. The correction was made.

Seventh, the Councils noted some ostensible inconsistencies in the minimum age standards for certified peers. In response, the Division modified Page 6e.

Since the regulation is final, and the Division incorporated many amendments prompted by the commentary, I recommend no further action.

3. DMMA Prop. & Emergency Medicaid Pregnant Women & Infants Income Cap Regulation [17 DE Reg. 584 & 597 (12/1/13)]

Based on changes in federal law, DMMA was prompted to modify its calculation of the Medicaid countable income cap for pregnant women and infants under age 1. This resulted in an anomaly, i.e., pregnant women and infants under age 1 would be eligible with countable income up to 209% of the federal poverty level (FPL) but children between 1 and 18 would be eligible with countable income up to 212% of the FPL. DMMA would like to have the same standard so it is proposing to adopt the 212% FPL standard for both groups. CMS recommended that DMMA effect the revisions “immediately” (p. 598) so DMMA is issuing both an emergency and proposed regulation. DMMA indicates there is no negative financial impact on the State resulting from the proposed change. At p. 599.

Since the proposal would increase access to the Medicaid program with no negative financial impact, I recommend endorsement subject to consideration of a potential amendment. Both the emergency and proposed regulations recite that “Delaware will disregard an equal amount to the difference...”. I suspect that DMMA may have intended to recite that “Delaware will disregard an amount equal to the difference...”

4. DOE Final Issuance of Initial License Regulation [17 DE Reg. 610 (12/1/13)]

The SCPD and GACEC commented on the proposed version of this regulation in October. A copy of the October 25, 2013 SCPD memo is attached for facilitated reference.

First, the Councils noted that the definition of “suspension” was too narrow. The DOE agreed and amended the definition.

Second, the Councils identified a conflict between a statute and regulation in the context of a bar on issuance of a license without meeting the requirements of certification. The DOE indicated that it will consider the comment when issuing another set of proposed regulations.

Third, the Councils observed that a reference to “within the last year” could be interpreted in different ways. The DOE indicated that it will consider the comment when issuing another set of proposed regulations.

Fourth, the Councils noted that §11.2 would ostensibly allow someone who obtains an initial license to keep the (inactive) license indefinitely until offered a job by a public school. The DOE indicated that it will consider the comment when issuing another set of proposed regulations.

Parenthetically, the Delaware School Nurses’ Association also submitted comments. The DOE indicated that it will consider the comments when issuing another set of proposed regulations.

Since the regulation is final, and the DOE anticipates issuing another proposed regulation prior to July 1, 2014, I recommend no further action.

5. DOE Prop. Paraeducator Permit Regulation [17 DE Reg. 591 (12/1/13)]

The Professional Standards Board, in collaboration with the Department of Education, proposes to adopt revisions to its regulation covering paraeducator permits.

I have the following observations.

First, §§3.1.1.4 and 3.1.2.4 are not grammatically correct. The other subparts begin with nouns (“completion”; “receipt”; and “completion” while this subpart begins with a verb (“submits”). Moreover, the reference to “and meets all the requirements” is redundant since §3.1 and 3.1.2 already require the applicant to meet listed standards. Compare analogous regulations (e.g. 14 DE Admin Code 1520, §3.0; 14 DE Admin Code 1521, §3.0). I recommend consideration of the following substitute: “Submission of sufficient verifiable evidence to the Department that the applicant meets the above qualifications.”

Second, §3.2.1 literally allows an applicant to submit either transcripts or tests scores. I recommend substituting “and” for “or” since §§3.1.1 and 3.1.2 require both completion of education studies and satisfactory score on a test/assessment.

Third,, the grammar in §4.2 is incorrect. Consider inserting “who” between “applicant” and “has”.

Fourth, the grammar in §5.2 is incorrect. Consider inserting “who” between “Paraeducator” and “has”.

I recommend sharing the above observations with the SBE, DOE, and Professional Standards Board.

6. DOE Proposed Charter Schools Regulation [17 DE Reeg. 588 (12/1/13)]

Legislation (H.B. No. 165) was signed by the Governor on June 26, 2013 which included many revisions to Delaware’s charter school law. The revisions included the creation of the following new section:

The Department of Education shall administer a performance fund for charter schools, to be known as the “Charter School Performance Fund”. The Department of Education shall establish eligibility requirements for applicants desiring to apply for funding, which shall include but not be limited to a proven track record of success, as measured by a Performance Framework established by the charter school’s authorizer or comparable measures as defined by the Department. The Department of Education shall also establish criteria to evaluate applications for funding, which shall include but not be limited to the availability of supplemental funding from non-State sources at a ratio to be determined by the Department. The Department of Education shall prioritize those applications that have (a) developed high-quality plans for start-up or expansion or (b) serve high-need students, as defined by the Department. The fund shall be subject to appropriation and shall not exceed \$5 million annually.

Title 14 Del.C. §509(m)

The Department is now issuing some brief revisions to its charter school regulation to implement the above statute. I have two (2) observations.

First, the above statute requires the Department to “establish eligibility requirements for applicants desiring to apply for funding” and “criteria to evaluate applications for funding”. The proposed regulation only defines the fund without describing the actual “eligibility requirements” and “criteria to evaluate applications” contemplated by the new statute. Perhaps the Department intends to adopt standards at a sub-regulatory level. It would be preferable to include standards in the Part 275 regulation which contains a §6 covering “funding”. This would provide an opportunity for public and stakeholder input on the standards.

Second, the statute authorizes the Department to define “high-need students”. The proposed regulation adopts a rather vague standard which only focuses on only one parameter, low income status:

“High-Needs Students”: means students that qualify as low economic status pursuant to Department determination.

If the Legislature intended to only prioritize students from low-income families, it would have simply adopted such a reference in the statute. During the consideration of the bill, multiple amendments were introduced in this context. See attachments. An amendment (S.A. No. 3) which solely focused on low-income students did not pass. Significantly, multiple representatives introduced amendments which prioritized not only low-income students, but also students with disabilities. See H.A. No. 9 and H.A. No. 11. The implication is that there was a lack of consensus on the focus of prioritization but “high-needs” students should not be simply narrowly defined to only include low-income individuals. It would be propitious if the State could encourage charter schools to develop specialized programs for students with disabilities. This would be consistent with State public policy as reflected in Title 14 Del.C. §3121. Moreover, conceptually, students with disabilities are “high needs” students. By regulation (14 DE Admin Code 1426, §6.0), students cannot be classified as IDEA-eligible unless they demonstrate significant disability-based limitations on educational performance. I therefore recommend that the DOE define “high-needs students” to include “students with disabilities”.

