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MEMORANDUM

DATE: October 28, 2011

TO: Ms. Sharon L. Summers, DSS  
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 15 DE Reg. 454 [DSS Proposed Food Supplement Program Electronic Benefit Transfer Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its Food Supplement Program standard covering *Electric Benefit Transfer*. The proposed regulation was published as 15 DE Reg. 454 in the October 1, 2011 issue of the Register of Regulations. SCPD has the following observations.

First, there are many references to "store" or "stores". See, e.g., §§9093.2, 9093.3, and 9093.5. In other instances, DSS often refers to "retailer" or retailers". See, e.g., §§9093.3 and 9093.6. DSS describes eligible vendors as including a "farmers market" (§§9093.2 and 9093.6); "street or route vendor" (§9093.6); and providers such as soup kitchens, shelters, communal living arrangements, and home delivered meals (definition of "eligible foods" at p. 466). The term "retailer" would be preferable to "store" since it would cover farmers' markets and street vendors. However, the term would not "capture" soup kitchens, shelters, home delivered meal providers. DSS should consider adopting a uniform term (e.g. "supplier") with a definition which encompasses the expected provider network.

Second, in §9093.2, first line, substitute "farmers'" for "farmers". Compare reference in §9093.6, second paragraph.

Third, in §9093.3, second paragraph, consider substituting "DSS will emphasize" for "Emphasize". Compare references at end of this section (e.g. "DSS must act..."; "DSS will send a notice..."; "DSS will make a provisional credit...").

Fourth, in §9093.3, second last paragraph, the “notice” provision would benefit from embellishment since it does not indicate how households would be alerted to the 10-day deadline on requesting provisional credit. One option would be to amend the initial sentence as follows:

DSS will send a notice to the household informing it of the account adjustment and appeal rights, including the timetable for requesting a provisional credit.

Alternatively, DSS could insert the following based on the definition of “adequate notice” at p. 463:

DSS will send an adequate notice as defined in §9094 to the household informing it of the account adjustment.

Fifth, in §9093.7, first sentence, consider the following revision: “~~Regulations say we~~ DSS must provide...”

Sixth, in §9093.8, second sentence, substitute “it was” for “they were” since the antecedent (“household”) is singular. Similarly, in §9094, definition of “Notice of Expiration”, substitute “it needs” for “they need”. Compare similar reference in §9093.3, second last paragraph.

Seventh, in §9094, definition of “Elderly or disabled member”, the period is missing at the end of Par. “A”.

Eight, in §9094, definition of “Eligible foods”, Par. C, DSS may wish to consider substituting “benefits” for “coupons”.

Ninth, the regulation contains pejorative and outdated references. See, e.g., the following: A. reference to “physically or mentally handicapped” in §9094, definition of “Meal Delivery Service”; B. reference to “Disabled member” in §9094, definition of “elderly or disabled member” and definition of “group living arrangement”; and C. inclusion of the following reference in §9094, definition of “homeless” - “a halfway house or similar institution that provides temporary accommodations for individuals intended to be institutionalized”. The Governor signed H.B. 91 in August 2011 which includes the following admonition:

(b) From the effective date of this section, all new and revised statutes, administrative rules, local laws, ordinances, charters or regulations promulgated or any publications published by the state or any political subdivision that refers to persons with disabilities shall:

(1) Avoid language that:

(A) implies that a person as a whole is disabled, such as the “mentally ill”, “retarded”, or the “learning disabled”, or

(B) equates persons with their conditions, such as “epileptics”, “autistics”, or quadriplegics”, and

(2) Replace non-respectful language by referring to persons with disabilities as persons first; for example, persons with disabilities, persons with developmental disabilities, persons with mental illness, persons with autism, or person with cognitive disabilities.

DMMA implemented this law in August by issuing a comprehensive regulation amending many of its regulations to conform to the directive and spirit of H.B. 91. See 15 DE Reg. 202 (August 1, 2011). DSS should likewise consider reviewing this regulation to ensure conformity with H.B. 91.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations and recommendations on the proposed regulation.

cc: Ms. Elaine Archangelo  
Mr. Brian Hartman, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

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