

February 24, 2017

Kimberly Xavier  
Planning, Policy & Quality Unit  
Division of Medicaid & Medical Assistance  
1901 N. DuPont Hwy.  
P.O. Box 906  
New Castle, DE 19720-0906

**RE: DSS Proposed Purchase of Care (POC) – Licensed Exempt Providers Regulation [20 DE Reg. 614 (February 1, 2017)]**

Dear Ms. Xavier:

The Governor's Advisory Council for Exceptional Citizens (GACEC) reviewed the Department of Health and Social Services (DHSS/Division of Social Services (DSS) original proposed version of this regulation in December of 2016. A copy of our December 22, 2016 letter is attached. Council understands the proposed regulation is being reissued because it was inadvertently published as a DMMA initiative. Since the February version of the regulation is identical to the December version with the exception of the effective date, the GACEC would like to re-submit our earlier comments with updates where necessary.

As background, the federal Child Care and Development Block Grant funds child care for low income families who are working or participating in education or training activities. In 2016, new federal regulations were adopted which are prompting DSS to revise its provider standards. The changes will be effective on May 11, 2017. At 614.

One significant change Council notes is curtailing the scope of providers exempt from licensing. At 615-616. Persons who come into the home of the child and relatives who provide care in their own homes remain exempt from licensing. Id. However, the following entities would no longer be exempt:

- (1) public or private school care;
- (2) preschools and kindergarten care; and
- (3) before and after school care programs.

DSS recites that “(t)he final rule requires that all providers receiving Purchase of Care (POC) funding must now be licensed, including those that were previously license exempt, in order to continue receiving POC funding.” Council could not verify the accuracy of this recital which, read literally, would disallow the exemption of persons coming into a child’s home and relatives providing care in their homes. At 615. The federal regulation, with commentary, is more than 600 pages making it difficult to confirm the accuracy of the statement without extensive review. The federal regulations (§§98.2 and 98.40) do not categorically require Delaware to remove the current licensing exemption of the three types of entities listed above. However, §98.40 does require DHSS to describe the rationale for any exemptions in its Plan. The regulation does not provide the rationale for retaining the exemption for persons coming into a child’s home and relatives who provide care in their home apart from a simple listing of some health and safety standards.

Council would like to note that the regulation could be improved by including the rationale for retaining the two exemptions in §11004.4.1 consistent with federal regulation §98.40. Also, Council suggests that DSS resolve the inconsistency between reciting that “all providers receiving Purchase of Care (POC) funding must now be licensed....” and continuing to exempt the two classes of providers mentioned.

A second change is the deletion of an authorization category of “double time (D) which is two days”. The specific rationale for this change is also not provided. Council suggests that DSS provide more information, specifically, the rationale for deleting this authorization category.

Thank you for your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you have questions.

Sincerely,

Dafne A. Carnright  
Chairperson

DAC:kpc

Attachment