I recommend sharing the above observations with the DOE and SBE. The GACEC should also consider promptly sharing its comments with select policymakers who could also submit recommendations to define “high-needs students” to include “students with disabilities”. For example, the sponsors of H.A. No. 9 and H.A. No. 11 and the Lt. Governor might be interested in the regulation.

7. DFS Prop. Child Placing Agencies Regulation [17 DE Reg. 608 (12/1/13)]

In July, 2013, the Division of Family Services published a 47–page set of regulations revising its standards applicable to child placing agencies. Both the GACEC and SCPD submitted twenty-eight (28) comments on the proposed standards. A copy of the July 25, 2013 SCPD memo is attached for facilitated reference. Rather than adopt a final regulation, the Division is publishing a revised set of proposed regulations. My analysis will follow the order of commentary in the July 25 memo earmarked with italics.

1. In §4.0, definition of “Adoptive Parent”, the word “means” is omitted. It should be inserted.

Revision: The word “means” was inserted.

2. In §5.0, definition of “Child Appointed Special Advocate”, substitute “litem” for “lite”. SCPD also recommends substituting “neglected or dependent child” for “neglected and dependent child” since the terms are disjunctive, i.e. a child can be either abused, neglected, or dependent.

Revision: DFS substituted “neglected or dependent child” for “neglected and dependent child”. It deleted the reference to Guardian ad lite(m). It substituted “Court Appointed Special Advocate” for “Child Appointed Special Advocate”.

3. In §5.0, the definition of “Developmentally Appropriate” could be improved. The current definition only addresses age and omits any consideration of other characteristics, including disability. As a result, §73.0 would literally require a foster parent to provide a 10 year old child with severe cognitive limitations to use only a fifth-grade reading level book. In contrast, the child’s service plan is expected to reflect disability-related considerations. See §§62.1.2 and 62.1.4. Consider the following revision: “Developmentally Appropriate” means...age, is consistent with the child’s special needs, and encourages development...” The term “special needs” is defined in §5.0.

Revision: DFS adopted a variation of the suggested language.

4. In §6.1.1, there is a dangling conjunction (“and”).

Revision: The extraneous “and” was deleted.

5. Section 12.0 contemplates the posting of a license “at an Agency location”. Section 8.1 indicates that a license is issued “for the address of the Agency’s actual site where services are being provided.”. The Division could consider amending §12.0 so the license would be posted at the actual licensed site rather than any agency location.

Revision: DFS amended the provision to require posting “at the address of the Agency’s actual site where services are being provided.”

6. Section 16.0 allows licensees to request a “variance” or waiver of specific standards. It would be preferable to include some provision for notice to affected individuals (e.g. foster and adoptive parents; foster children) to facilitate input. Compare 16 DE Admin Code 3310, §12.1.4; and 16 DE Admin Code 3301, §9.1.5.

Revision: No change was made. I recommend that the comment be reiterated.

7. In §18.0, it would be preferable to include a provision disallowing retaliation against individuals both initiating or cooperating with a complaint investigation. Compare analogous §44.3 and 16 DE Admin Code 3320, §19.2.

Revision: DFS added a §18.8 which recites as follows: “A Licensee shall not discourage, inhibit, penalize or otherwise impede any staff member from reporting any suspected or alleged incident of child abuse or neglect.” This is identical to §44.3. However, the provision could be improved. First, it could be modified to cover volunteer reporting as well. See analogous DFS regulation, 9 DE Reg. 105, §13.1.13.2. Second, neither §44, §17, nor §18 bar a provider from retaliating against staff who have cooperated with a post-report DFS investigation. Non-retaliation provisions facilitate State agency investigations and support sanctions if a provider penalizes cooperating staff. Cf. Title 16 Del.C. §§1134(g), 1135, and 1154(b). Based on these concerns, the following standard could be adopted: “A Licensee shall not discourage, inhibit, penalize or otherwise impede any staff member or volunteer from reporting any suspected or alleged incident of child abuse or neglect or cooperating with a Department investigation of the incident.” The term ‘Department’ is used based on §18.2.

8. Section 18.3 requires DFS to categorically notify the licensee and agency that a complaint is being investigated. DFS may wish to reconsider this no-exceptions requirement. Such notice may prompt a wrongdoer to initiate "cover-up" action. Such notice could also compromise a criminal investigation initiated under §18.7. DFS may wish to consult the Attorney General's Office concerning this provision.

Revision: No change was made. The concern should be reiterated. It's not apparent whether DFS consulted the Attorney General's Office in this context.

9. In §19.0, DFS could consider requiring notice of incidents involving "exploitation" of a child. See §75.0. DFS could also review analogous regulations to broaden the scope of reportable incidents. See, e.g., 16 DE Admin Code 3320, §24.0; and 16 DE Admin Code 3225, §19.7, including elopement and attempted suicide as reportable incidents.

Revision: Section 19.2.3 has been amended to cross reference the definition of abuse or neglect in Title 10 Del.C. §901(1). That statute defines abuse as including exploitation. I recommend reiterating the recommendation to expand the list of reportable incidents. An elopement or attempted suicide without injury would not be reportable incidents under the current §19.0. The cited DHSS regulations, by analogy, would require reporting of such events.

10. Section 19.2.6 and 101.10 allow facilities to maintain a temperature of 85 degrees. This standard is assessed "at floor level" (§101.10). Since hot air rises, this means that the ambient room temperature may be significantly hotter than 85 degrees. Moreover, Delaware's high humidity levels exacerbate the effects of high temperatures. Query whether maintaining an infant in a high-humidity room with ambient room temperature between 85-90 degrees is a prudent regulatory standard. Compare 16 DE Admin Code 3225, §17.3 (maximum 81 degree temperature); 16 DE Admin Code 3310, §5.4 (temperature and humidity "provide a comfortable atmosphere"). In other contexts, the Regulation recognizes that children should be accorded some choice in "comfort" contexts. See, e.g., §77.5.4 (authorizing substitution of foods subjectively "disliked" or "unacceptable") and §81.4 (allowing children to keep personally "special" belongings). DFS could incorporate analogous consideration of a child's temperature tolerances as well. Compare 16 DE Admin Code 3225, §17.3 ("A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort."). At a minimum, the 85 degree standard should be lowered.

