

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Sections 512 and 518 (31 **Del.C.** §§512 & 518)
16 **DE Admin. Code** 3012

FINAL

ORDER

TANF CMR School Attendance Requirement

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Division of Social Services Manual (DSSM) regarding the Division of Social Services Manual (DSSM) regarding TANF CMR School Attendance Requirement, specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR). 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 August 2019 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 3, 2019 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 November 12, 2019, Delaware Health and Social Services/Division of Social Services proposes to amend the Division of Social Service Manual sections 3012 and 3012.1 regarding Temporary Assistance for Needy Families (TANF), specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR).

Statutory Authority

- Social Security Act, Title IV, Part A
- CFR, Title 45, Subtitle B, Chapter II
- 31 **Del.C.** §512
- 31 **Del.C.** §518

Background

The Temporary Assistance for Needy Families (TANF) Contract of Mutual Responsibility (CMR) is an agreement between the TANF client and the Division of Social Services that sets obligations and expectations for helping the TANF household achieve self-sufficiency. The CMR lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements.

Purpose

The proposed rule includes a new section on TANF bonus payments for specific school milestones and incorporates CMR sanction guidelines.

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 September 3, 2019.

Fiscal Impact Statement

The policy is currently in place and there are no new financial responsibilities.

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: Two commenters requested clarity be provided on the definition of "satisfactory school attendance." The proposed regulations state the following: "TANF children are required to maintain satisfactory school attendance as defined

by their individual schools or at an 85% attendance rate.” The commenters questioned, “If these metrics are different, which will DSS use – whichever is less?”

Agency Response: The school’s response to attendance is what DSS relies on as the primary verification to determine if attendance is satisfactory. When the school does not respond then DSS would default to the 85% rate.

Comment: Two commenters requested that DSS distinguish between excused vs. unexcused absences? How will DSS treat absences due to suspensions?

Agency Response: When there are a high number of absences DSS will contact the school to verify if the parent is cooperating with the school. DSS will also offer the family supportive services and case management when the family is facing numerous challenges. DSS will explore issues with families to determine when barriers exist that prevent compliance with attendance laws. Good Cause encapsulates a broad range of issues and circumstances our families experience daily.

Comment: Two commenters stated that DSS accommodate TANF children with disabilities before imposing sanctions due to unsatisfactory school attendance.

Agency Response: When there are a high number of absences DSS will contact the school to verify if the parent is cooperating with the school. DSS will also offer the family supportive services and case management when the family is facing numerous challenges. DSS will explore issues with families to determine when barriers exist that prevent compliance with attendance laws. Good Cause encapsulates a broad range of issues and circumstances our families experience daily, this could include absences related to health issues.

Comment: Two commenters asked that DSS clarify how much the bonus payment will be and to clarify that a determination regarding eligibility for a bonus payment is an appealable decision.

Agency Response: DSS publishes the amount of the bonus payment in an administrative notice. All actions taken or not taken on cases can be appealed.

Comment: Two commenters suggested that DSS amend its policy so that TANF children with disabilities are eligible to receive a bonus payment if they graduate from high school by age 21.

Agency Response: TANF is for families with minor children in the home. If a child has not graduated by the age of 19 they are no longer eligible for TANF. DSS does not have any high school students between the ages of 19 and 21 on TANF. So they cannot be issued a TANF payment because, one must be receiving TANF assistance to qualify for the high school graduation bonus payment.

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

- Governor’s Advisory Council for Exceptional Citizens
- State Council for Persons with Disabilities

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2019 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Temporary Assistance for Needy Families (TANF), specifically, to update policy regarding the school attendance element of the Contract of Mutual Responsibility (CMR), is adopted and shall be final effective November 12, 2019.

10/9/19

Date of Signature

Kara Odom Walker, MD, MPH, MSHS,
Cabinet Secretary

FINAL

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

3012 Requiring Satisfactory School Attendance Requirements

~~School attendance requirements exist for both adults and children. Children are expected to maintain satisfactory school attendance. Acceptable school attendance will be defined by the individual school. If the school does not define what is acceptable, use an 85% attendance rate.~~

~~Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. These penalties will differ depending upon whether a child is under the age of 16 or is 16 or over.~~

Ensuring TANF children maintain satisfactory school attendance is a required CMR element for all TANF clients.

1. School attendance requirements exist for both TANF adults and children.

- A. TANF adults are required to cooperate with school officials and other service providers when necessary to help their children maintain satisfactory school attendance.
- B. TANF children are required to maintain satisfactory school attendance as defined by their individual schools or at an 85% attendance rate.

2. TANF clients will receive one-time bonus payments when their children achieve specific school milestones.

- A. DSS will issue a one-time bonus payment for TANF children who graduate from high school by age 19. This bonus payment will be paid directly to the high school graduate.
- B. DSS case workers must disregard the bonus payment as income for TANF and Food Benefit cases.

3. Failure to comply (without good cause) with the school attendance element in the CMR will result in a sanction to the TANF case.

- A. For children under 16 years old:
 - i. The sanction will be an initial \$50.00 reduction in the household's TANF benefit amount if the TANF adult does not comply with the school or other service providers to ensure the child's satisfactory school attendance.
 - ii. This reduction increases each month by \$50.00 until there is compliance or the TANF case is closed.
 - iii. If the child does not comply, a sanction will not be imposed if the TANF adult is complying with the school or other service providers.
- B. For children over 16 years old:
 - i. If the child does not comply, the child is removed from the TANF grant and the household size is reduced.
- C. The client will receive written notification of compliance requirements.
- D. The sanction will end when DSS receives proof that TANF clients are complying with the school attendance element.
 - i. The TANF adult must comply with the school or other service providers for four consecutive weeks for the sanction to end.
 - ii. TANF children over 16 years old must return to school, participate in employment and training, or work for four consecutive weeks for the sanction to end.

FINAL

POLICY – AMENDMENT

Delaware Department of Health and Social Services
Division of Social Services
Policy and Program Development Unit

~~3012.1 Sanctions and Cures for Unsatisfactory School Attendance~~

~~CHILDREN UNDER 16 YEARS OLD~~

~~The fiscal sanction for noncompliance, without good cause, with school attendance (including dropping out of school) or alternative participation requirements will be:~~

~~A \$50.00 reduction in the TANF grant each month if the parent does not work with the teen and the school to ensure school attendance. If the parent works with the school and the teen still does not comply with the requirement the sanction is removed.~~

~~CHILDREN AGE 16 AND OLDER, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN OR HEAD OF HOUSEHOLD~~

~~The fiscal sanction for noncompliance, without good cause, with school attendance, including dropping out of school, or alternative participation requirements will be:~~

~~The removal of the child from the grant and the subsequent reduction in household size.~~

~~To cure the sanction teens over 16 must first serve a full month sanction and either return to school, work, or participate in employment and training for four consecutive weeks whichever is longest.~~

10 DE Reg. 706 (10/01/06)

23 DE Reg. 384 (11/01/19) (Final)