



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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May 31, 2022

Nicole Cunningham
Division of Social Services
1901 North DuPont Highway/P O Box 906
New Castle, DE 19720-0906

RE: 25 DE Reg. 1012 [DHSS/DSS Proposed Defining Relative In-Home Child Care Regulation (May 1, 2022)]

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 amend the DSS Manual (DSSM) to define and explain the requirements for a relative to provide childcare services in the child's home through the Purchase of Care program. Council would like to reiterate concerns that were shared when the regulations were revised in 2018 and request information on why the regulations only apply to families with at least four children.

These proposed regulations "define and explain" requirements for a relative to provide in home childcare through the purchase of care program. DSS appears to be restating the provisions limiting Relative In Home Care to families with four or more children and eliminating the "last resort" exception to this rule for special needs children when other childcare cannot be found.

In its place, the revised regulation restates the four family member restriction in 3A, by requiring a minimum of four children (and a maximum of five); and in 3C, by requiring that the children be family members of the caregiver and that they all be siblings. The proposed regulation removes the exception for special needs children, and restricts care to non-traditional work hours that are not normally available.

As noted, DSS revised these regulations in 2018. At that time, concerns were raised about the need to make reasonable modifications to this and in fact any policy if either the child or the parent has disabilities requiring changes. The comment and the response from DSS are noted here for your reference.

Third, Section 3 includes the following limit: "Relative childcare is limited to evening and weekend shift work hours only." This is ill-conceived given the overall shortage of childcare providers. Moreover, "special needs" parents and children are eligible for the State childcare program. See 16 DE Admin. Code 11003.7.8. It may be extremely difficult for a parent of a special needs child ages 13-18 to identify a licensed provider to add a 13-18-year-old to their daycare. Moreover, "special needs" parents often rely on relatives for parenting assistance and federal law requires states to accommodate that reliance. See Joint DOJ/HHS LOF to Mass. Dept. Of Children & Families (1/29/15), published at https://www.ada.gov/ma_docf_lof.pdf. See also U.S. DOJ/HHS

Joint Guidance, "Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (8/15)", published at https://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf. At a minimum, Section 3 should be revised to allow relative childcare for special needs children and adults apart from evening and weekend shifts. It would also be prudent to authorize exceptions for all parents with the approval of DHSS.

***Agency Response:** DSS appreciates the Council's comment regarding the limitations on the Relative Care choice for parents. At this time the Division is not aware of any factual documentation regarding a childcare shortage in our state. We are, however, setting the stage to conduct some research to determine if in fact the childcare demand is greater than the supply, and where services may be lacking. Moreover, the division has seen a significant increase in the request for relative care by providers who are unsuitable for a myriad of reasons. We have had a rash of parents pulling their children from centers to allow relatives to provide care, parents attempting to get people other than relatives to provide care, people other than the authorized relatives actually caring for the children when site visits are conducted (which means they have not been fingerprinted), relative providers caring for the children at sites other than the authorized sites, relative providers/children who are unable to be located when attempting to conduct site visits, relative care providers allowing other adults who have not been fingerprinted, in the home, around the children, relatives providing care in environments that were not safe for children, etc. In its efforts to, as best it can, ensure the health and safety of children the division has made the decision to restore the integrity of the relative care program by limiting this choice to parents who need care during non-traditional hours such as weekends, and evening shifts. The agency is fully aware that there may be circumstances where exceptions must be made, particularly, for those families who may have a special need. The agency is amenable to addressing these exceptions as they present themselves.*

While DSS acknowledged in the response that they were “amenable” to addressing exceptions, they did not revise the regulation. Council would therefore like to reiterate this concern. Even if DSS is amenable to making exceptions, the fact is they are obligated to, and the regulation should clearly state that individuals can ask for modifications to the policy, especially the ones restricting coverage to non-traditional hours and restricting the use of relative in-home caregivers to families of four. Parents of children with disabilities struggle tremendously to find childcare that will accept their child and childcare providers discriminate on a regular basis against these families. Family size has no bearing on the need for childcare under these circumstances. For clarity and transparency, the regulation should articulate the availability of reasonable modifications to this policy.

As noted earlier, Council would also like information on why this is restricted to families of four, with a maximum of five children. Is there some significance to the number four?

Thank you for your time and consideration of our question and concerns. Please feel free to contact Pam Weir or me should you have any questions on our comments.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc