



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: October 26, 2018

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

FROM: Nick J. Fina, Ed.D - Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 264 [DHSS/Division of Social Services Amendments for Authorizations of Child Care, 22 Del. Register of Regulations 264 (October 1, 2018)]

The State Council for Persons with Disabilities (SCPD) has reviewed Delaware Health and Social Services (DHSS) proposed regulation to amend the Division of Social Services Manual in order to comply with the new federal statute and regulations regarding authorization requirements for Child Care Eligibility. The federal government recently reauthorized the Child Care and Development Block Grant (CCDBG), the federal block grant program that provides child care assistance for low-income families, in the Child Care and Development Block Grant Act of 2014. Additionally, the US Department of Health and Human Services published new rules in 2016 providing clarification about the 2014 law. Among other provisions, the new law and regulations establish a 12-month eligibility period for families and limits the situations in which cases may be closed, all of which are meant to improve continuity of care. DHSS' proposed amendments are intended to address these updated requirements. This proposed regulation was published as 22 DE Reg. 264 in the October 1, 2018 issue of the Register of Regulations.

The proposed amendments specify that DSS case workers must set child care authorizations for a period of 12 months unless a limited set of exceptions apply. Further, the amended language clarifies when child care authorizations must continue, including situations where a caretaker experiences a temporary change in work, education, or training. DHSS' language explaining the scenarios that constitute a temporary change are not comprehensive enough to comply with federal regulations, which define what states should consider (at minimum) to comprise a temporary change in the status of a caretaker as working or attending a job training or educational program. For instance, while the state's proposed language lists a temporary

change as including an “injury resulting in time off of work,” it does not mention situations involving illness or the need to care for a family member – both of which are included in the federal regulations.

DHSS also proposes to modify the requirements for closing child care cases. Although these amendments do not necessarily change the status quo and are in some ways an improvement over the manuals previous language, CLASI still has concerns regarding these provisions.

DHSS seeks to close child care cases upon the “death of the case head or of the authorized child.” Rather than automatically closing a case upon the death of the case head, DSS should evaluate whether a basis for continued eligibility still exists rather than disrupting services and forcing a new caretaker to reapply for benefits.

Under the proposed language, DSS will also close child care cases before redetermination or during graduated phase-out if the family’s income exceeds 85% of the state median income (SMI). DSS’ manual contains other provisions explaining the graduated phase-out process, which is a policy that applies to recipient families whose income exceeds the child care income limit at redetermination. However, new federal regulations note that states must establish a process for redetermination of eligibility that takes into account “irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.” Neither DHSS’ proposed language nor its existing policies for graduated phase-out describe how DSS will prevent fluctuations in income from resulting in the closure of a child care case due to income exceeding 85% of SMI.

DSS proposes to mail a Form 330, “Request for Contact,” to a parent or caretaker to request clarification about a child’s “excessive unexplained absences” from a child care program before closing a case. Closing a case due to excessive unexplained absences is an option authorized by federal regulations. Yet federal requirements specify that states may only discontinue assistance when excessive unexplained absences persist “despite multiple attempts by the Lead Agency or designated entity to contact the family and provider, including prior notification of possible discontinuation of assistance.” DSS’ proposed language does not provide for multiple attempts to contact both the family and provider – it simply states that a form will be mailed to the parent or caretaker requesting clarification, and DSS will terminate a case if the parent/caretaker does not respond by the requested due date. DSS should revise this language to make it clear that they must reach out to both families and providers multiple times and notify them of the risk of termination of benefits.

With respect to the proposed amendment concerning the 10-day closing notice, this provision should cross-reference DSSM 5300, which outlines the requirements for timely and adequate notice. In addition, the SCPD recommends that the proposed language explicitly require termination notices to include the specific reason(s) for case closure.

DHSS' proposed provisions on ending child care eligibility do not address the possibility of good cause for failing to timely respond to notices, or reasonable accommodations for situations involving disability or domestic violence. The proposed language simply makes no reference to possible barriers to compliance with DSS requirements. DSS should also allow a minimum of 30 days for families to provide any necessary information from the effective date of closure without having to reapply for benefits. Such a provision would support the purpose of these amendments, which is to comply with federal regulations meant to reduce interruptions to benefits. Colorado, for example, allows for 30 days from the effective date of closure for a caretaker to offer the information needed to continue the child care case. Upon providing the information, eligibility continues as of the date the missing information was given to the state. DSS' manual should include a similar provision, and notices should clearly inform caretakers of the deadline to supply additional information.

In sum, the SCPD recommends to DHSS that the proposed amendments be revised in order to meet federal requirements concerning when child care authorizations must continue and when cases may be closed. The current proposed language is insufficient, and DHSS must include more guidance in order to ensure consistent compliance with federal regulations. Moreover, DHSS should include policies that: (1) address good cause for untimely responses to notices; (2) allow for reasonable accommodations for disability or domestic violence; and (3) provide opportunities for families to provide information following case closure without having to reapply for benefits.

The SCPD also recommends that the regulation should focus on the spirit of the federal regulation that they are responding to, so that we are finding ways to minimize disruptions rather than discovering ways to take it away.

Thank you for your consideration and please contact SCPD if you have any questions.

cc: Robert Dunlevy, DSCYF/DPBHS
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Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disability Council

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