

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)
16 DE Admin. Code 5100

FINAL

ORDER

DSSM: TANF, General Assistance, Refugee Cash Assistance Program Relating to Civil Unions

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding *Civil Unions*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 1, 2012, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed amends related policies in the Division of Social Services Manual (DSSM) regarding *Civil Unions*.

Statutory Authority

146th General Assembly, Senate Bill #30, *An Act to Amend Title 13 of the Delaware Code Relating to Civil Unions*

Background

Signed into law by the Governor on May 11, 2011, Senate Bill #30 is an Act that creates the recognized legal relationship of civil union in Delaware for eligible persons. This Act further recognizes as civil unions for all purposes under Delaware law legal unions between two persons of the same sex entered into in jurisdictions outside of Delaware provided that such union and the parties thereto meet the Delaware eligibility requirements to enter into a civil union in the State of Delaware. Parties who enter into a lawful civil union in Delaware, or whose legal union is recognized as a civil union under Delaware law, will have all of the same rights, benefits, protections and responsibilities as married persons under Delaware law. It is not the intent of the Delaware General Assembly to revise the definition or eligibility requirements of marriage under Delaware law or to require any religious institution to perform solemnizations of civil unions.

Summary of Proposal

The purpose of the proposal is to clarify Division of Social Services (DSS) policies for the Temporary Assistance for Needy Families (TANF), General Assistance (GA), and Refugee Cash Assistance (RCA) programs to ensure the rights and responsibilities of parties to a civil union are consistent and equal to partners in marriage. Parties to a civil union have the same eligibility and responsibilities as partners in a marriage when applying for, or participating in, Delaware's Cash Assistance programs.

The proposed changes affect the following policy sections:

DSSM 3004, *Caretakers in TANF Families*

DSSM 3028.2, *Optional Composition of Assistance Units*

DSSM 4001, *Family Budget Group*

DSSM 4005.3, *Step-Parent Income in the TANF Program*

DSSM 4005.5, *Income of a Spouse in the GA Program*

DSSM 8025, *Family Budget Group*

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received.

However, further analysis by Division staff resulted in a grammatical change to the rule as proposed at *DSSM 3028.2, item 3*. Also, at *DSSM 4001, item 2* and *DSSM 8025, item 2*, the following text should have been underlined as new text:

who do not have. Bracketed-bold type indicates the changes.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2012 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding *Civil Unions* is adopted and shall be final effective April 10, 2012.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #12-13 REVISIONS:

3004 Caretakers in TANF Families

Assistance is provided to needy families. A family is one or more children living with a specified relative, guardian, or custodian (adult acting in loco parentis).

Specified relative is defined as:

- Any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. The degree of relationship is as follows: a parent (1st degree), grandparent (2nd degree), sibling (2nd degree), great-grandparent (3rd degree), uncle or aunt (3rd degree), nephew or niece (3rd degree), great-great-grandparent (4th degree), great-uncle or aunt (4th degree), first cousin (4th degree), great-great-great-grandparent (5th degree), great-great uncle or aunt (5th degree), or a first cousin once removed (5th degree).
- Any other persons named in the above groups whose relationship to one of the child's parents is established by legal adoption;
- The spouse of any person named in the above groups even though the marriage terminated by death or divorce;
- A party to a civil union of any person named in the above groups even if the civil union terminated by death or dissolution.

For the purposes of the TANF program a guardian is defined as:

- An adult providing an appropriate supportive living arrangement who has been appointed as guardian of the child(ren) in his/her care by an authorized court, or
- an adult who has received the consent and approval to exercise the day-to-day care, custody, and control of the child(ren) in his/her care by the Delaware Division of Family Services or any agency or court licensed or authorized to place children in a nonrelated home.

A custodian or an adult acting *in loco parentis* ("in the place of a parent") is defined as:

An adult who provides an appropriate supportive living arrangement for the child(ren) in his/her care, and who has:

- intentionally taken over the duties of a parent and is responsible for exercising the day-to-day care, custody, and control of the child(ren),
- accepted the legal responsibility of caring for the child,
- been referred to the Delaware Division of Family Services for purposes of determining suitability of the adult to act *in loco parentis* and the dependency of the child(ren).

