

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

FINAL

ORDER

Civil Rights Program 9004 Non-Discrimination Policy

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM). The proposed changes described below amend the Civil Rights Program policies related to the prohibition of retaliatory acts. 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 July 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Statutory Authority

7 CFR Part 15, Subpart A, *Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture - Effectuation of Title VI of the Civil Rights Act of 1964*

Summary of Proposed Changes

DSSM 1006.6, 1006.7, 1007, 1007.1, 1007.3 and 9004: The United States Department of Agriculture (USDA) revised the nondiscrimination statement due to changes in the Department's civil rights regulations. The nondiscrimination statement now includes *retaliation* as a reason an individual cannot be discriminated against. The affected areas of policy in the DSSM are revised to affirm that discrimination is prohibited in all aspects of the delivery of program benefits and to add the word "retaliation" to the list of prohibited actions.

Summary of Comments Received with Agency Response and Explanation Of Changes

The Delaware Developmental Disabilities Council (DDDC), the Governors Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

DSS recites that the impetus is U.S. Department of Agriculture (USDA) revisions to federal regulations which now address retaliation.

First, consistent with the attached non-discrimination statement, the Division covers the same eight (8) bases contained in the USDA policy: race, color, national origin, sex, religious creed, age, disability, and political beliefs. The Division may wish to consider whether State policy also favors supplementing this list with "sexual orientation" and/or "marital status". For example, in the context of State employment, discrimination on such bases is prohibited. See attached Executive Order No. 86 (May 2, 2006).

Second, the Division addresses "retaliation" by simply adding it to the list of protected classes in §§9004, 1006.6, 1006.7, 1007, and 1007.3. This makes little sense. "Retaliation" is not a protected class. Rather, there should be a separate standard prohibiting retaliation against person who file or facilitate a discrimination complaint or otherwise seek enforcement of the nondiscrimination regulations. For example, the attached USDA

nondiscrimination regulation, Par. 4, identifies protected classes and then adds the following separate statement:

No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint, participated in or contributed to the identification, investigation, prosecution, or resolution of civil rights violations in or by a recipient of Federal financial assistance from USDA; or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations, or policies.

DSS should adopt some variation of this statement in its regulations. For example, it could recite as follows:

No person shall directly or indirectly be subjected to retaliation, reprisal or harassment because he or she filed a discrimination complaint; participated in or contributed to the identification, investigation, prosecution, or reviews of discrimination; or otherwise aided or supported the enforcement of nondiscrimination laws or regulations.

Third, the resolution of complaint regulation (§1007.3) is somewhat anemic. It omits any authorization to provide individual relief to the complainant. For example, if a Deaf complainant alleged that staff refused to provide an interpreter necessary to complete a benefits application, or resulting in termination of benefits due to inability to effectively communicate, the regulation would not authorize an individual remedy (e.g. retroactive approval or reinstatement of benefits). By analogy, the attached fair hearing regulation [§5501] explicitly authorizes corrective relief. At a minimum, §1007.3 would benefit from a similar authorization.

Fourth, §1006.6 contemplates publication of the Division's nondiscrimination policy through the media (television, radio, newspaper). It would be preferable to also add the Division's website.

Fifth, §1006.3 (attached) contemplates the availability of multiple complaint options (federal and state) for an alleged victim of discrimination. For example, there may be circumstances in which an applicant or recipient could either file a complaint under §1007.1 or request a fair hearing under the attached 16 Admin Code 5001. As noted above, a Deaf person wrongly denied an interpreter (violating the ADA) may be improperly denied benefits or have benefits terminated. Alternatively, a DSS employee could refuse to provide a reasonable accommodation to a person with a disability resulting in a denied application, termination of benefits, delay in receipt of benefits, or reduction of benefits. It would be preferable to add a non-supplanting provision to §1007.1. Cf. the Department of Education federal programs complaints regulation, 7 DE Reg. 188, 190 final footnote (August 1, 2003). The following paragraph could be added to §1007.1:

The right to file a complaint under this section is not intended to be an exclusive remedy or supplant resort to other review systems which may otherwise be available, including 16 Admin Code 5000.

Agency Response: The Division of Social Services (DSS) amended the non-discrimination language based on the U. S. Department of Agriculture (USDA) revision of their USDA nondiscrimination statement. USDA instructed States to use the published nondiscrimination statement on all materials produced by the agencies for public information, public education or public distribution regarding the programs. Your comments regarding:

- (1) Adding 'sexual orientation' or 'marital status' to the protected list;
 - (2) Writing a separate standard prohibiting retaliation;
 - (3) Authorizing individual relief to complainants;
 - (4) Listing the Division's website as a media publication; and,
 - (5) Adding a non-supplanting provision to the section about multiple complaint options are important;
- however, DSS intends to only make the required changes at this time.

