



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

John A. McNeal
Director

MEMORANDUM

DATE: February 27, 2019

TO: Ms. Nicole Cunningham, DHSS/DSS
Planning, Policy and Quality Unit

FROM: Mr. J. Todd Webb - Chairperson
State Council for Persons with Disabilities

RE: 22 DE Reg. 658 [DHSS/Division of Social Services Income Reporting Requirements
for Child Care (February 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed Department of Health and Social Services/Division of Social Services' (DSS') proposal to amend the DSS Manual in order to comply with the new federal statute and regulations regarding reporting requirements for Child Care eligibility. This proposed regulation was published as 22 DE Reg. 658 in the February 1, 2019 issue of the Register of Regulations.

As background, 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, through the Child Care and Development Block Grant Act of 2014. Additionally, the U.S. Department of Health and Human Services published new rules in 2016 providing further clarification on the 2014 law. Among other provisions, the federal regulations establish limits for when eligible families must report a change in circumstance – such as a change in income – to the state. These guidelines are meant to reduce the burden of reporting and promote continuity of care. DSS' proposed amendments address these updated reporting requirements.

Under the proposed amendments, families must only report changes when the following occurs: (1) their monthly income exceeds 85% of the state median income (SMI) for the household size; or (2) the family experiences a non-temporary change, including the loss of employment, the

completion of an education or training program, or a permanent change in state residency.¹ When a family reports a non-temporary change that ends their need for child care, DSS will authorize 90 consecutive days of child care before case closure.

SCPD has the following recommendations that could improve the proposed regulations:

- DSS must explain how it will ensure that reporting requirements do not place an undue burden on eligible families and accommodate the needs of working parents. Federal regulations mandate that when a state agency, as here, chooses to impose additional notification requirements, these requirements “shall not constitute an undue burden on families” and shall (1) not require an office visit; and (2) be able to be fulfilled through a range of notification options, such as phone, email, online forms, and extended submission hours.² The proposed amendments, however, make no mention of how DSS will accommodate families who need to report changes.
- Federal regulations also direct states to take into account regular income fluctuations when the family’s income exceeds 85% of SMI.³ SCPD previously raised concerns that the DSS Manual lacks adequate explanation as to how DSS will prevent fluctuations in income from resulting in the closure of a child care case. Council reiterates that concern here. In November 2018, DSS stated it would be developing more comprehensive and detailed income policies in the near future for child care cases.⁴ A more robust income policy addressing fluctuations is needed to ensure that temporary changes do not cause a loss of child care benefits.
- The proposed language about reporting a change in monthly income is imprecise. The proposed policy states: “A family must only report a change in monthly income that exceeds 85% of the state median income (SMI) guideline for the household size.” The policy should instead note that families must only report changes in income that result in their monthly income – not the change in income – exceeding 85% of SMI.
- With respect to the continued authorization of child care for 90 days, the proposed amendments should specify that families will continue to receive at least the same level of assistance during that time period.⁵
- DSS should consider extending the 90-day time period for continued authorizations, or at least allow for extensions for reasons such as disability or other good cause. Federal regulations state that after a parent’s loss of work or other non-temporary change, states must offer families at least three months of continued assistance so the parent can find

¹ Unlike the requirement to report income that exceeds 85% of SMI (which is mandated by federal regulations), the requirement to report a non-temporary cessation of work, training, or education is an option states may choose to impose. 45 C.F.R. § 98.21(e)(1).

² 45 C.F.R. § 98.21(e)(2).

³ 45 C.F.R. § 98.21(e)(1)(i).

⁴ DSS Agency Response to Governor’s Advisory Council for Exceptional Citizens Re: DMMA Proposed Child Care Eligibility Authorization Regulation (22 DE Reg. 264), November 2, 2018.

⁵ Federal regulations require continued authorization “at least at the same level for a period of not less than three months....” 45 C.F.R. § 98.21(a)(2)(i).

another job or resume job training or educational activity.⁶ The proposed amendments do not discuss how DSS will accommodate families in which a parent/caretaker might have a disability or face other barriers that create a need for a longer job search.

- The amendments should also include a policy explaining how DSS will evaluate whether a family has regained eligibility for benefits before closing a child care case after 90 days of continued authorization. According to federal regulations, “[a]t the end of the minimum three-month period of continued assistance, if the parent is engaged in a qualifying work, education, or training activity, with income below 85% of SMI, assistance cannot be terminated and the child must continue receiving assistance until the next scheduled re-determination, or at Lead Agency option, for an additional minimum 12-month eligibility period.”⁷ DSS should outline how it will ensure continuity of benefits in the circumstances described above. Also, to further promote continuity of care, we urge DSS to exercise the option to approve benefits for an additional 12 months rather than until the next re-determination.

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

cc: Mr. Ray Fitzgerald, DHSS/DSS
Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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⁶ 45 C.F.R. § 98.21(a)(2)(i).

⁷ 45 C.F.R. § 98.21(a)(2)(ii).