



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 24, 2020

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

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

RE: 23 DE Reg. 624 [DSS Proposed Regulation on Child Care Subsidy
Program (February 1, 2020)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Social Services' (DSS') proposed regulation which updates existing provisions of the Delaware Social Services Manual (DSSM) pertaining to the Child Care Subsidy Program also known as Purchase of Care (POC). The regulation that DSS proposes to amend address payment to child care providers for absent days or holidays, as well as the termination of child care providers and clients who have self-arranged care. In addition to formatting updates, the proposed regulation would update the substance of both sections of the DSSM and was published as 23 DE Reg. 624 in the February 1, 2020 issue of the Register of Regulations. SCPD has the following observations and recommendations.

The proposed amendments relating to payment for absent days or holidays (the existing regulation can be found at 15 Del. Admin. C. § 11006.4.1) add details relating to the new child care copayment. The proposed amendments make clear that DSS will pay for absent days "after the family's copayment has been paid and there is a remaining balance due to the provider." If a copayment is not assigned, then DSS will pay for up to five absent days per month in accordance with the existing policy. Additionally, the proposed amendments specify that the State will pay for up to six major holidays per year of the provider's choice. The existing regulations do not set a limit on the number of paid holidays, but paid holidays must be indicated in the provider's contract.

With respect to termination of child care providers or clients who have self-arranged care (found at 16 Del. Admin. C. § 11006.5.1), the amendments make two substantive changes. First, the training requirements for relative care providers are adjusted from 47 hours of mandatory training to be completed within 18 months to 28 hours of mandatory training to be completed within 12 months; this change simply reflects the current requirements as found at 16 Del. Admin. C. § 11006.7. Additionally, a provision is added stating that DSS may terminate a parent or caretaker who has self-arranged care from the POC program for the following reasons: submission of fraudulent attendance records, failure to keep an open bank account and receive direct deposit payments, and failure to attend the mandatory orientation for self-arranged clients.

While the proposed amendments do not directly pertain to children or parents/caregivers with disabilities, it is possible that some disabilities or other health conditions may cause more frequent child absences than the stated maximum of five days per month that DSS will pay for. This provision is not new, and follows what is recommended by federal regulation to “support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences” (see 45 C.F.R. § 98.45). For some families in which a child or parent/caregiver has special needs, however, more than five days in a month may be missed on a more regular basis. While absence is not considered a reason for possible termination from the program unless there are “excessive unexplained absences” (see the DSSM at 16 Del. C. § 11004.12), low-income families with disabilities may encounter difficulty paying for additional days that a child was not present for contracted child care due to either the child or parent’s disability. While presumably a parent or child with a disability would potentially be legally entitled to a reasonable modification of program rules under the Americans with Disabilities Act, SCPD recommends that there is specific language included in the regulation for the payment of more than five absences in one month in certain circumstances when the absences are directly related to a child or parent’s disability or other serious health condition.

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

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