DSS will consider your comments in the future when this section is under revision again.

To strengthen the proposed regulation, further analysis by Division staff resulted in the following changes in the final order regulation text indicated by [bracketed bold type]. Specific changes include: 1) replacing

references to "State Hearing Officer" with "Civil Rights Coordinator" since that is the title actually used in correspondence by DSS; 2) including references to the DSS online civil rights complaint form since that is the most commonly used vehicle to file a civil rights complaint; 3) using the active rather than passive voice where appropriate; 4) removing outdated words/phrases; and, 5) clarifying/revising procedures to reflect current practices.

Findings of Fact:

The Department finds that the proposed changes as set forth in the July 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Civil Rights Program policies is adopted shall be final effective September 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 8/14/07

DSS FINAL ORDER REGULATIONS #07-41

REVISIONS:

9004 Non-Discrimination Policy

[272.6(a)]

[Do We will] not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of food stamp benefits, the conduct of fair hearings, or the conduct of any other program service for reasons of ~~age, race, color, sex, disability, religious creed, national origin, or political beliefs~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. Discrimination in any aspect of program administration is prohibited by these regulations: the Food Stamp Act, the Age Discrimination Act of 1975 (Public Law 94 135), the Rehabilitation Act of 1973 (Public Law 93 112, sec. 504), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal Law. Title VI complaints shall be processed in accord with 7 CFR, Part 15.

(Break in Continuity of Sections)

1006 Civil Rights and Non-Discrimination

In accordance with Title VI of the Civil Rights Acts of 1964, Section 504 of the Rehabilitation Act of 1973, and all pertinent requirements of the regulations of the U.S. Department of Health and Human Services (45CFR Part 80), DSS programs will include a Civil Rights Program that ensures that no individual will be denied any DSS services or excluded from any DSS program on the grounds of race, color, national origin, age, sex, disability, political belief, religion, or any other form of discrimination.

Specifically the Division of Social Services will not directly or through a contractual or other kind of arrangement on the grounds of race, color, national origin, age, sex, disability, political belief or religion:

- 1) Deny any person a DSS service;
- 2) Subject any person to segregation or separate treatment in any matter related to his/her receipt of services;
- 3) Restrict any person's employment of privileges enjoyed by others receiving DSS services; and
- 4) Treat any person differently from others in determining if that person satisfies any condition of eligibility that all persons must meet in order to qualify for services.

This applies to all intake and application procedures, caseload assignments, the determination of eligibility, the

amount and kind of services made available, and in the use of all DSS physical facilities.

Included in the requirements of the Civil Rights Program are the activities of:

- 1) Temporary Assistance for Needy Families;
- 2) Medical Assistance;
- 3) General Assistance;
- 4) The Food Stamp Program;
- 5) Services to Families and Children;
- 6) Emergency Assistance Services;
- 7) Employment and Training/Work For Your Welfare Services;
- 8) Refugee Resettlement Program services include Refugee Cash Assistance (RCA).

1006.1 Non-Discrimination and Administrative Practices

The Division will not directly, or through contractual or other arrangements employ methods of administration which subject any person to discrimination because of race, color, disability, national origin, age, sex, political belief or religion. This applies particularly to the following:

- 1) Type of services to be provided under any program;
- 2) The class of person to who or the situation in which DSS services will be provided; and
- 3) The class of person to be given an opportunity to participate in any DSS program.

1006.2 Administration of the Civil Rights Program

The Director has responsibility for ensuring that the civil rights of all individuals in contact with the Division of Social Services are observed. Acting through administrative staff, the Director will coordinate the Division's Civil Rights Program and assure compliance with the requirements of the program by all Division of Social Services' staff and all other persons or organizations that perform services for the Division of Social Services.

An important part of the administration of the Civil Rights Program is the assurance that all aspects of the program are understood and implemented by DSS staff members and by all other persons and organizations that provide services for DSS. It is also essential that all applicants for and recipients of DSS services be freely informed of their rights of protection from discrimination and their rights of complaint in any case of discrimination.

1006.3 Civil Rights Information to Clients and Participants

[A We will give a]ll applicants [~~will be given~~] a copy of Form 113, Information on Fair Hearings and Civil Rights on the applicant's right to send a letter of complaint to the Director or to the Federal Department of Health and Human Services or to file an appeal and ask for a Fair Hearing in any situation when he believes he has been a victim of discrimination on the grounds of [~~race, color, disability, national origin, age, sex, political beliefs or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. If a person wants to make a civil rights complaint our staff will provide the person with our online civil rights complaint form].