Revision: No change was made. The comment should be reiterated.

11. Section 42.4 is somewhat "overbroad". It bars employment "in any capacity" of "any person convicted of...offenses against a child". This bar would apply to individuals with no contact with children (e.g. accountant). This bar would apply to convictions remote in time and irrespective of rehabilitation. There is no definition of "offense against a child" which could be construed to include minor offenses and offenses not implicating child abuse/neglect. Although some discretion for exceptions is authorized by §42.6.6.1, that subsection ostensibly is only applicable to §42.6, not 42.4.

Revision: No change was made. The comment should be reiterated.

12. Section 42.6 would literally require the licensee to fire anyone "indicted" but not convicted of certain offenses. This is ostensibly inconsistent with federal guidance shared with DFS in connection with commentary on its proposed regulation published at 16 DE Admin Code (May 1, 2013). The Council included the following italicized commentary on that regulation:

Eighth, §7.0 is "overbroad". For example, §7.1.1.1 contemplates consideration of arrest records without conviction. This is inconsistent with recent EEOC guidance. See attachments. Consistent with the EEOC Q&A document, Par. 7, the Enforcement Guidance preempts inconsistent state laws and regulations. In the analogous context of adult criminal background checks, the DLTCRP recently adopted the following regulatory standard deferring to the EEOC guidance:

8.3. DHSS adopts the guidance from the Equal Opportunity Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, 915.002, issued 4/25/2012.

16 DE Admin Code 3105, §8.3.

Revision: No change was made. The comment should be reiterated.

13. Section 44.4 categorically bars notification of parents of investigation of abuse or neglect in which their child was allegedly victimized: "Staff shall not contact the parent/guardian of a child who is the alleged subject victim to advise them that either a report has been made or that the Division or law enforcement officer is conducting an investigation of an allegation of abuse or neglect." It is "odd" to bar notice to a parent of alleged abuse/neglect of a child. Indeed, the bar is "at odds" with §71.1 which requires the licensee to report to a parent any "incident involving serious bodily injury or any severe psychiatric episode involving the child". Parents will be justifiably upset if agencies conceal information about abuse/neglect of their children.

Revision: DFS amended the sentence as follows: "Staff shall ~~not contact~~ follow the protocol(s) of the investigating agency regarding informing the parent/guardian of a child who is the alleged subject victim to advise them that either a report has been made or that the Division or law enforcement officer is conducting an investigation of an allegation of abuse or neglect is being conducted". The phrase "is being conducted" is redundant and should be deleted.

14. DFS may wish to consider transferring the concepts embodied in §75.0 to §44.0.

Revision: DFS deleted §75.0 in its entirety. The previous version was as follows: "A licensee shall ensure that a foster parent does not subject a child to exploitation in any form." The concept is not explicitly addressed in §44.0.

15. Section 78.1.4 ostensibly authorizes "locking a child in a room" as long as not "for a long period of time". This is highly objectionable. The Division should bar locking a child in a room.

Revision: DFS amended the reference to bar “locking a child in a room”. See new §77.1.4.

16. Section 78.1.6 could be embellished with conduct (e.g. throwing child; hitting with closed fist) prohibited by Title 11 Del.C. §468(1)c.

Revision: Instead of embellishing this subsection with conduct which is prohibited by the statute, DFS deleted the specific references to prohibited conduct altogether. See new §77.1.6. It would be preferable to retain the specific examples of prohibited conduct, including shaking, hair pulling, hair pulling, slapping, pinching, and spanking. Many individuals would not view shaking, slapping, etc. as forms of corporal punishment.

17. Section 78.0 occasionally uses the terminology “is prohibited” (§78.1.9) but generally uses the terminology “shall be prohibited”. SCPD recommends generally using present tense, i.e., “is prohibited”. Otherwise, it appears that the conduct will be barred in the future.

Revision: DFS converted multiple references in new §77.0 to present tense.

18. In §78.1.12, insert ‘disability’ after “family”.

Revision: The insertion was made in new §77.1.12.

19. Section 78.0 could be improved by including a bar on chemical restraint. Compare recently enacted S.B. No. 100. See also 16 DE Admin Code 3320, §20.11.11.

Revision: DFS added a new §77.1.7 barring chemical restraint and physical restraint.

20. DFS should review both S.B. No. 100 and 16 DE Admin Code 3320, §20.11 for examples of limitations on behavior management that could be incorporated into §78.0.

Revision: DFS deleted the following ban on mechanical restraint which appeared in §78.1.7: “A child shall not be tied, taped, chained or caged or place(d) in mechanical restraints as a consequence of inappropriate behavior.” This is a major, unfortunate amendment. I recommend reinstatement of the sentence or a variation of the sentence. Otherwise, there is not prohibition on use of mechanical restraint.

21. In §80.2, substitute “places” for “place”.

Revision: The correction was made in new §79.2.

22. In §80.5 or §72.0, DFS may wish to address the use of bumper pads in cribs. See <http://pediatrics.about.com/od/babyproducts/a/crib-bumpers.htm>.

Revision: New §79.5.1 has been added which addresses not only bumper pads, but pillows and “other soft products” as well.

23. In §86.4, DFS should consider insertion of the word “approaching” prior to “eighteen”. As reflected in §86.3, providing a list of community services as the individual is “walking out the door” on the individual’s 18th birthday is not prudent. DFS should also consider adding other preparation/orientation activities, including completion of selective service registration. SCPD recommend that DFS review the findings in the preamble to H.B. No. 163 for insight. For example, if 82% of males exiting foster care are arrested by age 21, and a high percentage of females become pregnant by age 21, doesn’t it make sense to address prevention activities?

Revision: The word “approaching” was inserted. No other change was made.

24. Section 90.1 is somewhat “overbroad” since it does not address the passage of time or rehabilitation. If the substantiated neglect occurred 30 years ago, and the individual is now highly responsible, does it make sense to apply a categorical bar to serving as a foster parent?

