



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

John McNeal
SCPD Director

DATE: November 30, 2017

TO: Ms. Nicole Cunningham, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 21 DE Reg. 376 [DMMA Proposed Relative Child Care Regulation (11/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance (DMMA) proposal to revise its subsidized child care regulations. The proposed regulation was published as 21 DE Reg. 376 in the November 1, 2017 issue of the Register of Regulations. The SCPD previously commented on related regulations published at 20 DE Reg. 412 (12/1/16) and 20 DE Reg. 614 (2/1/17).

The Division proposes to restrict relative child care to conform to its view of the original intent, i.e., to provide a child care option for parents who work during “non-traditional” hours (e.g. shift work; weekends). Moreover, although relative caregivers may be exempt from licensing, the State is required to implement health and safety standards for all providers. This has prompted DMMA to propose new training and capacity standards. Some of the standards implement the attached 45 CFR 98.41.

The SCPD has the following observations.

First, there is an ostensible error in Section 5 on p. 378. The first bullet literally allows care in a child’s home only for 4-5 children. The reference to “minimum of four children in the home” should be “minimum of one child in the home”. Compare Section 6.

Second, Section 3 requires a relative provider to be “21 years of age or older”. In contrast, the applicable federal regulation defines relative child care providers as “18 years of age or older”. See 45 CFR 98.2. Moreover, states are restricted in their discretion to add requirements not included in the federal regulations:

(b) Lead agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in

§98.3(f).

45 CFR 98.41(b).

Third, Section 3 includes the following limit: “Relative child care is limited to evening and weekend shift work hours only.” This is ill-conceived given the overall shortage of child care providers. Moreover, “special needs” parents and children are eligible for the State child care program. See 16 DE Admin Code 11003.7.8. It may be extremely difficult for a parent of a special needs child ages 13-18 to identify a licensed provider to add a 13-18 year old to their daycare. Moreover, “special needs” parents often rely on relatives for parenting assistance and federal law requires states to accommodate that reliance. See Joint DOJ/HHS LOF to Mass. Dept. Of Children & Families (1/29/15), published at https://www.ada.gov/ma_docf_lof.pdf. See also U.S. DOJ/HHS Joint Guidance, “Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (8/15)”, published at https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf. At a minimum, Section 3 should be revised to allow relative child care for special needs children and adults apart from evening and weekend shifts.. It would also be prudent to authorize exceptions for all parents with the approval of DHSS.

Fourth, DMMA is imposing the following requirements on relative providers: 1) completion of orientation class on relative child care rules and regulations; 2) 28 hours of approved training within 12 months; 3) 3 hours of health and safety training annually; and 4) completion of both CPR and first aid courses resulting in certification followed by recertification every 2 years. See Section 4. DMMA is treating relative child care providers as if they were licensed day care providers even though they are exempt from licensing. See 16 DE Admin Code 11004.4.1. Asking a typical grandparent to spend an estimated 40 hours in training to care for a grandchild is “overkill”.

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

cc: The Honorable Nicole Poore
The Honorable Debra Heffernan
Mr. Steve Groff, DMMA
Mr. William J. McCool, III, United Cerebral Palsy
Mr. Terry Olson, The Arc of Delaware
Ms. Teresa Avery, Autism Delaware
Mr. Steve Yeatman, DSCYF and DDC
Mr. Rick Kosmalski, DDDS and DDC
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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45 CFR 98.41 - Health and safety requirements.

§ 98.41 Health and safety requirements.

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of, at a minimum:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

(B) Notwithstanding this paragraph (a)(1)(i), Lead Agencies may exempt:

(1) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles), provided there are no other unrelated children who are cared for in the same setting.

(2) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(3) Children whose parents object to immunization on religious grounds.

(4) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(1) The length of such grace period shall be established in consultation with the State, Territorial or Tribal health agency.

(2) Any payment for such child during the grace period shall not be considered an

error or improper payment under subpart K of this part.

(3) The Lead Agency may also, at its option, establish grace periods for other children who are not experiencing homelessness or in foster care.

(4) Lead Agencies must coordinate with licensing agencies and other relevant State, Territorial, Tribal, and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

- (ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;
- (iii) Administration of medication, consistent with standards for parental consent;
- (iv) Prevention and response to emergencies due to food and allergic reactions;
- (v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;
- (vi) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;
- (viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (ix) Appropriate precautions in transporting children, if applicable;
- (x) Pediatric first aid and cardiopulmonary resuscitation;
- (xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and
- (xii) May include requirements relating to:
 - (A) Nutrition (including age-appropriate feeding);
 - (B) Access to physical activity;
 - (C) Caring for children with special needs; or
 - (D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

(b) Lead Agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to strengthening the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

- (1) Group size limits for specific age populations;
- (2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and
- (3) Required qualifications for caregivers in child care settings as described at § 98.44(a)
- (4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

[81 FR 67582, Sept. 30, 2016]



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