The Division will publicize the Food Stamp Program complaint procedures and will ensure that all offices involved in administering the program and serving the public display the non discrimination poster provided by FNS. In addition, the Division will ensure that participants and other low income households have access to information regarding non discrimination statutes and policies within ten (10) days of the date of a request. Each individual who expresses an interest in filing a discrimination complaint shall be advised of the methods of filing complaints as stated in DSSM 1007.

1006.4 Assurance of Civil Rights Program Compliance in Regional Operations

The ~~[State Hearing Officer Civil Rights Coordinator]~~ is responsible for ensuring that employees of the Division, both at the professional and clerical level who are directly in contact with applicants and recipients carry out the requirements of the Civil Rights Program under the supervision of the appropriate Operations Administrator. He will also maintain complete records of all complaints that are made and/or appeals and fair hearings that are requested on the grounds of discrimination.

As part of staff development and in the course of regular work activities, staff members will be instructed to be alert to instances of discrimination on account of race, color, disability, national origin, age, sex, political belief, or religion on the part of any individual, or organization from which the Division purchases any service, or to which the Division makes referrals for any kind of service. If any such instance of discrimination is discovered, the worker will send a full report to the Director via his supervisor and the ~~[State Hearing Officer Civil Rights Coordinator]~~.

Individual vendors of any service purchased by the Division will be notified that all services must be provided without discrimination on account ~~[race, color, disability, national origin, age, sex, political beliefs or religion~~ **race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation**], and that payment will not be made unless such services are provided without discrimination.

1006.5 Reports of Civil Rights Program

The ~~[State Hearing Officer Civil Rights Coordinator]~~ will prepare and submit required reports on all aspects of the Civil Rights Program, including complaints of discrimination received, appeals to the Division or to the Department of Health and Human Services, verification of discrimination, action taken and the results. Correspondence between the Division and agencies, or any communications on Civil Rights issues will be made available ~~[to the Research Analyst]~~ upon request. In addition, access to records and facilities will be provided to representatives of the Department of Health and Human Services as requested, for purposes of verifying compliance with the Civil Rights Act and Department of Health and Human Services Regulations. Reports will also be submitted to the Food and Nutrition Service (FNS) for each discrimination complaint processed at the State level which arises from the operation of the Food Stamp Program in Delaware. The report shall contain as much of the following information as is available to the Division: the name, address, and telephone number of the person alleging discrimination; the reason for the alleged discrimination; the nature and date of the incident or action that led the person to allege discrimination; and the names and addresses of persons who may have knowledge of the discriminatory act(s). ~~[In addition, the report shall contain the findings of the investigation, and, if appropriate, the corrective action planned or taken.]~~ The report must be sent to FNS within 90 days of the date DSS receives the complaint.

1006.6 Civil Rights Program and Public Relations

The general public, including citizens interested in public welfare and civil rights, will be informed as widely as possible of the Civil Rights Program of the Division.

Informational releases will be given to the daily newspapers in Wilmington, and to the weekly or daily newspapers in the rest of the State. Similar information will be given to all radio stations in Delaware and, if acceptable, to the television station in Wilmington.

Organizations interested in learning more about the Civil Rights Program of the Division will be furnished speakers from the administrative staff of the Department on request to the Director.

Posters will be displayed in all offices of the Division notifying all persons that assistance and services are provided by the Division to all eligible persons without regard to ~~race, color, disability, national origin, age, sex, political belief and religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

1006.7 Staff Development and the Civil Rights Program

The Division of Social Services Staff Development and Training Program will emphasize the role of the Civil Rights

Program in all services provided to clients especially as it relates to the rights and privileges of each individual.

Both in its presentation of the legal and technical aspects of agency policy and procedures and in its analysis of case work attitudes and techniques, the Staff Development and Training Program will be administered at all times in such a way that emphasis is placed on the basic fact that all applicants and recipients, and all persons receiving any care or services from or through the Division, shall not be subject to discrimination of any kind on the grounds of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

1007 Complaint Procedures

Any person applying for or receiving any DSS services who believes he/she has been the victim of discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation may file a complaint directly or with the assistance of an individual, group, or agency representing the complainant, in accordance with the procedure outlined below.

1007.1 Right to File Complaint

The right to file a complaint alleging discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation applies to the following:

- a) All applicants for and recipients of cash assistance.
- b) All applicants for and recipients of food stamps.
- c) All applicants or recipients who are participating in demonstration projects.
- d) All persons applying for or receiving any service furnished by or through the Division.
- e) Any individual, group, organization, or agency acting on their own account or on behalf of any person receiving any service of the Division.