Revision: No change was made. I recommend reiterating the comment.

25. Section 96.1 categorically bars anyone over sixty-five (65) years of age becoming a foster parent. If there is no State statute which imposes such a limit, any State regulation limiting eligibility in a federally-funded program may run afoul of the federal Age Discrimination Act. See <http://www.hhs.gov/ocr/civilrights/resources/factsheets/age.pdf> and <http://www.dol.gov/dol/topic/discrimination/agedisc.htm>. It is also anomalous that the Regulation contains no age limit for prospective adoptive parents. See §140.0.

Revision: No change was made. I recommend reiterating the comment. The Councils may also wish to consider alerting AARP and DSAAPD of the age cap on foster parents. They may decide to comment on this aspect of the DFS regulation.

26. Although there is a brief treatment of “pets” in §112.0, potentially dangerous pets are not covered in §112.0 or in §101.0. Thus, a prospective foster parent could conceal ownership of multiple pit bulls or snakes. The regulatory standards do not contemplate any inquiry on the safety aspects of pets, only other household members (§§90.2 and 136.4) and visitors (§124.0). DFS may wish to add a standard addressing potentially dangerous pets.

Revision: No change was made. I recommend reiterating the comment.

27. The Councils previously questioned the general ban on children wearing a helmet around playground equipment. See §103.2.4.3. I continue to question the rationale for the general ban. Intuitively, if a child falls from a height, the helmet would provide some protection from TBI.

Revision: DFS provided the following response to the comment: "This prohibition is consistent with the recommendations of the American Academy of Pediatrics as found in Caring for Our Children, National Health and Safety Performance Standards, Guidelines for Early Care and Education, Third Edition which states that "helmets can be a potential strangulation hazard if...worn for activities other than when using riding toys." (P. 286)." I was unable to review the text of the above guidelines. The 2011 publication is available for purchase. However, further research corroborates the response. Consistent with the attached press release, the Consumer Products Safety Commission warns that children should not wear bike helmets when playing on playground equipment based on a strangulation risk.

28. Section 113 literally would not require someone driving a child in a pickup truck or van to have a driver's license and insurance. Consistent with §113.0, consider substituting "vehicle" for "automobile".

Response: The change was made.

I have a few supplemental comments on the revised proposed regulation.

1. In §5.0, DFS may wish to revise the definition of "complaint investigation". The definition limits the term to investigations by the OCCL. However, §18.2 contemplates investigations by the Department's Institutional Abuse Investigation Unit in some cases.

2. In §5.0, the definition of "guardian" overlooks the concurrent authority of the Court of Chancery to also appoint guardians of children. See Title 12 Del.C. §3901(a).

3. In §44.5.1, DFS should substitute "incident" for "incidence".

Attachments

8g:legreg/1213bils



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: October 25, 2013

TO: Ms. Sharon L. Summers, DSS
Policy & Program Development Unit

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

RE: 17 DE Reg. 406 [DSS Proposed TANF State Plan Amendment Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its TANF State Plan published as 17 DE Reg. 406 in the October 1, 2013 issue of the Register of Regulations. SCPD endorses the proposed changes since they are designed to implement federal requirements and are essentially "housekeeping" measures. SCPD also has the following observations.

First, given enactment of Delaware's Civil Marriage Equality and Religious Freedom Act of 2013, the Plan is being updated to afford partners in a same gender marriage the same program rights, benefits, responsibilities and obligations as different gendered marriage partners. The proposed amendment in this context is straightforward and summarizes the effect of the new State law.

Second, federal legislation requires states which issue electronic benefits to have policies to deter TANF recipients from conducting a benefit transfer transaction in liquor stores, casinos, and adult oriented entertainment venues. In response to the federal requirement, DSS is adding a provision confirming that it does not issue TANF benefits electronically. Rather it issues checks via PNC bank. DSS confirms that, if it converts to an electronic benefit system in the future, it will amend the TANF Plan to include safeguards against transactions in liquor stores, casinos, and adult oriented entertainment venues.

Third, there is a federal requirement that the TANF Plan include methods to reduce out-of-wedlock births. DSS is adding one program to the section describing such efforts. Specifically, DSS notes that the Jobs for Delaware Graduates program provides services to needy children attending middle schools in Delaware which target multiple objectives, including reduction in out of wedlock/teen

pregnancies.

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

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg406 dss-tanf 10-25-13



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: October 25, 2013

TO: Ms. Sharon L. Summers, DMMA
Planning & Policy Development Unit

FROM: *JW/s*
Jamie Wolfe, Vice-Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 395 [DMMA Prop. Medicaid State Plan Rehabilitative Services Reg.]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend the Medicaid State Plan in the context of "rehabilitative services". The primary impetus is "to be responsive to the United States Department of Justice (DOJ) Settlement through the addition of new services and modifications to existing services." The proposed regulation was published as 17 DE Reg. 395 in the October 1, 2013 issue of the Register of Regulations. SCPD has the following observations.

First, in Attachment 3.1-A, Page 6a, the definition of "crisis intervention services" recites that it is "a face-to-face intervention". This may be unduly limiting and could prove problematic if DMMA contemplates provider billing for many of the "specific activities" listed in the same section, including contact with collateral sources for information, follow-up with the individual and family members, and consultation with a physician. The listed activities would often occur by phone and would not be "face-to-face".

Second, in Attachment 3.1-A, Page 6b, there are multiple references to "consumers". In contrast, there are also references to "Medicaid eligible individuals" or "individuals". The term "consumer" is not a common description of Medicaid beneficiaries. The Division may wish to adopt alternate and consistent language.

Third, in Attachment 3.1-A, Page 6c and Page 6d, the term "certified screener" is used. SCPD assumes this refers to a "credentialed mental health screener" as defined in Title 16 Del.C. §5122(a)(1). DMMA includes definitions of some terms (e.g. "Licensed Behavioral Health Practitioner" in Attachment 3.1-A, Page 3 Addendum) but there is no definition of "certified screener". Moreover, neither the above statute nor the applicable regulation (16 DE Admin

Code 6002) authorizes “certification” of screeners. Rather, they are “credentialed”. DMMA may wish to conform the reference to the terminology used in the statute and regulation and provide a definition of the term.

