



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: November 30, 2018

TO: Kelly McDowell
Division of Family Services – Office of Child Care Licensing

FROM: Nick J. Fina, Ed.D - Chairperson NE/ARR
State Council for Persons with Disabilities

RE: 22 DE Reg. 380 [DFS Proposed Regulation - Family & Large Family Child Care Homes (11/1/18)]

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) proposal to amend the Delacare regulations covering family and large family child care homes. The proposed regulation was published as 22 DE Reg. 380 in the November, 2018 issue of the Register of Regulations. The SCPD has the following observations.

This memo will focus on the amendments to the sections on positive behavior management and administration of medication. The latter changes are meant to ensure that licensed centers comply with the Americans with Disabilities Act (ADA) by meeting the needs of children with disabilities who require medication while in child care.

Positive Behavior Management:

In the section on positive behavior management (Section 20.3), OCCL has added the requirement that staff members should “adapt behavior management practices for a child who has a special need, including a behavioral or emotional disability.” OCCL previously removed similar language from the regulations. The SCPD supports the re-introduction of this requirement, which specifies that staff must make efforts to accommodate children who require modifications in behavioral interventions due to a disability.

Administration of Medication:

With respect to administration of medication (Section 63.0), OCCL will now require licensed centers to ensure that a trained staff member who has received a valid Administration of Medication certificate from OCCL is present at all times to provide routine and emergency medications to children. In Subsection 63.6, the regulations also state that “a licensee may administer medication to a child who has a medical need during child care hours that requires the administration of medication by non-intravenous injection.” This change is an important one that will help ensure that child care centers comply with the ADA by meeting the needs of children who require medication by non-intravenous injection, such as children with diabetes who need insulin. However, OCCL could improve the regulations on medication administration in several ways:

- One concern is that child care centers may interpret the language in Subsection 63.6 as meaning that they have discretion over whether or not to administer medication by injection. In order to comply with the ADA, child care centers must provide medications by injections (with the consent of parents and medical providers) unless doing so would cause a fundamental alteration to the program. Thus, as a general rule, child care centers should be administering medications by injections when parents ask them to. OCCL should consider adding a subsection to Section 63.0 that clarifies that medication administration must be part of the reasonable accommodations that child care facilities make in order to provide equal services to children with disabilities.
- OCCL should require licensees to develop and consistently implement a written policy on the administration of medication. The sections on Procedures for Initial Licensure (Section 7.0) and License Renewal (Section 8.0) do not seem to require licensees to submit such plans for approval. However, it seems that policies on medication administration must be included in the parent/guardian handbook (see Subsection 23.1.13). These policies should be written in a way that makes it clear that the child care center is willing and able to accommodate children with medication needs, including medication by non-intravenous injections. CLASI also recommends that OCCL require licensees to develop individualized written plans for providing medication to students who need them. The proposed regulations do not currently have such a requirement, but they state that licensees shall ensure that medication is given as prescribed (Subsection 63.3).
- The section on staffing (Section 26.0) should cross-reference Section 63.0 and note that licensees must also ensure that at least one staff member with a valid Administration of Medication certificate is present at all times.
- The section on personnel files (Section 30.0) should note that, if applicable, valid Administration of Medication certificates (as well as certifications for any other trainings concerning medication administration) must be included in the personnel files for each trained staff member.

- The section on field trips and program outings (Section 68.0) makes no mention of meeting the needs of children who require medication while away from the child care center. Licensees must have plans and policies to accommodate children with medication needs on any field trips, and medication administration must not be interrupted when children are on these outings. The regulations should also state that licensees must not require parents/legal guardians to accompany their children on field trips to administer medications.¹

The SCPD is endorsing the proposed Delacare regulations for family and large family child care homes. However, we are asking for further revisions that clarify that providing medication by injections is generally not discretionary, but an integral part of providing reasonable accommodations for children with disabilities. Revisions should also address other important issues, such as ensuring that policies on medication administration are clearly conveyed to parents and that licensees have plans to accommodate children with medication needs on field trips.

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

cc: Ms. Trenee Parker, DFS
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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¹ The US Department of Justice has settled several cases with child care centers concerning their refusal to accommodate children with disabilities, including children with medication needs, on field trips. For more information, see the Child Care Law Center's ADA Settlement Summaries, available at: <http://childcarelaw.org/resource/united-states-department-of-justice-ada-settlement-summaries-2011/>.