



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

March 29, 2019

Nicole M. Cunningham
Planning, Policy & Quality Unit
Division of Medicaid & Medical Assistance
1901 N. DuPont Hwy.
P.O. Box 906
New Castle, DE 19720-0906

RE: DHSS/DSS Proposed TANF Recipients – CMR Requirements Regulation [22 DE Reg. 744 (March 1, 2019)]

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 to update provisions regarding the Contract of Mutual Responsibility (CMR) for Temporary Assistance for Needy Families (TANF) recipients. Council would like to share the following observations.

First, Council suggests that the proposed amendments could be strengthened in various ways and must ensure that DSS is fulfilling its obligations under the Americans with Disabilities Act (ADA) and Section 504 to provide people with disabilities equal access to the TANF program. DSSM 3009.1, Imposing Sanctions for Non-Compliance with CMR Requirements

Second, section 3009.1 explains that DSS will impose sanctions when clients fail to comply with their CMR requirements, but will not sanction a TANF case if DSS "determines a client has good cause for non-compliance with the CMR." No explanation is offered regarding how DSS will make this determination. The need for DSS to explain how case workers will determine "good cause" for non-compliance is especially important given DSS' obligations to provide reasonable accommodations under the ADA and Section 504.

Third, DSS should require case workers to verify the reason for a reported instance of non-compliance before imposing a sanction just as DSS proposes that “DSS case workers must verify that clients are compliant.... before sanctions can end.” DSS should not place all of the burden on families to notify their case workers of compliance barriers. Council would recommend DSS take affirmative steps to contact parents to inquire about non-compliance to ensure that it is not improperly sanctioning a family. Families – particularly those experiencing hardships like homelessness, disability, or medical emergencies that lead to non-compliance – often have great difficulty getting in touch with their case workers to report obstacles to complying with TANF requirements. Improper and erroneous sanctions can then drive these families into further poverty.

Fourth, section 3010 does not explain in adequate detail how DSS will accommodate individuals with disabilities in developing the CMR. HHS OCR guidance stresses that TANF beneficiaries with disabilities must receive an assessment that incorporates “an individualized analysis of each person’s ability to meet the program requirements.” The CMR should take the results of such an assessment into account, as well as the needs of the individual with a disability. Council recommends language that expressly requires CMRs to reflect any needed accommodations required by a TANF household member with a disability. DSS must have policies that explain that it will consider and grant any substantiated reasonable accommodation request from a recipient with a disability (or a member of the household with a disability) when developing or revising a CMR. Health and Human Services (HHS) recommendations for best practices suggests that TANF agencies address in individual responsibility plans “not only the suitability of job opportunities, but also the needs of a beneficiary with a disability for health care, benefits counseling, and disability-related services and supports...the agency [should] also [provide] comprehensive case management/service coordination.”

Fifth 3010(2)(C) states that DSS “will give clients the opportunity to understand the CMR and its requirements,” and that DSS will give clients a copy of the proposed CMR to review outside of the DSS office at the request of the client. This language is too vague. In its effort to make sure that clients understand the requirements of the CMR, DSS should clearly require its case workers to review certain topics with clients. Instead of relying on TANF recipients to request the opportunity to review the CMR outside of the office, Council suggests DSS require case workers to inform all recipients of this opportunity so that they are aware of this option and can choose to exercise it. DSS should also ensure that the CMR uses plain language that the recipient can understand, as well as offer translated copies to persons with limited English proficiency. Also, section 2.C. states that clients will be given a copy of the proposed CMR upon request. A copy should be provided automatically and Council would suggest requiring a signature to ensure that the copy was received.

Sixth, DSS proposes in section 3010(2)(F) that, although clients may object to certain elements of the CMR, DSS has the final authority to determine what elements are included. More explanation is needed here. How will DSS ensure that client objections are taken into account? Will DSS record these objections in the case record? What standards will DSS use in arriving at their final determinations of what elements are required in the CMR? DSS should clarify how it will ensure that case workers are not making these decisions unilaterally.

Seventh, section 3010(3) states that failure to comply (without good cause) in developing the CMR will result in a sanction. Again, DSS should require case workers to take affirmative steps to verify the reason for non-compliance and whether good cause exists. Further, DSS proposes that it will allow clients up to 10 days “to reach a resolution” if they are negotiating contract terms or “to complete contract review.” It is unclear what DSS means by reaching “a resolution.” Also, clients who are negotiating contract terms should still be offered additional time to review the CMR outside the office.

Council recommends DSS waive the 10-day requirement for clients with extenuating circumstances who may need extra time, such as clients with disabilities.

Eighth, section 3017.1 describes the Transitional Work Program (TWP) for “clients who have been determined unable to work in an unsubsidized employment setting by a health professional,” emphasizes that failure to comply (without good cause) with the TWP Employability Plan will result in sanctions. Again, Council recommends DSS require case workers to verify the reason for non-compliance before imposing a sanction so that good cause can be ascertained and reasonable accommodations offered when necessary.

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

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc