

CHILD AND FAMILY SERVICES AGENCY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Interim Director of the Child and Family Services Agency (CFSA), pursuant to section 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.03 (2005 Supp); section 106 of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006, D.C. Law 16-0069 (Act), and Mayor's Order 2006-38, dated March 20, 2006, hereby gives notice of the adoption, on an emergency basis, of a new Chapter 68 of Title 29 of the District of Columbia Municipal Regulations (DCMR). The rules establish procedures for providing subsidies to certain District residents who are grandparents, great-grandparents, great-aunts or great-uncles of children and who have been granted legal custody of the children or standby guardianship in accordance with D.C. Official Code § 16-4802 (2005 Supp.).

Section 102 of the Act requires the establishment of the Grandparent Caregivers Pilot Program (Pilot Program) no later than March 1, 2006. Issuance of the rules on an emergency basis is necessary to ensure that the Pilot Program is implemented by the statutory deadline and that District caregivers promptly receive this important benefit. Implementation of the rules on an emergency basis is necessary for the immediate protection of the safety and welfare of children who live with grandparents, great-grandparents, great-aunts or great-uncles whose low income prevents those relatives from adequately providing for the children's needs. The financial support to be provided to the grandparents, great-grandparents, great-aunts or great-uncles will help maintain the children in their relatives' homes and thus prevent the children entering the child welfare system. The emergency rules were adopted on March 20, 2006, and shall remain in effect for up to one hundred twenty (120) days unless superseded by another rulemaking notice.

The Interim Director also gives notice of her intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and following the review by the Council of the District of Columbia (Council) required by section 106 of the Act. Pursuant to that section, the proposed rules will be transmitted to the Council and will become effective upon the Council's approval of the rules by resolution or the expiration of the Council's thirty (30) day review period, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

Title 29 DCMR is amended by adding the following new Chapter 68:

CHAPTER 68**GRANDPARENT CAREGIVERS PILOT PROGRAM SUBSIDIES****6801****SCOPE**

6801.1

The purpose of this chapter is to establish criteria and procedures regarding the provision of a subsidy under the Grandparent Caregivers Pilot Program (Pilot

Program).

- 6801.2 The Pilot Program provides subsidies for grandparents, great-grandparents, great-aunts and great-uncles who meet the criteria set forth in this chapter and are caring for a child under certain circumstances.
- 6801.3 The Child and Family Services Agency (CFSA) shall be responsible for the implementation of this chapter, which shall apply to all subsidies provided through CFSA pursuant to the Pilot Program.
- 6801.4 All subsidies provided through CFSA pursuant to the Pilot Program are subject to the availability of funds specifically appropriated for this purpose by the District of Columbia. Nothing in this chapter shall be construed as creating an entitlement to a subsidy.
- 6801.5 Copies of this chapter shall be available from CFSA upon request.

6802 ELIGIBILITY

- 6802.1 To the extent that funds are specifically appropriated for the Pilot Program, an applicant shall be eligible to receive a subsidy under the Pilot Program if each of the following criteria is met:
- (a) The applicant has submitted a completed application packet in accordance with § 6803;
 - (b) The applicant is the grandparent, great-grandparent, great-aunt or great-uncle of the child;
 - (c) There is a court order awarding the applicant either legal custody or standby guardianship of the child;
 - (d) The child has resided with the applicant on a continuous basis for at least the most recent six (6) months;
 - (e) Unless the parent designated the applicant to be the child's standby guardian, the child's parent has not resided in the applicant's home for at least the most recent six (6) continuous months;
 - (f) The applicant and all adults residing in the applicant's home have obtained a criminal background check in accordance with § 6804;
 - (g) The applicant and all adults residing in the applicant's home have obtained a child protection register check in accordance with § 6804;

- (h) The household income is under two hundred percent (200%) of the federally-defined poverty level;
- (i) The applicant has applied for Temporary Assistance for Needy Families (TANF) benefits for the child through the Department of Human Services, and an eligibility determination has been made;
- (j) The applicant is a resident of the District of Columbia; and
- (k) The applicant has entered into a subsidy agreement in accordance with § 6806.

6803 APPLICATION PROCESS

6803.1 Each applicant shall submit a completed application packet.

6803.2 The application packet shall include the following:

- (a) The application form, which shall include a signed, notarized statement, sworn under penalty of perjury, that all information provided in the application packet is true and accurate to the best belief of the applicant;
- (b) Proof that the applicant is the grandparent, great-grandparent, great-aunt or great-uncle of the child;
- (c) A copy, under court seal, of the court order granting the applicant legal custody or standby guardianship;
- (d) The original results of a criminal background check, dated within one (1) year of the application;
- (e) A completed application for a Child Protection Register check;
- (f) Proof of application for TANF benefits on behalf of the child through the District of Columbia Department of Human Services, Income Maintenance Administration;
- (g) Proof that the child has resided with the applicant on a continuous basis for at least the most recent six (6) months. A sworn statement on the application is sufficient proof;
- (h) Unless the parent designated the applicant to be the child's standby guardian, proof that the child's parent has not resided in the applicant's home for at least the most recent six (6) continuous months. A sworn statement on the application is sufficient proof;

- (i) Proof of household income; and
- (j) Proof that the applicant resides in the District of Columbia.

