

March 27, 2013

Sharon L. Summers  
Division of Social Services  
1901 North DuPont Highway  
P. O. Box 906  
New Castle, DE 19720-0906

**RE: DSS Proposed Case Administration Regulation [16 DE Reg. 927 (March 1, 2013)]**

Dear Ms. Summers:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Social Services (DSS) proposal to revise a variety of sections in its DSS Manual in the context of Case Administration. The 15-page set of changes covers many forms of public assistance and amends sections dealing with discrimination, access to records and complaints. The GACEC would like to share the following observations.

First, §1003.2 (1 D) appears to be overbroad; Council would prefer deletion or narrowing it to felonies as defined in federal regulations.

Second, §1003.4 authorizes agency staff to release records to a court-appointed guardian ad litem "relating to the child and his or her family or guardian". This may be "overbroad". The relevant statutes, Title 13 Del.C. §§701© and 29 Del.C. §9007A, confer a right "to inspect and copy any records relating to the child and parents involved in the case of appointment". This access right would not ostensibly extend to the entire "family", including siblings, aunts and uncles, etc.

Third, §1003.5 authorizes release of confidential information in connection with "civil proceedings". This is also "overbroad" and could result in disclosure of information unauthorized by law. Section 1003.5 is based on 45 C.F.R. 205.50(a) and 7 C.F.R. 272.1(c). The latter regulation does not authorize disclosure in connection with "civil proceedings". The former regulation (§205.50) authorizes release based on "any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs." Thus, if the State instituted a civil action to recover the value of benefits fraudulently obtained, access to records would be authorized. Section 1003.5, Par. 1, on the other hand, literally authorizes release of information in connection with any civil proceedings (e.g. child custody; creditor-debtor litigation; landlord-tenant litigation) which are not "connected" to the administration of the DHSS plans or programs. The references should preferably be modified to incorporate this limitation. Also in this section, Council would request DHSS consider adding a Paragraph 5.0 to include a notification requirement to be sent to the last known address of the person whose records are being released.

Fourth, §1004 authorizes "sending" of records only via Division employee or Department mail. The Division may wish to consider addressing electronic forwarding of records (e.g. by encrypted or non-encrypted email). The Division may also wish to include some standards concerning the safeguarding of electronic case records.

Fifth, §1005, Pars. 3 and 5 contain some inconsistent standards.

A. Par. 3.A. establishes a five year record retention period for records but Par. 3.D. refers to retention "beyond the three-year period".

B. Par. 3.A. establishes a five year record retention period but Par. 5 authorizes files to be purged after four years.

Sixth, we suggest the following additions in §1006:

- A. §1006 Paragraph 4 states that “Staff do not discriminate against any person on the grounds of race, color, national origin, age, sex, disability, political belief, religion, or any other form of discrimination.” Council would like to see the underlined phrase (...or any other form of discrimination.) added to the end of each list referencing non-discriminatory practices in order to be consistent in the following sections: 1006.1 Paragraph 2, 1006.4 Paragraph 1 and 1007.3
- B. §1006.1, Par. 2, states that “(n)either the Division nor its contractors will not discriminate...” The word “not” should be deleted so the statement would recite that neither the Division nor its contractors will discriminate...”
- C. In §1006.4 Paragraph 3, the reference to “he” is problematic. Council suggests substituting “the Civil Rights Coordinator” for “he”.

Seventh, in §1007 Paragraph 1, Council suggests changing to the following: Complaints must be submitted in writing within 180 days of the alleged discriminatory act as otherwise provided and applicable in the Federal Regulations.

Eighth, §1008 only contemplates access to policy manuals at physical sites (e.g. public libraries; State Offices). DSS should review Title 29 Del.C. §10003 which contemplates that each agency will maintain a web portal through which Freedom of Information Act (FOIA) requests can be made. Requests for access to records can also be made via email or fax. Section 1008 is apparently outdated insofar as it only describes access to information by visiting “bricks and mortar” sites. The statute also contains specific photocopying fees information, including copying the first 20 pages for free. In contrast, §1008, Par. 3.B states that all pages are charged at the current Division established rate.

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

Sincerely,

Terri A. Hancharick  
Chairperson

TAH:kpc