

January 31, 2018

Nicole M. Cunningham
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 Child Care Assistance Regulation [21 DE Reg. 542 (January 1, 2018)]

Dear Ms. Cunningham:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services/Division of Social Services (DSS) proposal to amend the Delaware Social Services Manual (DSSM) regarding child care assistance, specifically, to clarify policy in reference to determination of eligibility. Council would like to share the following observations.

First, the amendment of 11002.4 eliminates a lengthy restating of the Personal Responsibility and Work Opportunity Act (PRWOA) definitions of eligible and ineligible immigration status and also deletes specific categories of eligibility. The amendment then sets out a much more simplified list of eligibility criteria. The revised language does not alter the eligibility criteria for this program. To be eligible, children must be under 13 or over 13 and incapable of self-care as determined by a medical professional. Children must also be citizens, qualified aliens (defined elsewhere) or referred by DFS.

Second, the next section further extends eligibility to children who are in need of protective services, homeless or in foster care; however, it is unclear whether this is irrespective of age or alien status. The regulation would benefit from language clarifying that this group of children is eligible irrespective of age or immigration status, if that is the case.

Third, subsection 2 lists the eligibility requirements for parents and Caretakers which includes

those who “report a special need.” It might be beneficial to cross-reference the definition of “special need” in 11003.7.8.

Fourth, the second set of amendments to section 11004 “Applying for Child Care Assistance” again seeks to simplify the language describing the application process. The language contemplates allowing case workers to conduct an “informal” review of eligibility, and make a disposition that a potential applicant is ineligible, without issuing a written decision and without the person having any right to appeal. The proposed language in paragraph 2 indicates that “Parents and caretakers who appear to be eligible may complete a formal application process.” Unfortunately, case handlers make mistakes and potential applicants can be mistakenly and unnecessarily discouraged from filing applications that would trigger a formal decision and a right to appeal. Some of the eligibility rules are complex (such as alien status) and some aspects of eligibility, such as having a special need, are subjective and not suitable for an informal decision by a case worker. Families who are told they are probably not eligible by a case worker are not likely to pursue an application. This policy may needlessly and unfairly skew the process against families.

Fifth, section 11004 3.c states that parents and caretakers are to be notified whether they are potentially eligible for services and that a written decision is not required for an informal inquiry. Council suggests the DSS revisit this section and require a timeframe for notification of some type and consider a written notification as mentioned in our comments above.

Council is concerned that these provisions may violate due process requirements and also make erroneous denials of services much more likely. The GACEC recommends that DSS revise the regulation to require an application be processed for each family that asks for services. This would be consistent with other benefits programs and also with due process requirements.

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

Sincerely,

Terri A. Hancharick
Vice Chairperson

TAH:kpc