Fourth, in Attachment 3.1-A, Page 6d, DMMA refers to “Advanced Practice Nurse and employment under a formal protocol with a Delaware licensed physician”. This makes no sense grammatically and substantively. SCPD assumes the Division intended to refer to an advanced practice nurse operating “in collaboration with” a physician. See Title 24 Del.C. §1902(b)(1). There is no requirement that an APN be employed by a physician.

Fifth, in the same Attachment 3.1-A, Page 6d, the list of practitioners includes “Licensed Physician Assistant and employment under the delegated authority of a licensed physician.” This makes no sense grammatically and substantively. There is no requirement that an LPA be “employed” by a physician. See Title 24 Del.C. §1770. The LPA must be “supervised” by a physician. Moreover, this is the only reference to licensed physician assistant in the entire regulation. There are many lists of practitioners authorized to provide Medicaid-reimbursable services. LPAs are omitted from the lists. See, e.g., Attachment 3.1-A, Pages 6b, 6c, 6e, 6h, 6i; and Attachment 4.19-B, Page 3a Addendum. The Division may wish to assess whether LPAs should be included in some of these sections. Finally, the Division may wish to correct the grammar in the final bullet on Page 6d.

Sixth, there is an anomaly in the age standards within the regulation. A “certified peer” must be at least 21 years of age. See Attachment 3.1-A, Page 6e. Other unlicensed staff, including a “recovery coach”, can be 18 years of age. See Attachment 3.1-A, Page 6h and Page 6i. Moreover, page 6h includes “certified peers” as “unlicensed staff” who can be age 18. The references are inconsistent and the rationale for the divergent standards is not intuitive.

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

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Delaware Academy of Physician Assistants
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg395 dmma- rehab services 10-25-13



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

October 25, 2013

Dr. Donna Lee Mitchell, Executive Director
Professional Standards Board
Townsend Building
401 Federal Street
Dover, DE 19901

RE: 17 DE Reg. 372 [DOE Prop. Issuance of Initial License Regulation]

Dear Dr. Mitchell:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)] proposal to amend its regulation covering the initial license for educators published as 17 DE Reg. 372 in the October 1, 2013 issue of the Register of Regulations. SCPD has the following observations.

First, in §2.0, the definition of "suspension" is limited to removal of a license for failure to pass the PRAXIS I test. In contrast, §§6.0 and 7.1.1 authorize suspension for failure to pass alternatives to the PRAXIS I. Moreover, the enabling legislation authorizes "suspension" in a variety of contexts apart from failure to pass the PRAXIS I test. See Title 14 Del.C. §1218(a). The definition of "suspension" in §2.0 may simply be too narrow.

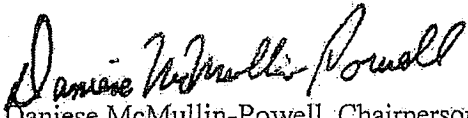
Second, SCPD has previously noted that it is odd to disallow applicants from seeking a license unless they also meet the requirements of a certification. This approach is retained in §3.3. This approach is facially contrary to Title 14 Del.C. §1210 which recites that the Department "shall issue an initial license" if certain criteria are met, none of which requires certification.

Third,, §5.2.1 recites that "(t)he one year of teaching experience must have occurred within the last year." This may result in confusion. For example, do all of the "countable" days have to occur within the last 365 days or is it sufficient that the last portion of the "countable" days be within the last 365 days? Moreover, in other sections, the standards refer to "fiscal year". See, e.g., §§7.1 and 13.1.1. Does "year" in §5.2.1 refer to calendar year or fiscal year?

Fourth, §11.2 would ostensibly allow someone who obtains an initial license to keep the (inactive) license indefinitely (e.g. 20 years) until offered a job by a public school. There is some "tension" between such an authorization and the normal 3-year duration of an initial license. See §11.1. Even a leave of absence cannot exceed 3 years without some effect on the duration of the initial license. See §14.0.

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

Sincerely,



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

cc: The Honorable Mark T. Murphy
Dr. Teri Quinn Gray
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Mr. Ilona Kirshon, Esq.
Ms. Susan Haberstroh
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg 372psb-initial license 10-25-13

SPONSOR: Sen. Townsend & Sen. Henry & Sen. McDowell

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE AMENDMENT NO. 3

TO

HOUSE BILL NO. 165

Amend House Bill No. 165 as amended by deleting line 77 in its entirety and substituting in lieu thereof the following:

“applicants desiring to apply for funding, which shall include but not be limited to: (1) an overall student body population in which low-income students comprise at least 10% of the student body, and (2) a proven track record of success, as”

SYNOPSIS

This amendment focuses the impact of the Charter School Performance Fund and seeks to increase the positive impacts of the Fund on all Delaware schoolchildren in a time of limited budgets and net cuts to education, by requiring monies from the Fund support programming and innovations occurring within settings more representative of Delaware's overall student population.

Author: Senator Townsend

SPONSOR: Rep. Baumbach

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 9

TO

HOUSE BILL NO. 165

AMEND House Bill No. 165 by striking line 82 in its entirety and substituting in lieu thereof the following:

developed high-quality plans to serve a high proportion of traditionally under-served students including students with low socio-economic status (SES) and students with disabilities.

SYNOPSIS

The amendment requires that the high-quality plans for the receipt of funds directly serve traditionally under-served students.

SPONSOR: Rep. Heffernan

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 11
TO
HOUSE BILL NO. 165

AMEND House Bill No. 165 by striking line 82 in its entirety and substituting in lieu thereof the following:

developed high-quality plans to serve a high proportion of traditionally under-served students including students with low socio-economic status (SES), rural students, and students with disabilities, with those schools receiving at least 50% of the performance fund.

SYNOPSIS

The amendment requires that preference is given to high-quality plans directly serving traditionally under-served students, rural students, or students with disabilities. Those programs are to receive at least 50% of the fund.



