



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
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**MEMORANDUM**

DATE: June 24, 2013

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

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

RE: 16 DE Reg. 1257 [DFS Proposed Residential Child Care Facility & Day Treatment Programs 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 proposal to amend the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs. The proposed regulation was published as 16 DE Reg. 1257 in the June 1, 2013 issue of the Register of Regulations.

As background, the Governor issued Executive Order 36 on January 4, 2012 establishing a schedule for agencies to solicit input from the public on regulations in effect for more than three years. DFS notes that it received few comments on its "Delacare" standards covering residential child care facilities and day treatment programs. Consistent with the Summary, it intends to initiate a comprehensive review of its standards in the Fall of 2013. SCPD has the following technical observations on the proposed regulation.

First, the Division is substituting "regulation" for "requirement" throughout the standards. The substitutions are generally acceptable. However, in a few contexts, the substitution results in "odd" or incomplete references. See, e.g., reference to "Regulations of 1.0, 2.0, 3.0 and 4.0" (§5.1.1 and §7.1.1); and reference to "Regulations of 1.0, 2.0, and 3.0" (§8.1.1). We suspect the Division intended to refer to "Regulations of Chapters 1.0, 2.0, ...". Compare §9.1.1, §10.1.1, and §11.1.1.

Second, the Division may wish to reconsider the substitution of "regulations" for "requirements" in §10.4.2.

Third, §11.11 requires all toys to be confirmed to be “of safe construction, non-toxic, and free of hazards” and checked with a “choker tube” to ensure parts cannot be swallowed by a child under age 3. Section 11.11.2.8 disallows the presence of any toy in a crib or playpen when an infant is asleep. There is no definition of “infant” but the OCCL licensing regulations for day care centers (Part 101) define an infant as a child under age one. Our concern is that some infants may be very “attached” to a particular toy as a “comfort” item and may not be predisposed to sleep without it. If all toys are checked for hazards, query whether the presence of a single toy in a crib or playpen is a realistic danger. DFS may wish to reconsider the total ban on any toy in a crib or playpen when an infant is asleep.

Fourth, given the anticipated thorough review of the standards in the Fall and “involvement of a wide cross-section of stakeholders”, SCPD would like to offer technical assistance to the process.

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

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