

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

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

FINAL

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 the Delaware Temporary Assistance for Needy Families (TANF) program’s Contract of Mutual Responsibility. 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 October 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Delaware Temporary Assistance for Needy Families (TANF) program’s Contract of Mutual Responsibility. The proposed change adds a new section to policy establishing timely participation requirements for clients referred to the Transitional Work Program.

Statutory Authority

- Social Security Act §402(a)(1)(A)(i), *Eligible States; State Plan*
- 31 **Del.C** §512, *Administration*
- 31 **Del.C** §518, *Failure To Comply With Job Placement, Education, Training, Work Eligibility, Parenting Or Personal Responsibility Requirements*

Summary of Proposed Change

DSSM 3017, Other CMR Elements: The *Transitional Work Program (TWP)* is a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management leading to employment when appropriate or to application for federally funded disability programs. TWP participants who fail to complete specified tasks within specified time frames, without good cause, are subject to a sanction that reduces their TANF grant by \$50.00. The sanction increases \$50.00 every month until the grant is closed or all past due TWP activities are completed.

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.

In a nutshell, the proposal authorizes DSS to require persons with disabilities determined unemployable to participate in a new transitional work program (“TWP”). Failure to meet the expectations and timetable of a TWP employability plan will result in TANF sanctions. GACEC and SCPD have the following observations.

First, there is no regulatory definition of the “transitional work program”. It is described in the summary as follows:

The Transitional Work Program (TWP) is a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work in an

unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management leading to employment when appropriate or to application for federally funded disability programs.

At 451. At a minimum, DSS should consider adding a definition of “transitional work program” to its compilation of definitions at Section 3001.

Second, there is no description of the beneficiary’s ability to influence the timelines and content of the TWP. The DSS regulations (§3010) covering the Contract of Mutual Responsibility (“CMR”) at least authorize some beneficiary input:

The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.

DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited to, participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.

Section 3010.

There is no corresponding authorization for input into the TWP by the beneficiary. At a minimum, such authorization should be added to the regulations.

Third, there is a “disconnect” between the new regulation and the definition of “unemployable” in §3001N. The definition of “unemployable” is as follows:

N. Unemployable - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited because s/he is physically or mentally disabled. An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

[emphasis supplied]

Thus, by definition, an “unemployable” beneficiary is someone who cannot benefit from job training, job readiness activities, etc. In contrast, the regulation [3017.1] anomalously requires the “unemployable” beneficiary to enroll in a transitional work program which includes activities medically certified (3001N) as beyond the capabilities of the beneficiary. If a doctor has certified that a beneficiary is incapable of even job readiness activities, why authorize DSS workers to require enrollment in such activities? The predictable result will be application of sanctions to persons with disabilities who will be penalized despite lack of fault.

Fourth, the proposed regulations provide conflicting information on whether enrollment in the TWP is mandatory or discretionary. On the one hand, the “Summary of Proposed Change” describes the TWP as “a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work ...”. In contrast, the actual regulation (§3017.1) provides the DSS worker with discretion to require participation since it recites that persons “may be required to enroll and participate in the Transitional Work Program”. There are no standards to guide DSS workers in determining which beneficiaries with disabilities will be required to enroll and participate in the TWP under §3017.1. Since there will be circumstances under which participation would clearly be of negligible value (e.g. caretaker with terminal illness awaiting results of SSI application), it makes sense to offer workers discretion.

Fifth, there is a “disconnect” between the definition of “sanction” and §3017.1.1. The definition of “sanction” recites as follows:

If a TANF client refuses or fails to attend a Contract of Mutual Responsibility requirement (e.g. participate in parenting education) the penalty is a \$50 reduction in the grant for each month the client refuses or fails to participate.

Section 3001K.

In contrast, the sanction for non-compliance with the Contract of Mutual Responsibility (“CMR”) under proposed §3017.1.1 is not limited to a \$50 monthly reduction of the grant. Rather, the penalty increases exponentially each month:

The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.

Section 3017.1.1. DSS may wish to ensure consistency among the regulations.

Sixth, if beneficiaries with disabilities are being involuntarily required to participate in the transitional work program, it would be preferable to explicitly recite that reasonable accommodations will be provided to facilitate effective participation. Compare §3006.1.

Finally, GACEC and SCPD prefer a voluntary participation approach to “unemployable” persons with disabilities enrolling in pre-vocational activities. Compare §3006.1. In addition, the Councils objects to the concept of subjecting medically certified unemployable beneficiaries with disabilities to strict compliance with TWP employability plans developed by unknown entities with no regulatory guidance on content, consumer input, or feasibility.

Agency Response: In regards to your recommendation regarding proposed regulations regulating client’s participation with the Transitional Work Program, the following italicized language is being added to the DSSM 3017.1. It is our belief that this language addresses your concerns that:

1. The Transitional Work Program should be defined in regulations
2. It should be clear that clients are involved in the development of the TWP employability plan.
3. The TWP should accommodate the needs of the clients referred to it.
4. Clients should not be expected to engage in activities which a healthcare professional has determined they should not engage in.

The Transitional Work Program (TWP) is designed to help TANF parents and caretakers who as a result of physical and/or mental disability have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management. Services will be provided in a manner that accommodates the individual needs of clients including in-home services when necessary. Clients will not be expected to participate beyond the maximum limits established by health care professionals. All parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP.