Adults acting in loco parentis are required to acknowledge their acceptance of the legal responsibility for the child(ren) in their care and their intentional acceptance of the day-to-day care, custody, and control of the child(ren) in their care. This acknowledgement must be in writing and on a Division of Social Services approved form.

The Division of Family Services (DFS), within the Department of Services for Children, Youth, and Their Families (DSCYF) must approve the living arrangement of a custodian and the children they are caring for by the next redetermination. If verification of consent and approval by DFS is not provided by the next redetermination, TANF payments should be stopped.

Paternity Establishment:

When a child lives with both the natural father and the mother but paternity has not been legally established, refer the parents to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgement of paternity. If the alleged father is unwilling to complete the voluntary acknowledgement of paternity, DSS will consider the child deprived of the care and support of his/her father. Refer the case to DCSE for follow-up on establishing paternity.

When a child lives with the natural father, but paternity has not been legally established, have the father complete a declaration of natural relationship document. Obtain one additional document from the documents listed below to support the natural father's claim of relationship.

- Social Security Administration records;

- Hospital, clinic, or Public Health Records;
- Department of Services to Children, Youth, and Their Families records;
- Census Bureau records;
- Income Tax records specifying the relationship;
- Insurance policies which specify the relationship;
- Military or veterans records which specify the relationship Statement from a minister, priest, or rabbi;
- Family bible, Baptismal Certificate or other family records (such as wills, deeds), written in ink and not altered which specify the relationship;
- Statement of physician or midwife who attended the birth and remembers the names of the people involved;
- Other government or local agency records, newspaper records, or local histories which specify the relationship;
- A Declaration of Natural Relationship signed by the mother or other maternal relative;
- If none of the above documents are available, a declaration of Natural Relationship signed by a knowledgeable person.

When a child lives with a relative of the natural father, but paternity has not been legally established, have the relative complete a Declaration of Natural Relationship document. Obtain one additional document from the documents listed above to support the relative's claim of relationship.

(Break in Continuity of Sections)

3028.2 Optional Composition of Assistance Units

1. In TANF the dependent child, and if residing in the home and otherwise eligible, the child's blood-related or adoptive minor siblings, and the child's natural or adoptive parent(s) must be included in the unit. When both parents of the dependent child are in the home, both parents must be included in the unit regardless of their marital status. In a case where paternity has not been legally established, the putative father must acknowledge paternity as a condition of eligibility.

A non-parent needy caretaker relative may be included in the unit if the caretaker so chooses.

The needy legal spouse of a caretaker relative may be included in the unit only if the caretaker is the natural or adoptive parent of the child(ren), and the caretaker is incapacitated or is the principal wage earner and qualifies as an unemployed parent.

2. In TANF married/civil union couple cases, where each adult has children from previous relationships that are eligible for TANF, include the family in one TANF unit. If the couple has children in common who are also eligible for TANF, include these children in the unit also.
3. In TANF married, civil union, or unmarried couple cases where each adult has children from previous relationships who are eligible for TANF, they have the option of being in one assistance unit or two separate assistance units. If the unit fails financially, a separate assistance unit may be established for the child(ren) of the previous relationships.

~~For example, EXAMPLE:~~ A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from ~~[the] male partner's~~ Partner A's job makes the family ineligible for TANF. We have the option of placing ~~the female partner~~ Partner B and his or her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married/in a civil union, a step-parent situation would exist. If the couple were not married/in a civil union, eligibility is based solely on the information from ~~[the] female partner~~ Partner B and his or her child.

4. When a couple, ~~married or unmarried~~, has a child in common and each partner has a child from a previous relationship, the couple, the child in common, and the other children will initially be placed in one TANF assistance unit. The siblings keep this as one assistance unit.

~~Example:~~ A couple each have a child from previous relationships. Initially, we place all the family members into one TANF assistance unit. Income from the male partner's job makes the family ineligible for TANF. We have the option of placing the female partner and his or her child from a previous relationship into a TANF assistance unit. In this scenario, if the couple were married a step-parent situation would exist. If the couple were not married, eligibility is based solely on the information from the female partner and his or her child.

