

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)

16 DE Admin. Code 1009 and 1010

FINAL

ORDER

Case Administration Provisions

1009 Arranging Interpreter and Translation Services for Limited English Proficient Individuals

1010 Arranging Services for Individuals with Hearing Impairments

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, Arranging Interpreter and Translation Services for [Non-English Speaking Clients] [Limited English Proficient Individuals] and Arranging Services for [Clients] [Individuals] with Hearing Impairments. 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 December 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 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 proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, Arranging Interpreter and Translation Services for [~~Non-English Speaking Clients~~] [Limited English Proficient Individuals] and Arranging Services for [Clients] [Individuals] with Hearing Impairments.

Statutory Authority

- Title IV-A of the Social Security Act, TANF Program and the Emergency Assistance Program
- Title 31 of the Delaware Code, Chapter 5, General Assistance Program
- Title IV of the Immigration and Nationality Act, Refugee Resettlement Program
- Title 31 of the Delaware Code, Title XX of the Social Security Act, 7 CFR §273.7, and the Child Care Development Block Grant, as amended by the Personal Responsibility and Work Reconciliation Act of 1996, Child Care Subsidy Program
- Title 31 of the Delaware Code, Chapter 9, Food Benefit Employment and Training Services; and,
- 7 U.S.C. Chapter 51 and Title 31 of the Delaware Code, Chapter 6, Food Supplement Program
- House Bill 91, 146th Delaware General Assembly, Use of Respectful Language When Referring to Persons with Disabilities

Background

The Department of Health and Social Services is the agency designated by the State as responsible for Delaware's public assistance programs. Within the Department, the Division of Social Services (DSS) administers the following programs: Temporary Assistance for Needy Families (TANF), General Assistance Program, Food Supplement Program, Refugee Resettlement Program, Child Care Subsidy Program, Emergency Assistance Program, and Employment and Training Services.

The purpose of Delaware's public financial assistance programs is to help its needy citizens in providing a standard of living that is compatible with human decency and good health and to provide opportunities for its recipients to gain skills that will enhance their ability to become financially independent.

Summary of Proposed Changes

DSSM 1009, ~~Procedures for Serving Non-English Speaking Clients Arranging Interpreter and Translation Services for [Non-English Speaking Clients] Limited English Proficient Individuals]~~ and **DSSM 1010**, ~~Procedures for Serving Hearing Impaired Clients Arranging Services for [Clients] Individuals] with Hearing Impairments:~~ The language in DSSM §§ 1009 and 1010 is changed to People First and the titles are changed to more accurately reflect the activity performed. In addition, the outdated listing of contracted vendors is removed. Finally, procedure is removed from the manual.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

GACEC and SCPD have the following observations.

§1009

First, the title to §1009 refers to "non-English speaking clients". Likewise, the second paragraph of text refers to "non-English speaking clients". This is unduly narrow. The first sentence of text more accurately refers to individuals who have "limited English proficiency". Moreover, the latter reference conforms to the attached HHS guidance excerpted from 68 Fed Reg. 47311 (August 8, 2003):

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English may be limited English proficient, or "LEP," and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.

See also attached excerpt from HHS OCR Website describing "LEP" as covering individuals who have "not developed fluency in the English language". Individuals who speak "some English" but lack "fluency" still qualify for "LEP" services.

DSS may wish to use the term "limited English proficiency" and include a definition.

Agency Response: The title of the policy is changed as below:

Arranging Interpreter and Translation Services For Limited English Proficient Individuals

The term non English speaking was replaced with limited English proficient as below:

DSS provides interpreter services to limited English proficient individuals who need an interpreter

A definition of limited English proficiency will be added to the appropriate Definitions section of the policy manual.

Second, the regulation authorizes interpreter services only to "applicants" and "recipients". This is unduly narrow. There may be individuals who request information on their behalf or on behalf of others. The above HHS standard refers to a "service, benefit, or encounter".