6803.3 An applicant shall be ineligible for a subsidy if the application is not complete, if it is determined that the applicant made false statements in the application packet, or if any of the eligibility requirements set forth in § 6802 are not met. An application is incomplete if the requirements of §§ 6803.1 and 6803.2 are not met.

6803.4 CFSA shall complete its review of the application, determine the applicant's eligibility, and notify the applicant in writing of its decision within forty-five (45) days of receipt of a completed application.

6804 CRIMINAL BACKGROUND CHECK AND CHILD PROTECTION REGISTER CHECK

6804.1 At the choice of the applicant, the criminal background checks required under this chapter may be obtained directly through the Metropolitan Police Department (MPD) or through CFSA.

6804.2 If the criminal background check is obtained through CFSA, CFSA shall pay the cost of the criminal background check for the legal custodian or guardian, and any other grandparent, great-aunt or great-uncle who resides in the home.

6804.3 This section shall not preclude an agency other than CFSA from paying for all or part of the cost of the criminal background check.

6804.4 In the event a criminal background check reveals a crime of violence or a crime against a child, CFSA shall review the conviction and determine whether the applicant is able to provide for the health, safety and welfare of the child in light of:

- (a) When the crime occurred;
- (b) The nature of the crime;
- (c) Any efforts made by the individual who has the criminal history to alter his or her behavior; and
- (d) Any other factors that assist CFSA in assessing the health, safety and welfare of the child.

6804.5 In the event that a child protection register check reveals that an individual is identified as the abuser or neglecter in a substantiated child abuse or neglect case, CFSA shall review the results and determine whether the applicant is able to provide for the health, safety and welfare of the child in light of:

- (a) When the child abuse or neglect occurred;
- (b) The nature of the child abuse or neglect;
- (c) Any efforts made by the individual who has the criminal history to alter his or her behavior; and
- (d) Any other factors that assist CFSA in assessing the health, safety and welfare of the child.

6804.6 CFSA may determine that an applicant is ineligible for a subsidy if it determines that the applicant is not able to provide for the health, safety and welfare of the child after conducting a review in accordance with § 6804.4 or 6804.5.

6805 SUBSIDY

6805.1 The amount of the subsidy shall be the amount that CFSA provides as the regular daily rate for a Level I permanent guardianship subsidy pursuant to Title 29 DCMR, Chapter 61, less any TANF benefits received for the child.

6805.2 The subsidy shall expire after one (1) year unless the recipient is recertified in accordance with § 6807.

6806 SUBSIDY AGREEMENT

6806.1 An applicant shall enter into a subsidy agreement with CFSA prior to receiving a subsidy.

6806.2 The amount of the subsidy stated in the subsidy agreement shall be the sole and complete amount of funds an individual shall receive under the Pilot Program for a child named in the subsidy agreement.

6806.3 A subsidy agreement shall include at least:

- (a) The amount of the subsidy;
- (b) A statement that the subsidy shall expire after one (1) year unless the recipient is recertified in accordance with § 6807;
- (c) A statement that the receipt of the subsidy is contingent upon the availability of funds specifically appropriated for this Pilot Program, and that if funds are exhausted during the period covered by the subsidy agreement, the subsidy will terminate;
- (d) A statement that subject to availability of funds specifically appropriated

for this Pilot Program, the recipient may reapply annually to be recertified in accordance with § 6807; and

- (e) A statement of the circumstances under which the subsidy shall terminate.

6806.4

A subsidy agreement shall terminate:

- (a) If funds specifically appropriated for this Pilot Program are not available to pay the subsidy;
- (b) At the end of one (1) year if the recipient fails to reapply and be recertified for the succeeding year;
- (c) If the recipient dies;
- (d) If the recipient is no longer the child's legal custodian or standby guardian;
- (e) Upon the earlier of the child's:
 - (1) Eighteenth (18th) birthday;
 - (2) Residence outside recipient's the home, unless the recipient can demonstrate that he or she retains financial responsibility for the child and the child is attending a residential school;
 - (3) Marriage;
 - (4) Death; or
 - (5) Enlistment in the military;
- (f) If there is a substantiated finding of child abuse or neglect resulting in the child's removal from the household;
- (g) If the recipient no longer meets the eligibility criteria set out in § 6802; or
- (h) In accordance with any additional terms contained in the subsidy agreement or otherwise in accordance with this chapter.

