



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

**John A. McNeal**  
Director

**MEMORANDUM**

DATE: April 30, 2019

TO: Ms. Kelly McDowell  
Division of Family Services – Office of Child Care Licensing

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

RE: 22 DE Register of Regulation 865 [Final DFS-DELACARE Regulations  
Early Care and Education and School-Age Centers, and 866 Family and  
Large Family Child Care Homes Regulations (April 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families (DSCYF)/Division of Family Services (DFS)/Office of Child Care Licensing's (OCCLs) final DELACARE regulations concerning the health, safety, well-being, and positive development of children who receive care in early care and education and school-age centers. Council's comments on the proposed regulations focused on changes needed to ensure that licensed centers comply with the Americans with Disabilities Act (ADA) by meeting the needs of children with disabilities who require medication while in child care. The final regulation was published as 22 DE Reg. 865 in the April 1, 2019 issue of the Register of Regulations. SCPD endorsed the proposed regulations, but also requested the following revisions:

- OCCL should require child care centers to inform parents and guardians that they will make reasonable accommodations for children with medication needs.
- The language in Subsection 63.8 should also be modified to more clearly warn child care centers that even if OCCL regulations do not require licensees to administer medication by injections, it may be mandatory to do so under state and federal anti-discrimination laws.

- For complaints under Subsection 12.5, OCCL should promptly refer complaining parties to all appropriate agencies and develop a system for tracking complaints, as well as consider referring disability-related complaints to CLASI.

OCCL incorporated some, but not all, of these recommendations:

- Under Subsection 23.1.13, OCCL added the requirement that parent/guardian handbooks should include policies concerning reasonable accommodations for children with disabilities. However, SCPD had suggested more specific language clarifying that reasonable accommodations extend to the administration of medication, including medication by injections.
- The updated version of Subsection 63.8 provides greater notice to licensees that administering medication via injections may be mandatory under state and federal laws. OCCL modified the language so that it now states that “[t]he administration of medication may be required under State and federal laws even though it is not mandated pursuant to these regulations.” This change is a significant improvement over the previous language, which highlighted that OCCL did not require the administration of medication and would only take enforcement action in limited circumstances. The new language addresses Council’s concerns that child care centers may believe they have complete discretion over whether or not to deliver medication by injection.
- OCCL declined to modify Subsection 12.5 to provide greater detail on the complaint process and to create a process for referring disability-related complaints to CLASI.

Overall, the final DELACARE regulations regarding early care and education and school-age centers are notable in that they now allow a licensee to administer medication by non-intravenous injection. This change is an important one that will help ensure that child care centers comply with the ADA by meeting the needs of children who require medication by injection, such as children with diabetes who need insulin.

OCCL also finalized the DELACARE regulations for family and large family child care homes. These final regulations were published as 22 DE Reg. 866 in the April 1, 2019 issue of the Register of Regulations. These regulations are similar or identical to the regulations for early care and education and school-age centers. The analysis above also applies to these regulations.

SCPD appreciates that OCCL incorporated some of the Council’s recommendations.

cc: Ms. Trenee Parker, DFS  
Laura Waterland, DLP  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council