



Governor's Advisory Council for Exceptional Citizens (GACEC)
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December 5, 2018

Kelly McDowell
Office of Child Care Licensing
Division of Family Services
Department of Services for Children, Youth and their Families
3411 Silverside Road, Hagley Building
Wilmington, DE 19810

RE: 22 DE Reg. 380 DFS OCCL Proposed DELACARE Regulations for Family and Large Family Child Care Homes Regulation [(November 1, 2018)]

Dear Ms. McDowell:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Family Services Office of Child Care Licensing (OCCL) proposal to amend its DELACARE: Regulations for family and large family child care homes. There are similar concerns in this regulation to the concerns noted by Council in our letter on 22 DE Reg. 379. See attached. Council endorsed the proposed changes to the early care and education and school-age centers regulation and provided observations; therefore, we **endorse** this proposed regulation but would like to share the following concerns on Americans with Disabilities (ADA) compliance issues in addition to the concerns noted on Reg. 379.

Positive Behavior Management:

In the section on positive behavior management (Section 18.0), OCCL has added the requirement that staff members should "adapt behavior management practices for a child who has a special need, including a behavioral or emotional disability." OCCL previously removed similar language from the regulations. Council supports the re-introduction of this requirement.

Administration of Medication:

With respect to administration of medication (Section 42.0), OCCL will now require licensees to ensure that a trained staff member who has received a valid Administration of Medication certificate from OCCL is present at all times to provide routine and emergency medications to children. In Subsection 42.6, the regulations also state that “a licensee may administer medication to a child who has a medical need during child care hours that requires the administration of medication by non-intravenous injection.” This change is an important one that will help ensure that licensees comply with the Americans with Disabilities Act (ADA) by meeting the needs of children who require medication by non-intravenous injection, such as children with diabetes who need insulin. However, OCCL could improve the regulations on medication administration in several ways:

- Licensees may interpret the language in Subsection 42.6 as meaning that they have discretion over whether or not to administer medication by injection. In order to comply with the ADA, licensees must provide medications by injections (with the consent of parents and medical providers) unless doing so would cause a fundamental alteration to the program. Thus, as a general rule, licensees should be administering medications by injections when parents ask them to. OCCL should consider adding a subsection to Section 42.0 that clarifies that medication administration must be part of the reasonable accommodations that must be made in order to provide equal services to children with disabilities.
- OCCL should require licensees to develop and consistently implement a written policy on the administration of medication. The sections on Procedures for Initial Licensure (Section 7.0) and License Renewal (Section 8.0) do not seem to require licensees to submit such plans for approval. However, it seems that policies on medication administration must be included in the parent/guardian handbook (see Subsection 20.2). These policies should be written in a way that makes it clear that the licensee is willing and able to accommodate children with medication needs, including medication by non-intravenous injections.
- The section on field trips (Section 47.0) makes no mention of meeting the needs of children who require medication while away from the home. Licensees must have plans and policies to accommodate children with medication needs on any field trips, and medication administration must not be interrupted when children are on these outings. The regulations should also state that licensees must not require parents/legal guardians to accompany their children on field trips to administer medications.

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

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

Attachment