



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

DATE: March 29, 2016

TO: Beth Kramer, Criminal History Supervisor  
Division of Family Services – Office of Child Care Licensing

FROM: DM-P/ARR  
Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 19 DE Reg. 821 [DFS Criminal History Record Checks for Child Care Person Regulation (3/1/16)]

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 proposal to repeal its current criminal background check standards for persons involved in child care and substitute a new set of standards. The proposed regulation was published as 19 DE Reg. 821 in the March 1, 2016 Register of Regulations. SCPD has the following observations.

In general, the standards are comprehensive and prescriptive. SCPD has only one significant concern. The new regulation applies its standards to an “employee” which is defined as including paid personnel, volunteers, persons with direct access to children, adult household members of child care homes, and applicants to become foster care providers, respite providers, adoptive parents, and their household members. See §2.0, definition of “employee”. While this may be the approach adopted in the statute [Title 31 Del.C. §309(b)(9)], there are several problems with this approach.

First, while the definition of “employee” covers this long list of persons, many regulatory sections refer to employees as distinct from volunteers, foster parents, etc. Compare, e.g., §2.0, definition of “child-serving entity”, §4.6.1.1, §4.7.1, and §5.1.1. If the definition of “employee” covers volunteers, foster parents, etc., it makes no sense to have separate references.

Second, the Administrative Code Style Manual provides the following guidance:

7.2. General Guidelines

In general, keep the language of the text as clear and simple as possible. When drafting, remember that documents should be written so that the general public can understand them. Avoid using language that only individuals with specialized knowledge can understand. Consistency of expression, logical arrangement, and adherence to accepted usage aid readability. Strive for consistency of terminology, expression, and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. ...

In contrast, the regulation sometimes refers to “employment” as distinct from volunteering or serving as a respite, foster parent, or adoptive parent. Compare §§4.2, 4.4, 4.6.1.1, 4.7.1, 7.1, 7.1.1.1.

Third, encompassing many “non-employees” within the definition of “employee” is counterintuitive and confusing. It’s akin to having a definition of “red” and defining “red” as including blue, green, and yellow. It’s “odd” to characterize volunteers and household members of foster, respite, and adoptive homes as “employees”.

Fourth, the title to the regulation still refers to “child care persons” which was the term used in the prior regulation (§4.1). This term is preferable to “employee” since a variety of persons can be listed under this definition without the term being counterintuitive and confusing.

For the above reasons, the Division may wish to revert to using the current regulatory term, “child care person”, rather than “employee” and otherwise revising the regulation for consistency.

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. Victoria Kelly  
Ms. Kelly McDowell  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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