

May 28, 2013

Elizabeth Timm  
Office of Childcare Licensing  
1825 Faulkland Road  
Wilmington, DE 19805

**RE: DFS Proposed Child/Health Care Setting Child Abuse Registry Regulation [16 DE Reg. 1159 (May 1, 2013)]**

Dear Ms. Timm:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Family Services (DFS) Office of Child Care Licensing (OCCL) proposal to adopt revisions to its standards covering criminal background checks for individuals involved in child care, health care and educational settings. The GACEC would like to share the following observations.

First, the title to the regulation is "underinclusive". It only refers to "child care and health care persons". In contrast, the regulation also covers public school employees and volunteers. See §3.0, definitions of "conditional public school person", "person seeking employment", "person seeking employment with a public school", and "public school"; and §4.1.1. The title should be expanded to highlight its coverage of educational personnel.

Second, in §1.0, Council recommends substituting "Basis" for "Base" in the title.

Third, in §3.0, the definition of "child care person", and §4.1.1 only apply the registry check process to persons who would be "alone" with children or persons in care. This should be reconsidered.

A. In Title 11 Del.C. §8563(a), the statutory definitions of "direct access", "person seeking employment", and "person seeking employment with a public school" are not limited to persons who would be "alone" with a child or person receiving care. Indeed, the statute [Title 11 Del.C. §8563(a)(4)] literally requires registry checks of anyone applying for work in a child care or health care setting regardless of access to children or persons receiving care. The only reference to "direct access" is in the context of public school personnel. Compare Title 11 Del.C. §8563(a)(5). If DFS defines "direct access" to only cover personnel who would be regularly "alone" with children or persons receiving care, employers may justifiably exclude many child and health care workers from the background check process. Moreover, although the statute [Title 11 Del.C. §8563(a)(4)] requires all applicants for a license to operate a child care facility to undergo a background check, the regulations would exempt such applicants if they are "off-site" owners without individual access to children.

B. There are situations in which perpetrators act as a team to abuse/neglect vulnerable persons. Just because someone is not alone with a child or person receiving care, does not mean that the child or person receiving care is not at risk.

Fourth, in §7.1, there is a plural pronoun (“they”) with a singular antecedent (“person”). Consider the following revision - “When...perpetrator, ~~they~~ the person will be allowed...”

Fifth, the enabling statute [Title 11 Del.C. §8563(h)] authorizes other entities, including nonpublic schools, to voluntarily submit to the background check process. The regulation is completely silent in this context. This could result in confusion among employers and DFS staff when implementing the statutory authorization.

Thank you for your time and consideration of our comments and recommendations. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

Terri A. Hancharick  
Chairperson

TAH:kpc