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: July 25, 2013

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

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

RE: 17 DE Reg. 62 [DFS Proposed Child Placing Agency 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 (OCCL's) proposal to amend its regulations regarding the *Delacare Requirements for Child Placing Agencies*. The proposed regulation was published as 17 DE Reg. 62 in the July 1, 2013 issue of the Register of Regulations. SCPD has the following observations

1. In §5.0, definition of "Adoptive Parent", the word "means" is omitted. It should be inserted.
2. In §5.0, definition of "Child Appointed Special Advocate", substitute "litem" for "lite". SCPD also recommends substituting "neglected or dependent child" for "neglected and dependent child" since the terms are disjunctive, i.e. a child can be either abused, neglected, or dependent.
3. In §5.0, the definition of "Developmentally Appropriate" could be improved. The current definition only addresses age and omits any consideration of other characteristics, including disability. As a result, §73.0 would literally require a foster parent to provide a 10 year old child with severe cognitive limitations to use only a fifth-grade reading level book. In contrast, the child's service plan is expected to reflect disability-related considerations. See §§62.1.2 and 62.1.4. Consider the following revision: "Developmentally Appropriate" means...age, is consistent with the child's special needs, and encourages development..." The term "special needs" is defined in §5.0.
4. In §6.1.1, there is a dangling conjunction ("and").

5. Section 12.0 contemplates the posting of a license "at an Agency location". Section 8.1 indicates that a license is issued "for the address of the Agency's actual site where services are being provided.". The Division could consider amending §12.0 so the license would be posted at the actual licensed site rather than any agency location.

6. Section 16.0 allows licensees to request a "variance" or waiver of specific standards. It would be preferable to include some provision for notice to affected individuals (e.g. foster and adoptive parents; foster children) to facilitate input. Compare 16 DE Admin Code 3310, §12.1.4; and 16 DE Admin Code 3301, §9.1.5.

7. In §18.0, it would be preferable to include a provision disallowing retaliation against individuals both initiating or cooperating with a complaint investigation. Compare analogous §44.3 and 16 DE Admin Code 3320, §19.2.

8. Section 18.3 requires DFS to categorically notify the licensee and agency that a complaint is being investigated. DFS may wish to reconsider this no-exceptions requirement. Such notice may prompt a wrongdoer to initiate "cover-up" action. Such notice could also compromise a criminal investigation initiated under §18.7. DFS may wish to consult the Attorney General's Office concerning this provision.

9. In §19.0, DFS could consider requiring notice of incidents involving "exploitation" of a child. See §75.0. DFS could also review analogous regulations to broaden the scope of reportable incidents. See, e.g., 16 DE Admin Code 3320, §24.0; and 16 DE Admin Code 3225, §19.7, including elopement and attempted suicide as reportable incidents.

10. Section 19.2.6 and 101.10 allow facilities to maintain a temperature of 85 degrees. This standard is assessed "at floor level" (§101.10). Since hot air rises, this means that the ambient room temperature may be significantly hotter than 85 degrees. Moreover, Delaware's high humidity levels exacerbate the effects of high temperatures. Query whether maintaining an infant in a high-humidity room with ambient room temperature between 85-90 degrees is a prudent regulatory standard. Compare 16 DE Admin Code 3225, §17.3 (maximum 81 degree temperature); 16 DE Admin Code 3310, §5.4 (temperature and humidity "provide a comfortable atmosphere"). In other contexts, the Regulation recognizes that children should be accorded some choice in "comfort" contexts. See, e.g., §77.5.4 (authorizing substitution of foods subjectively "disliked" or "unacceptable") and §81.4 (allowing children to keep personally "special" belongings). DFS could incorporate analogous consideration of a child's temperature tolerances as well. Compare 16 DE Admin Code 3225, §17.3 ("A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort."). At a minimum, the 85 degree standard should be lowered.

11. Section 42.4 is somewhat "overbroad". It bars employment "in any capacity" of "any person convicted of...offenses against a child". This bar would apply to individuals with no contact with children (e.g. accountant). This bar would apply to convictions remote in time and irrespective of

rehabilitation. There is no definition of "offense against a child" which could be construed to include minor offenses and offenses not implicating child abuse/neglect. Although some discretion for exceptions is authorized by §42.6.6.1, that subsection ostensibly is only applicable to §42.6, not 42.4.

12. Section 42.6 would literally require the licensee to fire anyone "indicted" but not convicted of certain offenses. This is ostensibly inconsistent with federal guidance shared with DFS in connection with commentary on its proposed regulation published at 16 DE Admin Code (May 1, 2013). The Council included the following italicized commentary on that regulation:

Eighth, §7.0 is "overbroad". For example, §7.1.1.1 contemplates consideration of arrest records without conviction. This is inconsistent with recent EEOC guidance. See attachments. Consistent with the EEOC Q&A document, Par. 7, the Enforcement Guidance preempts inconsistent state laws and regulations. In the analogous context of adult criminal background checks, the DLTCRP recently adopted the following regulatory standard deferring to the EEOC guidance:

8.3. DHSS adopts the guidance from the Equal Opportunity Commission, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, 915.002, issued 4/25/2012.

16 DE Admin Code 3105, §8.3.

13. Section 44.4 categorically bars notification of parents of investigation of abuse or neglect in which their child was allegedly victimized: "Staff shall not contact the parent/guardian of a child who is the alleged subject victim to advise them that either a report has been made or that the Division or law enforcement officer is conducting an investigation of an allegation of abuse or neglect." It is "odd" to bar notice to a parent of alleged abuse/neglect of a child. Indeed, the bar is "at odds" with §71.1 which requires the licensee to report to a parent any "incident involving serious bodily injury or any severe psychiatric episode involving the child". Parents will be justifiably upset if agencies conceal information about abuse/neglect of their children.

14. DFS may wish to consider transferring the concepts embodied in §75.0 to §44.0.

15. Section 78.1.4 ostensibly authorizes "locking a child in a room" as long as not "for a long period of time". This is highly objectionable. The Division should bar locking a child in a room.

16. Section 78.1.6 could be embellished with conduct (e.g. throwing child; hitting with closed fist) prohibited by Title 11 Del.C. §468(1)c.

17. Section 78.0 occasionally uses the terminology "is prohibited" (§78.1.9) but generally uses the terminology "shall be prohibited". SCPD recommends generally using present tense, i.e., "is prohibited". Otherwise, it appears that the conduct will be barred in the future.

