



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: December 14, 2016

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 412 [DMMA Proposed Purchase of Care-Licensed Exempt Provider Regulation (12/1/16)]

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 its regulations applicable to Purchase of Care Providers. The proposed regulation was published as 20 DE Reg. 412 in the December 1, 2016 issue of the Register of Regulations.

As background, the federal Child Care and Development Block Grant funds child care for low-income families who are working or participating in education or training activities. In 2016, new federal regulations were adopted which are prompting DMMA to revise its provider standards. The changes will be effective on February 11, 2017.

One significant change is curtailing the scope of providers exempt from licensing. Persons who come into the child's home and relatives who provide care in their own homes remain exempt from licensing. Id. However, the following entities would no longer be exempt:

- (1) public or private school care;
- (2) preschools and kindergarten care; and
- (3) before and after school care programs.

DMMA recites that "(t)he final rule requires that all providers receiving Purchase of Care (POC) funding must now be licensed, including those that were previously license exempt, in order to continue receiving POC funding." SCPD could not verify the accuracy of this recital which, read literally, would disallow the exemption of persons coming into a child's home and relatives providing care in their homes. At 414. The federal regulation, with commentary, exceeds 600 pages so it is difficult to confirm the accuracy of the statement without extensive review. It is published at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-22986.pdf>

The attached federal regulations (§§98.2 and 98.40) do not categorically require Delaware to remove the current licensing exemption of the above 3 types of entities. However, §98.40 does require DHSS to describe the rationale for any exemptions in its Plan. The regulation does not provide the rationale for retaining the exemption for persons coming into a child's home and relatives who provide care in their home apart from a bare listing of some health and safety standards.

A second change is deletion of an authorization category of "double time (D) which is two days". At 415. The specific rationale for this change is also not provided.

SCPD did not identify any inconsistencies or facial issues in the proposed regulation. However, SCPD has the following observations and recommendations.

First, the regulation could be improved by including the rationale for retaining the 2 exemptions in §11004.4.1 consistent with the attached federal §98.40.

Second, SCPD recommends that DMMA resolve the inconsistency between reciting that "all providers receiving Purchase of Care (POC) funding must now be licensed...." and still exempting 2 classes of providers.

Third, SCPD recommends that DMMA provide the rationale for deleting the authorization category "double time (D) which is two days".

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

cc: Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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learning and strengthen and retain (including through financial incentives and compensation improvements) the child care workforce.

3. Amend § 98.2 as follows:

- a. Revise the definition of *Categories of care*;
- b. Add in alphabetical order definitions for *Child experiencing homelessness*, *Child with a disability*, and *Director*;
- c. Revise the definition of *Eligible child care provider*;
- d. Add in alphabetical order a definition for *English learner*;
- e. Revise the definition of *Family child care provider*;
- f. Remove the definition of *Group home child care provider*; and
- g. Revise the definitions of *Lead Agency, Programs*, and *Sliding fee scale*; and
- h. Add in alphabetical order a definition for *Teacher*.

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

Categories of care means center-based child care, family child care, and in home care;

* * * * *

Child experiencing homelessness means a child who is homeless as defined in section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a);

Child with a disability means:

- (1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*);

(3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(4) A child with a disability, as defined by the State, Territory or Tribe involved;

* * * * *

Director means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider, and which may serve children from birth to kindergarten entry and children in school-age child care;

* * * * *

Eligible child care provider means:

(1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

English learner means an individual who is an English learner, as defined in section 8101 of the Elementary and Secondary Education Act of 1965 or who is limited English proficient, as defined in section 637 of the Head Start Act (42 U.S.C. 9832);

* * * * *

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

* * * * *

Lead Agency means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

* * * * *

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality activities pursuant to § 98.53;

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Sliding fee scale means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(k);

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Teacher means a lead teacher, teacher, teacher assistant, or teacher aide who is employed by a child care provider for compensation on a regular basis, or a family child care provider, and whose responsibilities and activities are to organize, guide, and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (f) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act (42 U.S.C. 608(a)(7)).

(g) Include in the triennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (f) of this section.

19. In § 98.40, redesignate paragraph (a)(2) as (a)(3), revise newly redesignated paragraph (a)(3), and add new paragraph (a)(2).

The addition and revision read as follows:

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) ***

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

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