Agency Response: DSS offers interpreter services to individuals who have limited English proficiency. The policy is amended accordingly.

Third, the second paragraph of text suggests that staff or vendor translation is the exclusive approach to address the needs of persons who would benefit from interpreter services. Consistent with the attached HHS OCR guidance, individuals should be offered the option of relying on their own interpreter. OCR notes that some individuals may be more comfortable with a family member interpreting. See also attached resolution agreement. Moreover, an individual may prefer to use a "personal" interpreter in lieu of waiting for a State interpreter or rescheduling a visit.

Agency Response: Interpreter services are offered to applicants/recipients and their representatives when they have a need for an interpreter. If an individual has his or her own interpreter the services of a DSS interpreter is not needed.

Fourth, it would be preferable to include a standard of "timely" provision of interpreter services. HHS characterizes undue delay in providing interpreter services as a "frequently encountered" Title VI violation. See attached 67 Fed Reg. 4975-76 (February 1, 2002).

Agency Response: The standard of timely provision of interpreter services varies according to the needs of the individual in need. If an office interview is scheduled the individual's personal interpreter comes to the office with the individual or DSS arranges for an interpreter to be available at the time of the interview. Some offices have bi-lingual staff available on site who can interpret as needed. Interpreter services are also available via a phone call to a contracted vendor. It is rare that the vendor is not able to accommodate a request for real time interpretation.

Fifth, the exclusive context for determining need for interpreter services is a receptionist assessment upon the physical appearance of the individual:

The receptionist will identify the need for services when the applicant or recipient arrives at the office.

HSS guidance contemplates advertising the availability of interpreter services. It would be preferable to allow individuals to request an interpreter in advance (e.g. via phone).

Agency Response: The actual text of the policy states: "The receptionist will identify the need for services when the applicant or recipient arrives at the office." There is no reference to the physical appearance of an individual. The need is identified by verbal or written communication with the individual.

As an aside, we understand people can apply for benefits online at the DSS website. HHS guidance contemplates providing accommodations for high percentage minority languages (e.g. Spanish). Does the DSS website provide an online version of applications in Spanish that may satisfy accommodation requirements?

Agency Response: Yes.

1010

First, the title to the section suggests that only existing "clients" are covered by the policy. This is too narrow to meet ADA standards. See attached DOJ ADA guidance:

The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

Agency Response: The title is changed to "Arranging Services for Individuals with Hearing Impairments"

Second, the regulation authorizes interpreter services only to "applicants" and "recipients". This is unduly narrow. There may be individuals who request information on their behalf or on behalf of others.

Agency Response: The policy is amended as below.

"This policy applies to individuals who have a hearing impairment and require auxiliary aids or services to provide information to, or receive information from DSS."

Third, the policy recites that it covers "auxiliary aids" for persons with hearing impairments. It then omits any accommodations apart from interpreter services. Consistent with the attached DSAMH policy, "30% to 50% of persons > 65 years of age have significant hearing loss leading to impairment in functioning." If a person presents a "hard of hearing" profile, providing an ASL interpreter will not be useful. Moreover, the attached DOJ ADA guidance provides a long list of "auxiliary aids" apart from interpreters for individuals with hearing impairments.

Agency Response: DSS contracts with a vendor to communicate via TTY for those customers who have a TTY machine. Written communication is also used in addition to ASL interpreters. DSS is in the process of reviewing the contracts of current vendors to determine specifically what other auxiliary aids they provide. Negotiations for amendments to the contracts will take place if necessary.

Fourth, we recommend incorporating a reference to "effective communication" in the regulation since this is the operative ADA benchmark.

Agency Response: The policy is amended as below to incorporate the suggested language.

"A contracted vendor will provide the individual with effective communication services."

Fifth, covering the arrangement of services for individuals with hearing impairments with the 3-sentence policy is ostensibly inadequate guidance to staff.

