



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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February 21, 2020

Nicole Cunningham
Planning, Policy and Quality Unit
Division of Medicaid and Medical Assistance
1901 North DuPont Highway/P O Box 906
New Castle, DE 19720-0906

**RE: 23 DE Reg. 624 [DHSS/DSS Proposed Child Care Subsidy Program Regulation
(February 1, 2020)]**

Dear Ms. Cunningham:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) proposal to update provisions of the Delaware Social Services Manual (DSSM) pertaining to the Child Care Subsidy Program also known as Purchase of Care (POC). The proposed amendment addresses payment to child care providers for absent days or holidays, as well as the termination of child care providers and clients who have self-arranged care. Council would like to share the following observations.

While the proposed amendments do not directly pertain to children or parents/caregivers with disabilities, it is possible that some disabilities or other health conditions may cause more frequent child absences than the stated maximum of five days per month that DSS will pay for. This provision is not new, and follows what is recommended by federal regulation to "support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences" (see 45 C.F.R. § 98.45). For some families in which a child or parent/caregiver has special needs, however, more than five days in a month may be missed on a more regular basis. While absence is not considered a reason for possible termination from the program unless there are "excessive unexplained absences" (see the DSSM at 16 Del. C. § 11004.12), low-income families with disabilities may encounter difficulty paying for additional days that a child was not present for contracted child care due to either the child or parent's disability. Presumably a parent or child with a disability would potentially be legally entitled to a reasonable modification of program rules under the Americans with Disabilities Act. However, Council would like to suggest that the rules specifically reflect that accommodations may be made for the payment of more than five absences in one month in certain circumstances when

the absences are directly related to the disability or other special health care need of a child or parent.

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

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc