

# 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 2027

**FINAL**

**ORDER**

### 2027 Disqualification of Individuals Convicted of Drug Related Offenses

#### 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 Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony*. 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 2017 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 2, 2018 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

Effective for services provided on and after July 28, 2017 Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Services Manual section 2027 regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony*.

#### Statutory Authority

- 31 Del.C. §524 - Eligibility for Temporary Assistance for Needy Families

#### Background

Delaware Code, Title 31, Chapter 5, §524 became effective July 28, 2017. This law removes the prohibition against receipt of Temporary Assistance for Needy Families (TANF) funds by persons convicted of a drug felony, so long as that person is otherwise eligible for TANF assistance.

#### Purpose

The purpose of this proposed regulation is to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony.

#### Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) gives public notice and provides an open comment period for thirty (30) days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 2, 2018.

#### Fiscal Impact Statement

The following fiscal impact is projected:

	Federal Fiscal Year 2018	Federal Fiscal Year 2019
General (State) funds	\$312,012 (12 months)	\$312,012 (12 months)
Federal funds	\$40,572 (12 months)	\$40,572 (12 months)

#### 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) both endorsed the proposed amendment and offered the following summarized observation:  
They write,

The proposed regulation implements H.B. No. 11, which was enacted in 2017, by striking the DSS regulation which imposed the drug conviction eligibility ban. Both councils noted there is a difference between the H.B. No. 11 fiscal note (projecting \$33,810 10-month State funds impact in SFY18) and the regulation's fiscal impact of \$312,012 12-month State funds impact in FFY18. The suggestion was for DSS to review the accuracy of the fiscal impact.

**Agency Response:** DSS appreciates the Councils' perspective on the fiscal note, but the fiscal note is not inaccurate; it is for the TANF and General Assistance Cash Assistance Programs. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 disqualifies individuals who were convicted of a drug felony on or after August 22, 1996 from TANF cash assistance. In 1996, DSS included General Assistance in its policy for consistency with the cash assistance programs it administered. DSS has decided to remove the ban from clients receiving General Assistance, since it was removed for TANF clients.

DSS is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input given.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2017 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Disqualification of Individuals Convicted of Drug Related Offenses specifically, *to remove the restriction against receipt of Cash Assistance from persons convicted of a drug felony*, is adopted and shall be final effective March 11, 2018.

Kara Odom Walker, MD, MPH, MSHS  
Cabinet Secretary, DHSS  
2/22/18

#### **~~2027 Disqualification of Individuals Convicted of Drug Related Offenses~~**

~~For Cash Assistance:~~

~~Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession, use or distribution of controlled substances shall not be eligible for cash assistance.~~

~~This provision does not apply to individuals convicted of such offenses which occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~

~~Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a non-parent payee.~~

~~7 DE Reg. 647 (11/01/03)~~

~~15 DE Reg. 1616 (05/01/12)~~

~~21 DE Reg. 722 (03/01/18) (Final)~~