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MEMORANDUM

DATE: April 25, 2011

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

FROM: Daniese McMullin-Powell, ^{Dmp/pk}Chairperson
State Council for Persons with Disabilities

RE: 14 DE Reg. 1009 DSS [Proposed Child Subsidy Program Special Needs Child 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 Child Care Subsidy Program regulation published as 14 DE Reg. 1009 in the April 1, 2011 issue of the Register of Regulations. In this month's Register, the Division withdrew a regulation in which it proposed to narrow the scope of waivers of caretaker fees in this program. See 14 DE Reg. 1078 (4/1/11). DSS is now seeking alternate means of reducing program costs through this regulation.

Upon initial review of the regulation, it appeared that the main thrust of the initiative is to completely eliminate standards allowing special needs children to be eligible for the Child Care Subsidy Program. For example, the "Summary of Proposed Changes" section recites as follows: "The Special Needs rule is being revised by eliminating Special Needs for children while maintaining it for adults." Moreover, the following authorization is being stricken altogether:

Children with Special Needs:

A child that is 13 through 18 years of age may be eligible for Special Needs Child Care if the child's physical, medical or emotional condition is such that he is unable to care for himself. Children under age 13 may qualify for Special Needs Child Care if they have a need that cannot be met in a regular daycare setting. Children 13 years of age and older are only eligible for Special Needs Childcare.

Consistent with the attached 45 C.F.R. §98.20, DSS has the discretion to cover or not cover such children:

(a) In order to be eligible for services under §98.50, a child shall:

(I) Be under 13 years of age; or

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision; ...

Secondarily, the regulation ostensibly narrows the “necessity of child care” standards for two-parent households. See proposed changes to §11003.8.

The rationale for the proposed revisions is not clearly articulated in the regulation.

After the SCPD informally shared its concerns with DSS, the Division Director attended the April 18 Council meeting to share additional information and perspective. The Council understands that DSS anticipates an annual cost savings of between \$500,000-\$700,000 based on the regulation. It is anticipated that approximately 300 families would be affected. Affected families would predominantly have children under age 13. There are an estimated 20 families with 13-18 year-old special needs children. The parents are unemployed in 8 of these 20 families. The intent is not to eliminate eligibility of 13-18 year old children from program eligibility. Rather, the intent is to disallow eligibility if parents are available for care (e.g. not employed). Thus, under the regulation, the 8 families with unemployed parents would probably lose eligibility. This interpretation is somewhat supported by retention of the definition of “child” in §11002.9H which includes “children 13 through 18 years of age if they are physically or mentally incapable of caring for themselves”.

SCPD appreciates the participation of the DSS Division Director at its April 18 meeting, but opposes the regulation in its current form. It would be preferable for DSS to republish a more informative revised regulation. Moreover, if DSS intends to eliminate “special needs for children” status, there are multiple inconsistent regulations. See, e.g., §§11002.2C, 11002.4F, 11002.6.2D, 11002.9AP, and 11003.72b. The DSS interpretation of the current regulation as allowing eligibility irrespective of parental employment/training status is also undermined by the existing regulations. For example, §11002.2C refers to “the children or parents have a special need requiring either one of them to be out of the home”. Likewise, §11003.71.d describes eligibility as follows:

It will also include parents/caretakers who need care because of a special needs child. It will always coincide with the parent/caretaker’s need to work or participate in education or training.

Likewise, §11003.7.8 recites that “(t)o be eligible for Special Needs care, the parent/caretaker or child must meet the definition of need as explained below”. This is followed by §11003.8, entitled “Necessity of Child Care”, which generally limits eligibility to hours when the child is not in school and both parents work or one works and other parent is incapacitated.

Finally, since the program is partially funded by a federal block grant, it is possible that the Division has provided written assurances in its application that it covers special needs children. If so, DSS could potentially violate grant assurances by changing standards “midstream”.

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: Lt. Governor Matthew Denn
Kids Caucus
Ms. Elaine Archangelo
Ms. Deborah Gottschalk
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

14reg1009 dss-child care 4-11

or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child shall:

- (1)(i) Be under 13 years of age; or,
 (ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;
- (2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and
- (3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or
 (ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2)

other than the parent(s) described in paragraph (a)(3)(1) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to § 98.16(f)(7).

(b) Pursuant to § 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

- (1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;
- (2) Limit parental rights provided under Subpart D; or
- (3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

- (1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or
- (2) To receive a child care certificate as defined in § 98.2. Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled