

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF SOCIAL SERVICES

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

### PROPOSED

### PUBLIC NOTICE

### Civil Rights Program

### 9004 Non-Discrimination Policy

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing 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.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by July 31, 2007.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

### 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.

### DSS PROPOSED REGULATIONS #07-33

#### REVISIONS:

#### 9004 Non-Discrimination Policy

[272.6(a)]

Do 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**

All 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.

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 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.

Individual vendors of any service purchased by the Division will be notified that all services must be provided without discrimination on account of race, color, disability or national origin, age, sex, political belief or religion, 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 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. The letter 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 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.

### **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.

### **1007.5 Confidentiality of Complaints**

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 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, State Office, Division of Social Services. 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 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 will review the complaint, take appropriate action, respond to the complainant on the disposition of the complaint, and forward the results of the complaint to the Director.

**11 DE Reg. 23 (07/01/07)**