18. In §78.1.12, insert 'disability' after "family".
19. Section 78.0 could be improved by including a bar on chemical restraint. Compare recently enacted S.B. 100 . See also 16 DE Admin Code 3320, §20.11.11.
20. DFS should review both S.B. 100 and 16 DE Admin Code 3320, §20.11 for examples of limitations on behavior management that could be incorporated into §78.0.
21. In §80.2, substitute "places" for "place".
22. In §80.5 or §72.0 , DFS may wish to address the use of bumper pads in cribs. See <http://pediatrics.about.com/od/babyproducts/a/crib-bumpers.htm>. (also attached).
23. In §86.4, DFS should consider insertion of the word "approaching" prior to "eighteen". As reflected in §86.3, providing a list of community services as the individual is "walking out the door" on the individual's 18th birthday is not prudent. DFS should also consider adding other preparation/orientation activities, including completion of selective service registration. SCPD recommends that DFS review the findings in the preamble to H.B. 163 for insight. For example, if 82% of males exiting foster care are arrested by age 21, and a high percentage of females become pregnant by age 21, doesn't it make sense to address prevention activities?
24. Section 90.1 is somewhat "overbroad" since it does not address the passage of time or rehabilitation. If the substantiated neglect occurred 30 years ago, and the individual is now highly responsible, does it make sense to apply a categorical bar to serving as a foster parent?
25. Section 96.1 categorically bars anyone over sixty-five (65) years of age becoming a foster parent. If there is no State statute which imposes such a limit, any State regulation limiting eligibility in a federally-funded program may run afoul of the federal Age Discrimination Act. See <http://www.hhs.gov/ocr/civilrights/resources/factsheets/age.pdf> and <http://www.dol.gov/dol/topic/discrimination/agedisc.htm>. (also attached). It is also anomalous that the Regulation contains no age limit for prospective adoptive parents. See §140.0.
26. Although there is a brief treatment of "pets" in §112.0, potentially dangerous pets are not covered in §112.0 or in §101.0. Thus, a prospective foster parent could conceal ownership of multiple pit bulls or snakes. The regulatory standards do not contemplate any inquiry on the safety aspects of pets, only other household members (§§90.2 and 136.4) and visitors (§124.0). DFS may wish to add a standard addressing potentially dangerous pets.
27. The Council previously questioned the general ban on children wearing a helmet around playground equipment. See §103.2.4.3. SCPD continues to question the rationale for the general ban. Intuitively, if a child falls from a height, the helmet would provide some protection. from TBI.

28. Section 113.1 literally would not require someone driving a child in a pickup truck or van to have a driver's license and insurance. Consistent with §113.2, consider substituting "vehicle" for "automobile".

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
Mr. William Love
Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&I/17reg62 dscyf-dfs child placing registry 7-25-13

Dangers of Crib Bumper Pads

Crib Safety Basics

By Vincent Iannelli, M.D., About.com Guide Updated October 18, 2011

About.com Health's Disease and Condition content is reviewed by the [Medical Review Board](#)

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Crib bumpers were made obsolete a long time ago, once infants could no longer fit their head through the wider gap of the slats on older cribs. They continue to be popular, though, and are used by many new parents, often because they continue to be sold as a part of baby bedding sets.

But should you avoid crib bumpers?

Crib Bumpers

The Consumer Product Safety Commission (CPSC) says to avoid "pillow-like bumper pads."



Before your baby is born, be sure her crib is safe by taking the blankets, pillows, stuffed toys, and the crib bumper out.
 Photo by Vincent Iannelli, MD.

Although the American Academy of Pediatrics used to say that "if bumper pads are used in cribs, they should be thin, firm, well secured, and not 'pillow-like,'" they now say that bumper pads are not recommended.

And even before they had a formal policy against the use of crib bumpers, there was advice on the AAP website that recommended that parents not use them because they are just decorative and may lead to rare, but preventable, deaths.

The AAP also warned that crib bumper pads should be removed once your baby begins to stand.

Dangers of Crib Bumper Pads

While the CPSC continues to investigate crib bumper pads, parents can decide if crib bumper pads are worth the risk. Originally designed to prevent babies from getting their head through the gap between crib slats, crib bumpers lost much of their real purpose when the crib safety regulations reduced the gap between slats in 1974.

Now they are purely decorative and are often sold as a part of crib bedding sets.

An article published in 2011 in *Pediatrics*, titled "Injuries Associated With Cribs, Playpens, and Bassinets Among Young Children in the US, 1990-2008," stated that "The use of crib bumper pads is strongly discouraged because the possibility for serious injury, including suffocation and strangulation, greatly outweighs any minor injury they may prevent."

Parents should also consider that a recent investigation by the *Chicago Tribune* suggests that deaths from crib bumper pads are likely under-reported.

Crib Bumper Safety

Why should crib bumpers be thin, firm, well secured, and not "pillow-like?"

If you do use crib bumpers, this can help to avoid the most common ways that crib bumper pads lead to injuries and death:

- strangulation by crib bumper pad ties
- suffocation against the crib bumper pads
- entrapment against the crib bumper pads and another object, such as the crib slats or crib mattress

Even these crib bumper safety tips won't prevent all injuries, as babies can get entrapped with a firm crib bumper, too.

Would a mesh crib bumper be a safer alternative to traditional crib bumpers? Most likely it would, but so would simply removing or never putting crib bumpers in your baby's crib in the first place.

Crib Bumpers - What You Need To Know

Making sure your baby's crib is safe is an important part of [baby proofing](#) your home.

Don't make your baby's crib less safe by adding an unsafe crib bumper to your baby's crib.

To recap, important things to know about crib bumpers include:

- The use of crib bumpers is now discouraged by most safety experts.
- If you do choose to use crib bumpers for decorative purposes, make sure that they are not pillow-like and that they are thin, firm, and well secured to your baby's crib.
- Be sure to remove crib bumpers once your baby is able to stand, so that he can't use them to help climb out of his crib.
- Many people think that deaths from crib bumpers are under-reported.
- The Canadian Paediatric Society and Health Canada have had a formal recommendation against using crib bumpers since 2004.

Parents should also keep in mind that crib bumpers are not thought to be needed to prevent serious injury from infants or toddlers getting their arms or legs caught between crib slats, which is one of the main reasons that they use crib bumpers in the first place.

