



STATE OF DELAWARE
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MEMORANDUM

DATE: July 14, 2010

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

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

RE: 14 DE Reg. 15 [DSS Proposed Child Care Subsidy Overpayment Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services (DSS's) proposal to amend its regulation regarding identification and processing of overpayments in the Child Care Subsidy Program. The proposed regulation was published as 14DE Reg. 15 in the July 1, 2010 issue of the Register of Regulations. SCPD has the following observations and recommendations.

First, the introduction, last sentence, reads as follows: "Each in the adult child care household is liable for repayment of the overpayment." There is ostensibly a word missing from the sentence. Alternatively, perhaps the sentence was intended to read as follows: "Each adult in the child care household is liable for overpayment." Apart from the wording, SCPD has multiple substantive concerns with the concept embodied in the sentence.

A. There is no definition of "child care household". There are references to "a family" [§§11003.6, 11003.7.2, and 11003.9]. In particular, §11003.9.3 recites as follows:

The people whose needs and income are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility and the child care parent fee.

Imposing liability on everyone in an undefined "household" will predictably result in confusion and fair hearings.

B. Section 11003.9.4 identifies minor parents as separate eligibility units under the program "even if they live with their legal guardian or parents". There is some "tension" between the

regulatory establishment of a separate eligibility unit for minor parents and the recital that “each in the ...household is liable for overpayment. The co-habiting legal guardian or grandparent of children served in the program should not be liable for overpayments. Moreover, the legal basis for imposing liability of other non-applicant co-habiting persons is also questionable.

C. There is a lack of due process if everyone in a “household” is liable for an overpayment while notice and opportunity for hearing is only offered to the parent/caretaker under §11005.4.2.

Second, in the last paragraph in the regulation, the term “over payments” should be “overpayments”.

Third, DSS is eliminating all examples from the regulation. SCPD encourages the Division to reconsider the value or retaining the examples. Much of the State workforce is aging and retiring. New DSS employees would benefit from the examples which provide easily-understood guidance reflecting long-term practice.

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. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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