

October 26, 2018

Nicole M. Cunningham
Planning, Policy & Quality Unit
Division of Medicaid & Medical Assistance
1901 N. DuPont Hwy.
P.O. Box 906
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RE: DMMA Proposed Child Care Eligibility Authorization Regulation [22 DE Reg. 264 (October 1, 2018)]

Dear Ms. Cunningham:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Medicaid and Medicare Assistance (DMMA) proposal to amend the Division of Social Services (DSS) Manual. The amendment is being proposed in order to comply with the new federal statute and regulations regarding authorization requirements for Child Care Eligibility. Council would like to share the following concerns and ask that DHSS consider revising the proposed amendments in order to meet federal requirements concerning when child care authorizations must continue and when cases may be closed. Our observations are as follows:

First, the proposed amendments specify that DSS case workers must set child care authorizations for a period of 12 months unless a limited set of exceptions apply. Further, the amended language clarifies when child care authorizations must continue, including situations where a caretaker experiences a temporary change in work, education, or training. DHSS' language explaining the scenarios that constitute a temporary change are not comprehensive enough to comply with federal regulations, which define what states should consider (at minimum) to comprise a temporary change in the status of a caretaker as working or attending a job training or educational program. For instance, while the state's proposed language lists a temporary change as including an "injury resulting in time off of work," it does not mention situations involving illness or the need to care for a family member – both of which are included in the federal regulations.

Second, DHSS proposes to modify the requirements for closing child care cases. DHSS seeks to close child care cases upon the “death of the case head or of the authorized child.” Rather than automatically closing a case upon the death of the case head, DSS should evaluate whether a basis for continued eligibility still exists rather than disrupting services and forcing a new caretaker to reapply for benefits.

Third, under the proposed language, DSS will also close child care cases before redetermination or during graduated phase-out if the family’s income exceeds 85% of the state median income (SMI). The DSS manual contains other provisions explaining the graduated phase-out process, which is a policy that applies to recipient families whose income exceeds the child care income limit at redetermination. However, new federal regulations note that states must establish a process for redetermination of eligibility that takes into account “irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.” Neither the DHSS proposed language nor its existing policies for graduated phase-out describe how DSS will prevent fluctuations in income from resulting in the closure of a child care case due to income exceeding 85% of SMI.

Fourth, DSS proposes to mail a Form 330, “Request for Contact,” to a parent or caretaker to request clarification about “excessive unexplained absences” of a child from a child care program before closing a case. Closing a case due to excessive unexplained absences is an option authorized by federal regulations. Yet federal requirements specify that states may only discontinue assistance when excessive unexplained absences persist “despite multiple attempts by the Lead Agency or designated entity to contact the family and provider, including prior notification of possible discontinuation of assistance.” The proposed language does not provide for multiple attempts to contact both the family and provider. It simply states that a form will be mailed to the parent or caretaker requesting clarification and DSS will terminate a case if the parent/caretaker does not respond by the requested due date. DSS should revise this language to make it clear that they must reach out to both families and providers multiple times and notify them of the risk of termination of benefits. It would be helpful if the 10-day closing notice cross-referenced DSSM 5300, which outlines the requirements for timely and adequate notice. In addition, Council recommends that the proposed language explicitly require termination notices to include the specific reason(s) for case closure.

Fifth, the DHSS proposed provisions on ending child care eligibility do not address the possibility of good cause for failing to respond in a timely manner to notices, or reasonable accommodations for situations involving disability or domestic violence. The proposed language makes no reference to possible barriers to compliance with DSS requirements. Council requests DSS consider allowing a minimum of 30 days for families to provide any necessary information from the effective date of closure without having to reapply for benefits. Such a provision would support the purpose of these amendments, which is to comply with federal regulations meant to reduce interruptions to benefits. Colorado, for example, allows for 30 days from the effective date of closure for a caretaker to offer the information needed to continue the child care case. Upon providing the information, eligibility continues as of the date the missing information was given to the state. The DSS manual should include a similar provision and notices should clearly

inform caretakers of the deadline to supply additional information.

The current proposed language is inadequate and DHSS needs to include more guidance in order to ensure consistent compliance with federal regulations. In summary, DHSS needs to include policies that: (1) address good cause for untimely responses to notices; (2) allow for reasonable accommodations for disability or domestic violence; and (3) provide opportunities for families to provide information following case closure without having to reapply for benefits.

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

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF:kpc