Sources:

American Academy of Pediatrics Policy Statement. The Changing Concept of Sudden Infant Death Syndrome: Diagnostic Coding Shifts, Controversies Regarding the Sleeping Environment, and New Variables to Consider in Reducing Risk. *Pediatrics* 2005; 116: 1245-1255.

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Yeh, Elaine S. Injuries Associated With Cribs, Playpens, and Bassinets Among Young Children in the US, 1990-2006. *Pediatrics*, Mar 2011; 127: 479 - 486.

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Office for Civil Rights
U.S. Department of Health
and Human Services
200 Independence Avenue, SW
H.H.H. Building, Room 509F
Washington, D.C. 20201

TELEPHONE
1-800-368-1019

E-MAIL
ocrmail@hhs.gov

TDD
1-800-537-7697

www.hhs.gov/ocr

KNOW ABOUT THE FEDERAL LAW THAT PROTECTS AGAINST AGE DISCRIMINATION

What is the Age Discrimination Act?

The Age Discrimination Act of 1975 is a national law that prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. The Age Discrimination Act applies to persons of all ages. Under the Age Act, recipients of federal financial assistance may not exclude, deny or limit services to, or otherwise discriminate against, persons on the basis of age.

The Age Act does not cover employment discrimination, which is enforced by the Equal Employment Opportunity Commission (EEOC).

The Office for Civil Rights (OCR), at the U.S. Department of Health and Human Services (HHS), ensures that entities that receive federal financial assistance comply with this law.

The Age Discrimination Act contains certain exceptions that allow, under limited circumstances, the use of age distinctions or factors other than age. For example, the Age Discrimination Act does not apply to an age distinction contained in a Federal, State or Local statute or ordinance adopted by an elected, general purpose legislative body that: provides any benefits or assistance to persons based on age; establishes criteria for participation in age-related terms; or describes intended beneficiaries or target groups in age-related terms.

How to file a complaint of discrimination with the Office for Civil Rights (OCR)

If you believe that you or someone else has been discriminated against because of age by an entity receiving financial assistance from HHS, you or your legal representative may file a complaint with OCR. Complaints must be filed within 180 days from the date of the alleged discrimination.

You may send a written complaint or you may complete and send OCR the Complaint Form available on our webpage at www.hhs.gov/ocr. The complaint form is also available on our webpage in a number of other languages under the Civil Rights Information in Other Languages section.

The following information must be included:

- Your name, address and telephone number.
- You must sign your name on everything you write. If you file a complaint on someone's behalf — e.g. spouse, friend, client, etc. — include your name, address, telephone number, and statement of your relationship to that person.
- Name and address of the institution or agency you believe discriminated.
- When, how and why you believe discrimination occurred.
- Any other relevant information.

If you mail the complaint, be sure to send it to the attention of the regional manager at the appropriate OCR regional office. OCR has ten regional offices and each regional office covers specific states. Complaints may also be mailed to OCR Headquarters at the following address:

Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW.
H.H.H. Building, Room 509-F
Washington, D.C. 20201

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* [The Age Discrimination Act of 1975](#) prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance. The Act, which applies to all ages, permits the use of certain age distinctions and factors other than age that meet the Act's requirements. The Age Discrimination Act is enforced by the [Civil Rights Center](#).

The Age Discrimination in Employment Act of 1967 (ADEA) protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment. The ADEA is enforced by the [Equal Employment Opportunity Commission \(EEOC\)](#).

[Section 188 of the Workforce Investment Act of 1998 \(WIA\)](#) prohibits discrimination against applicants, employees and participants in WIA Title I-financially assisted programs and activities, and programs that are part of the One-Stop system, on the ground of age. In addition, WIA prohibits discrimination on the grounds of race, color, religion, sex, national origin, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. Section 188 of WIA is enforced by the [Civil Rights Center](#).

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Monitors and enforces the Age Discrimination Act in programs and activities receiving federal financial assistance.

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[29 USC §621](#)

[Age Discrimination in Employment](#)

[29 USC §6101](#)

[Age Discrimination Act of 1975](#)

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[Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act \(WIA\)](#)

[29 CFR Part 1625](#)

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Bicycle Helmet Safety Institute

CPSC Press Release: Bike Helmets on Playgrounds

For Immediate Release
 Contact: Ken Giles
 February 22, 1999
 (301) 504-0580 Ext. 1184
 Release # 99-065

After Recent Death, CPSC Warns Against Wearing Bike Helmets on Playgrounds

WASHINGTON, D.C. - After the strangulation death of a 3-year old Pennsylvania boy, the U.S. Consumer Product Safety Commission (CPSC) warns that children should not wear bike helmets when playing on playground equipment. The boy died February 4 when his bicycle helmet became wedged as he apparently tried to slide through a small opening on the playground equipment near his home. CPSC is aware of a second strangulation death that occurred in 1997 when a 7-year old girl in Canada became entrapped in an opening on a playground structure. Both victims were wearing a bicycle helmet during play and died due to hanging from the helmet strap.

CPSC Chairman Ann Brown said, "Children should always wear a helmet while riding their bikes. Helmet use can reduce the risk of head injury by up to 85 percent in the event of a crash. But when a child gets off the bike, take off the helmet. There is a hidden hazard of strangulation if a child wears a helmet while playing on playground equipment."

In addition to the deaths, CPSC also has reports of four cases in the United States where no injury occurred. In two of these cases, the children were climbing trees, and in the other two cases, the children were on playground equipment.

Copies of CPSC's Bike Helmet Safety Alert can be obtained through CPSC's hotline at (800) 638-2772 or [CPSC's web site](#).

The U.S. Consumer Product Safety Commission protects the public from unreasonable risks of injury or death from 15,000 types of consumer products under the agency's jurisdiction. To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at <http://www.cpsc.gov/talk.html>. For information on CPSC's fax-on-demand service, call the above numbers or visit the web site at (<http://cpsc.gov/about/who.html>). To order a press release through fax-on-demand, call (301) 504-0051 from the handset of your fax machine and enter the release number. Consumers can obtain this release and recall information at CPSC's web site at <http://www.cpsc.gov>. To establish a link from your web site to this press release on CPSC's web site, create a link to the following address:
<http://www.cpsc.gov/cpscpub/prerel/prhtml99/99065.html>

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