5. A pregnant woman, with no other children, may receive TANF beginning on the first day of the month that her child is expected to be born, if the woman meets all other technical and financial eligibility requirements, and her expected due date has been verified by a physician. The child is added to the unit, and a supplemental grant is effective the date of its birth if the birth is reported within five (5) days. If the birth is not reported within five (5) days, the child is added to the unit and the grant is effective as of the date of the report. The child's father, if he is otherwise eligible, is also added using these guidelines. Procedures for completing supplemental applications for newborns are outlined in DSSM 2000.6.

(See DSSM 4010 ~~for budgeting instructions~~ Determining Financial Eligibility and Grant Amounts for Pregnant Women in TANF and GA)

A pregnant woman who plans to place her child for adoption is eligible for TANF beginning the 1st day of the month her child is due, assuming she meets all other eligibility requirements. If she still plans to terminate her parental rights after the child is born, the child cannot be added to the assistance unit and the child is not eligible for Medicaid. In this instance, the TANF case is closed at the end of the month that the birth occurs.

6. If a child receiving SSI is the only child in the home, the child's caretaker relative can receive TANF if the child is deprived of parental care. The caretaker's needy legal spouse can receive TANF if the caretaker is the child's natural or adoptive parent and the caretaker is incapacitated or qualifies as an unemployed parent.
7. For GA eligible adults, include the adult. The adult's spouse or UMP is also included if the spouse or partner also meets a condition of unemployability.
8. A woman who has a verified pregnancy and receives a GA check the month she delivers her child is eligible for TANF that month for herself and her child if she reports the birth to DSS, and she meets all other TANF technical and financial eligibility requirements.

The TANF grant is effective the date of the child's birth if the birth is reported within five (5) days.

The TANF grant is effective the date of the report if the birth is not reported within five (5) days.

If the pregnancy had not been verified, the TANF grant is effective the date the birth is verified.

(Break in Continuity of Sections)

4001 Family Budget Group

Assume there is no income.

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married ~~and civil union~~ couples if they live together and are both eligible for a grant.
2. ~~Unmarried couples~~ Couples who do not have legally recognized marriages/civil unions but who live together as husband and wife or spouses and are both eligible for a grant.

NOTE: In GA, couples will be considered as living together as husband and wife if:

- a. They say they are ~~married~~, joined by a civil union or marriage even if the marriage/civil union cannot be verified, or
 - b. They are recognized as parties to a civil union, spouses, or husband and wife in the community, or
 - c. One partner uses the other's last name, or
 - d. They state they intend to marry/join in a civil union, or
 - e. They jointly hold resources.
3. Parents and their eligible children.

Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the TANF need standard for the budget group size as specified in Section 4007.2. (See DSSM 3028 for a definition of an assistance unit)

In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

- A. Assistance would be denied to any of the recipients by maintaining separate budget groups.
- B. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments.) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.

(Break in Continuity of Sections)

4005.3 Step-Parent Income in the TANF Program

In the TANF Program, a step-parent through marriage or civil union who resides with his/her step-children is considered responsible for supporting those children. A portion of the step-parent's income is used to determine the step-children's financial eligibility and the amount of assistance the children receive. To determine the amount of the step-

parent's income that is deemed to the assistance unit, follow the steps listed below:

NOTE: The assistance unit must include the step-child, the step-child's natural or adoptive parent, and siblings who are also living in the home and who are otherwise eligible.

1. Determine the step-parent's gross income.
2. Deduct \$90.00 from earned income.
3. Deduct the TANF standard of need (See DSSM 4007.2) for the family size that includes the step-parent and those individuals who
 - a. live in the step-parent's home
 - b. are the step-parent's dependents for income tax purposes
 - c. are not members of the TANF assistance unit because of a sanction.
(These individuals cannot include a person who is removed from the TANF unit because he/she failed without good cause to cooperate with DCSE or the First Step Program and is being sanctioned.)
4. Deduct amounts paid by the step-parent to individuals who are not living in the home, but who are claimed as dependents for income tax purposes.
5. Deduct child support or alimony payments made to individuals not living in the home.

