



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: September 26, 2013

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

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

RE: 17 DE Reg. 289 [DSS Proposed Child Care Subsidy Program "Relative" Definition 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 adopt a revised definition of "relative" for purposes of its Child Care Subsidy Program. The summary of proposed changes states that the current definition is vague and leads eligibility determination workers to the Delaware Temporary Assistance for Needy Families (TANF) policy definitions. The proposed rule change is intended to ensure that eligible relatives provide authorized child care services. The proposed regulation was published as 17 DE Reg. 289 in the September 1, 2013 issue of the Register of Regulations. SCPD has the following observations.

First, the new reference to "step-relatives" could be interpreted in different ways:

- A. All step-relatives (even step-cousins and step-parents) qualify as a "relative"; or
- B. Only step-grandparents, great-grandparents, aunts, uncles and siblings qualify.

This is confusing.

Second, the definition omits persons related by adoption. Compare 45 C.F.R. §98.2 (definition of "eligible child care provider), which reads, in pertinent part, as follows:

- (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, sibling (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;...

See also analogous references to “natural, legal, adoptive, step” relatives in 16 DE Admin Code §11003.9.3 and definition of parent in §11002.9 covering “natural, adoptive, and step” relatives.

Third, based on the above excerpt from 45 C.F.R. §98.2 (definition of “eligible child care provider”), SCPD surmises that a “relative” must be an adult. The definition in the proposed regulation only requires a sibling to be an adult. An aunt or uncle could be under 18 years of age in the State regulation.

Based on the above observations, DSS could consider the following alternative:

Relative An adult who is by marriage, blood relationship, or court decree, the grandparent, great grandparent, sibling, aunt or uncle of the child receiving care.

Fourth, the Division may wish to consider amending its definition of “parent” and adding a definition of “in loco parentis” in a future proposed regulation. Consider the following:

The federal definition of “parent” (45 C.F.R. §98.2) includes a “legal guardian” and “other person standing in loco parentis”:

Parent means a parent by blood, marriage, or adoption and also means a legal guardian, or other person standing in loco parentis.

In contrast, the DSS definition of “parent” in §11002.9 omits guardians and other persons standing in loco parentis:

Parent The child’s natural mother, natural legal father, adoptive mother or father, or step-parent.

Moreover, another federal regulation requires the State to specifically adopt a definition of “in loco parentis”. See 45 C.F.R. §98.16(f)(9).

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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