1007.2 Methods of Filing Complaints

1) The complainant may write a letter addressed to the Director, Division of Social Services [**or may use the Division's online Civil Rights / Discrimination Complaint Form 840**]. The letter [**or complaint form**] will describe fully the kind of discrimination alleged, when and where such discrimination took place, and any pertinent facts and circumstances in connection with the alleged discrimination. The letter will be signed by the person making the complaint. A complaint regarding the Food Stamp Program may be initiated verbally. However, the complaint must eventually be reduced to writing for recordkeeping purposes.

2) The complainant may write a letter addressed to the Federal Department of Health and Human Services in Washington, DC or in the Region III office in Philadelphia, giving all facts and circumstances of the discrimination complained of, as stated in (1) above.

3) Individuals who believe they have been subject to discrimination in any aspect of the Food Stamp Program may file a verbal or written complaint with the Secretary or the Administrator, Food and Nutrition Service (FNS), Washington, DC 20250 and/or with the Division as stated in (1) above. Complaints will contain the following information: The name, address, and telephone number of the person alleging discrimination; the name and location of the office or organization accused of the discriminatory practice and the nature of the incident or acts which resulted in the allegation; the date(s) on which the incident occurred; the names of persons who have knowledge of the alleged discriminatory acts, and the basis of complaint (e.g., race, color, etc.).

4) The complainant may file an appeal and ask for a fair hearing in accordance with the established policies and procedures of the Division on appeals and fair hearing.

- 5) The complaint must be filed within 180 days of the alleged discriminatory act.

1007.3 Methods of Handling Complaints

The ~~[Director Civil Rights Coordinator]~~ will study and evaluate all complaints alleging discrimination on account of race, color, disability, national origin, age, sex, political beliefs or religion race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

~~[He The Director will route them to the State Hearing officer who will then assign them to appropriate administrative or supervisory staff for complete investigation. A written report will be prepared and forwarded to the Director. The Director will study the report and determine whether or not any discriminatory practice has, in fact been carried on. If the Director finds that this has been the case, he will take such action as seems necessary action will be taken to correct the discriminatory practice and to assure that there will be no repetition of such discrimination.~~

~~The Director will address a letter to the complainant covering the investigation and findings on the complaint. He The Director will be advised that if he is not satisfied, he may ask to have the complaint may be presented to the Secretary of the Department of Health and Human Services.~~

If the complaint is over the operation of the Delaware Food Stamp Program, the Civil Rights Coordinator will provide the complaint to the Regional Office of the United States Department of Agriculture.

If the complaint is over the operation of the Medicaid program, the Civil Rights Coordinator will provide the complaint to the Secretary of the Department of Health and Human Services.

For all other DSS complaints, the Civil Rights Coordinator will provide the complaint to the Division of Social Services Director.]

1007.4 Records of Complaints

~~[Records of complaints on grounds of discrimination will be maintained showing the action taken on the complaint, the investigation conducted, the findings, and any subsequent action by the Director. Such complaint records will be made available upon request to duly authorized representatives of the Department of Health and Human Services. We will maintain records of complaints on grounds of discrimination based on color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. The records will show the action taken on the complaint, any investigation conducted, the findings and any subsequent action.]~~

1007.5 Confidentiality of Complaints

~~[The We will safeguard the]~~ identity of the complainant ~~[shall be kept confidential]~~ except to the extent necessary to carry out the above complaint procedures.

1007.6 Other Complaint Procedures

~~[Food Stamp Program Applicants and]~~ participants, ~~[potential participants, or other individuals or groups]~~ may file complaints, other than complaints based on discriminatory practices or complaints that may be pursued through a fair hearing, by filing a complaint, in writing, within thirty (30) days of the alleged action or inaction, with the Division of Social Services ~~[Complaints Manager, Customer Relations Manager], [State Office, Division of Social Services Lewis Building]~~. The thirty day time limit begins on the date the complainant becomes aware, or should have become aware, of the agency action and may be extended by the ~~[Complaints Manager Customer Relations Manager]~~ for good cause such as, but not limited to, complaints about office hours, office locations or discourteous treatment, or situations which may involve overtime. The ~~[Complaints Manager Customer Relations Manager]~~ will review the complaint, take appropriate action[, and] respond to the complainant on the disposition of the complaint[, and forward the results of the complaint to the Director].

11 DE Reg. 325 (09/01/07) (Final)