The remainder is unearned income used to determine the assistance unit's financial eligibility and grant amount.

Summary - Total Income

- \$90.00 from earned income
- Standard of Need
- Payments to dependents

Countable Income

The resources of a step-parent are not considered in determining the financial eligibility of the assistance unit. Resources held jointly by the step-parent and the step-parent's spouse are considered available in their entirety to both partners. If the spouse is a member of the assistance unit, these resources are considered in determining the unit's eligibility.

Step-parent budgeting is only used to determine the financial eligibility or benefit level of a step-child when the step-child's natural parent resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

NOTE: If the step-parent is included as a member of the TANF unit, his/her income is budgeted in accordance with rules governing the income of TANF applicants and recipients.

(Break in Continuity of Sections)

4005.5 Income of a ~~[Minor Parent's Parent of Legal Guardian Spouse]~~ in the GA Program

This policy applies to GA applicants and recipients who are married/party to a civil union and live with their spouse.

To determine GA financial eligibility and grant amounts for unemployable adults where the GA eligible person resides with a spouse who has income but is not also technically eligible for a grant.

1. Determine the spouse's gross unearned income.
2. Determine the spouse's gross earned income.
3. Deduct \$50 for work expenses from the spouse's earned income.
4. Add amounts from Step 1 and Step 3 to determine the spouse's countable income.
5. Compare the sum in Step 4 to the GA Standard of Need for two people.
6. If income exceeds the standard, the GA case is financially ineligible.
7. If income is less than the standard, the GA case is financially eligible. To determine the grant amount, subtract the income from the GA Standard of Need for two. The grant equals the difference, if the difference is less than the GA Standard of Need for one person. The grant equals the GA standard if one of the differences is equal to or greater than that amount.

EXAMPLES:

1. Spouse of GA eligible has \$200 countable income.
\$200 is greater than \$166 - Case is ineligible.
2. Spouse has \$130 countable income.
\$130 is less than \$166 - Case is eligible.
\$166 minus \$130 = \$36 = GA grant.

3. Spouse has \$30 countable income.
\$30 is less than \$166
\$166 minus \$30 = \$136

4. GA grant = \$123 (maximum for one person)

DCIS Instructions

~~The spouse's countable income and the grant amount must be determined manually. If the grant is to be reduced by the spouse's income (as in Example #2), the amount that equals the difference between the GA Standard of Need for one and the grant to be issued is entered as PA only unearned income on the TD.~~

~~EXAMPLE (using #2 above): \$123 (GA S/N) - \$36 (GA grant) = \$87 (amount entered as PA only unearned income).~~

(Break in Continuity of Sections)

8025 Family Budget Group

Family budget group is the total number of persons whose needs and income are budgeted together. This will always include the following:

1. Married and civil union couples if they live together and are both eligible for a grant.
2. ~~Unmarried couples~~ Couples who do not have legally recognized marriages/civil unions but who live together as husband and wife or spouses and are both eligible for a grant.

NOTE: In RCA, couples will be considered as living together as husband and wife if:

- a. They say they are ~~married~~, joined by a civil union or marriage even if the marriage/civil union cannot be verified, or
 - b. They are recognized as parties to a civil union, spouses, or husband and wife in the community, or
 - c. One partner uses the other's last name, or
 - d. They state they intend to marry/join in a civil union, or
 - e. They jointly hold resources.
3. Parents and their eligible children.

Family budget groups will consist of more than one assistance unit when all budget group members are not placed in the same assistance unit. In those instances, the need standard for the family cannot exceed the RCA need standard for the budget group size as specified in Section 8031.1 (See DSSM 8021)

In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's needs and income and those of his/her children are always budgeted together. The needs and income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

1. Assistance would be denied to any of the recipients by maintaining separate budget groups.
- 2.. The caretaker understands the implications of combining the budget groups (i.e., lower assistance payments, increased Medicaid coverage, etc.) and chooses to have his/her needs and income and those of his/her children considered with the needs and income of any other children in the home.