The goal of the TWP program is to support clients in achieving the highest level of self-sufficiency possible given their individual circumstances. This goal will be reached by:

- *Promoting wellness activities and health maintenance planning for clients with disabilities that are expected to be of limited duration.*
- *Identifying and accessing accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.*
- *Identifying and assisting clients who are likely eligible for federal disability programs gain entry into those programs.*

The TWP Employability Plan is a tool used to assist clients in reaching TWP program and client identified goals. The Employability Plan will detail the activities clients will need to engage in to reach the goals. The TWP program will collaborate with each client to develop their TWP Employability Plan. Goals and activities will include but are not limited to; completion of assessments and healthcare appointments, enrollment/completion of training activities, completion of activities aimed at improving or maintaining wellbeing and the completion of activities necessary for application for federally funded disability programs.

As requested in your letter, a definition of the Transitional Work Program will also be added to Section 3001 of the DSS Policy Manual.

In your letter you asked for clarification regarding the mandatory nature of the TWP program. The TANF clients that can be referred to the program are as defined in the text above: *parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP*. Once a client is referred to the TWP program their participation with the program is mandatory. The Division of Social Services may decide based on individual case dynamics, TWP program limitations, funding limitations, or other factors to withdraw referrals to the program or not to refer clients to the TWP.

You asked for clarification regarding the Contract of Mutual Responsibility (CMR) sanction policy as stated in the proposed regulation. Your interpretation for the CMR sanction definition is different than it is explained in the policy that relates to each CMR area. In your example of parent education the sanction calculation is delineated in DSS policy 3015.1 Sanctions for Not Meeting Parenting Education Requirements as follows: "The fiscal sanction for failure, without good cause, to attend parenting education classes will be an initial \$50.00 reduction in TANF benefits. Increase this reduction each month by \$50.00, either until there is compliance or the case is closed". You appear to be interpreting the definition of the CMR Sanction to mean the CMR sanction results in a \$50.00 grant reduction, which remains at \$50.00 until the sanction is cured. But the definition is repeatedly operationalized in the policy as: the grant reduction resulting from a CMR sanction is calculated by multiplying \$50.00 by the number of months of failure to cooperate.

Findings of Fact:

The Department finds that the proposed changes as set forth in the October 2009 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding *Other Contract of Mutual Responsibility (CMR) Elements* is adopted and shall be final effective December 10, 2009.

Rita M. Landgraf, Secretary, DHSS

3017 ~~Other CMR Elements~~ Additional CMR Elements

~~When staff has reason to believe that the family needs other services to become self-sufficient, these services will be identified and specified in the Contract of Mutual Responsibility. Additional family specific CMR elements will be identified and added to a TANF household's CMR. These elements may be identified by DSS, the family, or other agencies that are involved with the family.~~

3017.1 Transitional Work Program (TWP) Requirements

~~**[Parents and relative caretakers that the agency has determined are unemployable and unable to achieve self-sufficiency, because they are too physically or mentally disabled to work in an unsubsidized work may be required to enroll and participate in the Transitional Work Program.]**~~

The Transitional Work Program (TWP) is designed to help TANF parents and caretakers who as a result of physical and/or mental disability have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management. Services will be provided in a manner that accommodates the individual needs of clients including in-home services when necessary. Clients will not be expected to participate beyond the maximum limits established by health care professionals. All parents and caretakers receiving a TANF grant in the Non-Time Limited program are eligible for referral to the TWP.

The goal of the TWP program is to support clients in achieving the highest level of self-sufficiency possible given their individual circumstances. This goal will be reached by:

- Promoting wellness activities and health maintenance planning for clients with disabilities that are expected to be of limited duration.
- Identifying and accessing accommodations, educational programs, and appropriate work settings for clients with disabilities amenable to those interventions.
- Identifying and assisting clients who are likely eligible for federal disability programs gain entry into those programs.

The TWP Employability Plan is a tool used to assist clients in reaching TWP program and client identified goals. The Employability Plan will detail the activities clients will need to engage in to reach the goals. The TWP program will collaborate with each client to develop their TWP Employability Plan. Goals and activities will include but are not limited to; completion of assessments and healthcare appointments, enrollment/completion of training activities, completion of activities aimed at improving or maintaining wellbeing and the completion of activities necessary for application for federally funded disability programs.]

The CMR and the TWP Employability Plan will establish time limits for the completion of TWP activities or goals.

3017.1.1 Sanctions for Not Meeting the TWP Requirements

The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.

3017.1.2 Curing TWP Sanctions

The sanction will end when all activities which exceed the time limits established in the CMR and TWP Employability Plan are completed.

3017.2 Division of Social Services (DSS) Identified CMR Elements

When staff has reason to believe that the family needs other services to become self-sufficient, these services will be identified and specified in the Contract of Mutual Responsibility.

3017.2.1 Sanctions for Not Meeting Division of Social Services Identified CMR Elements

The sanction for failure, without good cause, to comply with DSS identified elements in the Contract of Mutual Responsibility will be an initial \$50.00 reduction in TANF benefits. This reduction increases each month by \$50.00, either until there is compliance or the case is closed. The case worker will give the client written notification of what s/he has to do to be in compliance.

3017.2.2 Curing Division of Social Services Identified CMR Sanction Penalties

The sanction will end when the client has met the requirements as listed in the sanction notification.