



STATE OF DELAWARE
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MEMORANDUM

DATE: March 28, 2013

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

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

RE: 16 DE Reg. 927 [DSS Proposed Case Administration 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 revise a variety of sections in its DSS Manual in the context of Case Administration. The changes cover many forms of public assistance and amends sections dealing with discrimination, access to records, and complaints. The proposed regulation was published as 16 DE Reg. 927 in the March 1, 2013 issue of the Register of Regulations. SCPD has the following observations.

First, §1003.4 authorizes agency staff to release records to a court-appointed guardian ad litem "relating to the child and his or her family or guardian". This may be "overbroad". The relevant statute, 29 Del.C. §9007A, confers a right "to inspect and copy any records relating to the child and parents involved in the case of appointment". This access right would not ostensibly extend to the entire "family", including siblings, aunts and uncles, etc.

Second, §1003.5 authorizes release of confidential information in connection with "civil proceedings". This is also "overbroad" and could result in disclosure of information unauthorized by law. Section 1003.5 is based on 45 C.F.R. 205.50(a) and 7 C.F.R. 272.1(c). The latter regulation does not authorize disclosure in connection with "civil proceedings". The former regulation (§205.50) authorizes release based on "any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of any such plans or programs." Thus, if the State instituted a civil action to recover the value of benefits fraudulently obtained, access to records would be authorized. Section 1003.5, Par. 1, on the other hand, literally authorizes release of information in connection with any civil proceedings (e.g. child custody; creditor-debtor litigation; landlord-tenant litigation) which are not "connected" to the administration of the DHSS plans or programs. The references should

preferably be modified to incorporate this limitation.

Third, §1004 authorizes “sending” of records only via Division employee or Department mail. The Division may wish to consider addressing electronic forwarding of records (e.g. by encrypted or non-encrypted email). The Division may also wish to include some standards concerning safeguarding of electronic case records.

Fourth, §1005, Pars. 3 and 5 contain some inconsistent standards.

A. Par. 3.A. establishes a 5 year record retention period for records but Par. 3.D. refers to retention “beyond the three-year period”.

B. Par. 3.A. establishes a 5 year record retention period but Par. 5 authorizes files to be purged after 4 years.

Fifth, §1006.1, Par. 2, states that “(n)either the Division nor its contractors will not discriminate...” The word “not” should be deleted so the statement would recite that neither the Division nor its contractors will discriminate...”

Sixth, §1008 only contemplates access to policy manuals at physical sites (e.g. public libraries; State Offices). DSS should review Title 29 Del.C. §10003 which contemplates that each agency will maintain a web portal through which FOIA requests can be made. Requests for access to records can also be made via email or fax. Section 1008 is ostensibly outdated insofar as it only describes access to information by visiting “bricks and mortar” sites. The above statute also contains specific photocopying fees information, including copying the first 20 pages for free. In contrast, §1008, Par. 3.B states that all pages are charged at a set rate.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations 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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