Agency Response: Guidance for staff is more appropriately issued via internal documents. DSS will review appropriate information and formulate guidance that provides adequate direction for staff. In addition, DSS will make a subsequent change to policy if warranted.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Case Administration, specifically, Arranging Interpreter and Translation Services for Limited English Proficient Individuals and Arranging Services for Individuals with Hearing Impairments is adopted and shall be final effective February 10, 2013.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATIONS #13-06

REVISIONS:

1009 ~~Procedures for Serving Non-English Speaking Clients~~ Arranging Interpreter and Translation Services for [Non-English Speaking Clients] Limited English Proficient Individuals

~~Non-English speaking clients who need an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a bilingual staff person to translate for the client.~~

~~DSS has contracts for translation services with the following:~~

~~EDS (1-800-996-9969 and press Option 8);~~

~~Family and Children Services of Delaware, Inc. (655-6486);~~

Camie Santiago Hall (410-548-4740 or HARBORRD@aol.com,
Latin American Community Center (655-7338), and
Para-Plus Translations, Inc. (1-800-558-3011).

For complete detailed procedures in accessing these services read the most recent administrative notice on translation services.

This policy applies to [~~applicants and recipients~~ individuals] who have limited English proficiency and require the services of an interpreter [or translator] to provide information to, or receive information from DSS.

DSS Workers Arrange for Interpreter Services

DSS provides interpreter services to [~~non-English speaking clients~~ limited English proficient individuals] who need an interpreter. The receptionist will identify the need for services when the [~~applicant or recipient~~ individual] arrives at the office. Bilingual staff or a contracted vendor will provide the services. A listing of contracted vendors is available in the Interpreter and Translation Services Administrative Notice.

DSS Workers Arrange for Translation Services

DSS translates forms and documents into languages common in Delaware. This includes translating an application for our customers. The DSS Worker will send requests for document or form translation to the DSS Policy Unit. See the Interpreter and Translation Services Administrative Notice.

1010 ~~Procedures for Serving Hearing Impaired Clients~~ Arranging Services for [Clients Individuals] with Hearing Impairments

The Division of Social Services will obtain sign language interpreters for the hearing impaired. Clients requiring the aid of an interpreter will be identified by the receptionist at the time of arrival. The receptionist will notify the unit supervisor who will make arrangements for a sign language interpreter to translate for the client.

As there is a charge for using these services, approval must be obtained from the appropriate Operations Administrator prior to contacting these services.

They are:

Communication Connection 610-272-4948
Deaf Hearing Communication Center 610-534-5025
Deaf Communication Services 302-266-6877

To secure an interpreter follow the procedures outlined below:

1. Call one of the services listed above.
2. Inform the person you are making a request for an interpreter.
3. Provide the date, time and place of the interpreting assignment (interview).
4. Leave a call-back name and phone number so the interpreter assigned can return your call to confirm availability.

Requests should be made at least 3 days before the interpreter is needed.

If you need to have telephone contact with a hearing impaired or deaf customer the Delaware Relay Service is available at 800-232-5470

NOTE: The bill for services will come to the unit requesting the service. Please have the Supervisor sign the bill, "Okay to Pay" and forward it to the DSS fiscal office for payment.

This policy applies to [~~applicants and recipients~~ individuals] who have a hearing impairment and require auxiliary aids or services to provide information to, or receive information from DSS.

DSS Supervisors Arrange for Sign Language Interpreters

DSS provides sign language interpreters [or other auxiliary aids] for [~~applicants and recipients~~ individuals] who have a hearing impairment. The receptionist will identify the need for services [or auxiliary aids] when the [~~applicant or recipient~~ individual] arrives at the office. Use of these services [or auxiliary aids] must be approved by the Supervisor.

A contracted vendor will provide the [individual with effective communication] services. A listing of contracted vendors is available in the Interpreter and Translation Services Administrative Notice.

16 DE Reg. 869 (02/01/13) (Final)