6806.5

The recipient shall notify CFSA within two (2) weeks of:

- (a) Any circumstances that may result in the recipient no longer meeting the eligibility criteria set out in § 6802;

- (b) Any circumstances that may result in the termination of the agreement pursuant to § 6806.4; and
- (c) Any change of address.

6807 RECERTIFICATION

- 6807.1 If the applicant seeks recertification of the subsidy, CFSA shall conduct a review of the subsidy to determine whether the recipient remains eligible in accordance with this chapter.
- 6807.2 The recipient shall establish continued eligibility.
- 6807.3 The recipient shall submit a recertification application packet at least sixty (60) days but not more than ninety (90) days prior to the expiration of the subsidy.
- 6807.4 The application packet shall include:
- (a) A signed, notarized statement, sworn under penalty of perjury, that all information provided to establish continued eligibility is true and accurate to the best belief of the recipient and that there has been no material change in circumstance since the recipient was initially determined to be eligible for a subsidy;
 - (b) Updated child protection register and criminal background checks; and
 - (c) The child's school attendance records.
- 6807.5 If a recipient fails to submit an application for recertification or fails to cooperate with CFSA in its conduct of the review, CFSA may terminate the grandparent caretaker subsidy.

6808 APPEAL PROCEDURE

- 6808.1 Except as provided in § 6808.2, an applicant or recipient who is aggrieved by a decision of CFSA in connection with eligibility for a subsidy may appeal the decision in accordance 29 DCMR, Chapter 59.
- 6808.2 An applicant or recipient may not appeal an eligibility decision that is based on the unavailability of funds specifically appropriated for the Pilot Program.

6809 CONFIDENTIALITY

- 6809.1 CFSA shall maintain the confidentiality of information and records concerning an application for or receipt of a subsidy. Information or records may only be released as permitted by applicable provisions of District or federal law.

6899 DEFINITIONS

6899.1 The following terms and phrases shall have the meanings ascribed:

“Adult” – An individual who is 18 years of age or older.

“Applicant” – An individual who is applying for a subsidy provided under the Grandparent Caregivers Pilot Program.

“Application” – A written request to be found eligible for a subsidy submitted pursuant to this chapter.

“CFSA” – The District of Columbia Child and Family Services Agency.

“Child” – An individual who is under eighteen (18) years of age and who is the grandchild, grand-nephew or grand-niece, as appropriate, of the applicant or recipient.

“Court” – Any court of competent jurisdiction.

“Crime against a child” – A criminal offense which is comparable to:

- (a) Kidnapping of a minor, except by a parent;
- (b) False imprisonment of a minor, except by a parent;
- (c) Criminal sexual conduct toward a minor;
- (d) Solicitation of a minor to engage in sexual conduct;
- (e) Use of a minor in a sexual performance;
- (f) Solicitation of a minor to practice prostitution;
- (g) Any conduct that by its nature is a sexual offense against a minor;
or
- (h) Production or distribution of child pornography.

For purposes of this definition, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator was a minor when the crime was committed.

“Crime of violence” – Has the meaning set forth in D.C. Official Code § 23-1331 (2005 Supp.).

“Criminal background check” – The investigation of an individual’s criminal history through the record systems of both the Federal Bureau of Investigation and the Metropolitan Police Department.

“DCMR” – The District of Columbia Municipal Regulations.

“Household income” – The combined gross income of the applicant or recipient, as appropriate, and all other individuals, including children, residing in the applicant or recipient’s home.

“Legal custodian” – The person to whom a court of competent jurisdiction has awarded custody.

“Legal custody” -- A legal status awarded by a court which vests in a custodian the responsibility for the custody of a minor and that includes rights and responsibilities that are substantially similar to those set out in D.C. Official Code § 16-2301(21) (2005 Supp.).

“Minor” – An individual who is under eighteen (18) years of age

“Recipient” – An individual who receives a subsidy under the Grandparent Caregivers Pilot Program.

“Resident of the District of Columbia” – A resident as defined by section 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.03).

“Standby guardianship” – A legal status awarded by the court in accordance with D.C. Official Code § 16-4802 (2005 Supp.).

“Subsidy” – A subsidy provided under the Grandparent Caregivers Pilot Program.

“Subsidy agreement”-- An agreement entered into between CFSA and a grandparent, great-grandparent, great-aunt or great-uncle concerning the provision of a subsidy under the Grandparent Caregivers Pilot Program.

“Substantiated” – Has the meaning set forth in the Improved Child Abuse Investigations Amendment Act of 2002, effective October 19, 2002 (D.C. Law 14-206; D.C. Official Code § 4-1301.02(19A)).

“Temporary Assistance for Needy Families” or “TANF” -- the Temporary Assistance for Needy Families program established by section 201 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code 4-202.01), which is administered through the Department of Human Services, Income Maintenance Administration.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Daniel Hoffman, Program Administrator, Child and Family Services Agency, 400 6th Street, S.W., Washington, DC 20024. Copies of these proposed rules may be obtained without charge at this address.