



**NEW YORK STATE  
OFFICE OF TEMPORARY AND DISABILITY  
ASSISTANCE  
40 NORTH PEARL STREET  
ALBANY, NY 12243-0001**

**David A. Paterson  
GOVERNOR**

**Administrative Directive**

**Section 1**

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| <b>Transmittal:</b>                    | 09-ADM-24   |
| <b>To:</b>                             | Local District Commissioners  |
| <b>Issuing Division/Office:</b>        | Center for Employment & Economic Supports   |
| <b>Date:</b>                           | December 28, 2009   |
| <b>Subject:</b>                        | Changes to 18 NYCRR 350.4 Impacting the Safety Net Assistance (SNA) Application Supplement and the Recognition of Same Sex Marriages  |
| <b>Suggested Distribution:</b>         | Temporary Assistance Directors<br>Food Stamp Directors<br>Medical Assistance Directors<br>WMS Coordinators<br>Staff Development Coordinators<br>Employment Coordinators<br>Domestic Violence Liaisons<br>Jobs Staff |
| <b>Contact Person(s):</b>              | Temporary Assistance Bureau at 1-800-343-8859, ext. 4-9344<br>Medicaid- Local District Support Unit Medicaid Liaison  |
| <b>Attachments:</b>                    | None  |
| <b>Attachment Available On – Line:</b> | <input type="checkbox"/>  |

**Filing References**

| <b>Previous ADMs/INFs</b> | <b>Releases Cancelled</b> | <b>Dept. Regs.</b> | <b>Soc. Serv. Law &amp; Other Legal Ref.</b> | <b>Manual Ref.</b> | <b>Misc. Ref.</b> |
|---------------------------|---------------------------|--------------------|--|--------------------|-------------------|
| 01 ADM 17                 | 01 ADM 17                 | 18 NYCRR 350.4     |  |                    |                   |

## Section 2

### I. Summary

This administrative directive outlines changes to 18 NYCRR 350.4 as follows:

Subdivision (b) of section 350.4 is amended to eliminate the regulatory requirement that able-bodied employable temporary assistance (TA) recipients must complete a LDSS-4776 “*Safety Net Assistance (SNA) Application Supplement*” to transition from federally funded assistance to SNA upon reaching the 60-month time limit.

Paragraph (1) of subdivision (c) of section 350.4 is amended to include language that is inclusive of all spouses including partners in same sex marriages conducted in other jurisdictions where they are legally recognized. The paragraph will now read as follows: “*In family applications, both spouses shall sign. In situations where a parent in the family is not married to the other parent, both parents, if they are to be included in the grant, shall sign the application form*”.

### II. Purpose

This Directive informs districts of two regulatory changes to 18 NYCRR 350.4. These changes include the circumstances in which the State-prescribed LDSS-4776 is no longer a required form, and new terminology in 18 NYCRR 350.4 (c)(1) that describes who must sign the application form when applying for assistance and/or care.

### III. Background

The SNA application supplement process was an interim procedure to safeguard against the inappropriate receipt of benefits by individuals who were ineligible for Temporary Assistance for Needy Families (TANF) federally funded assistance, to increase client contacts in order to encourage self-sufficiency and to ensure that all SNA transfers met all SNA program requirements. Since 2001, policies, procedures, systems changes, and the decreasing number of monthly transfers eliminated the need for the LDSS-4776.

Additionally, 18 NYCRR 350.4(c)(1) was amended to reflect a February 1, 2008, New York State Supreme Court, Appellate Division, Fourth Department court decision in Martinez v. County of Monroe, 50 A.D.3d 189 (4<sup>th</sup> Dep’t 2008), which held that same-sex marriages legally performed in *other* jurisdictions are “entitled to recognition in New York in the absence of express legislation to the contrary” (Martinez, 50 A.D. 3d at 193). Accordingly, the Governor’s Office directed state agencies to review their policies and interpretations of relevant statutes and regulations, and construe marriage-related terms in a manner that recognizes legal same-sex marriages, unless prohibited by another provision of law. Prior to this change, 18 NYCRR 350.4(c)(1) required the signatures of both the “husband and the wife” on family applications.

## IV. Program Implications

### Temporary Assistance (TA)

#### Safety Net Assistance (SNA) Application Supplement

Effective immediately, there is no longer a requirement that families transitioning to SNA because of the State 60-month time limit complete an LDSS-4776. However, the LDSS-4529 “*The Agreement to Repay Any Safety Net Assistance Overpayments Still Owed After Case is Closed*”, and the LDSS-4530 “*Assignment of Wages, Salary, Commissions or Other Compensation for Services*” will still be required forms for SNA applicants/recipients.

Cases moving from federally funded TANF assistance to SNA due to the State 60-month time limit will continue to be automatically converted.

#### Same-Sex Marriages

Applicants for and recipients of TA, regardless of sexual orientation, who claim to be married, must verify, or request assistance in obtaining such verification of their marital status. For same sex couples such documentation includes proof of a legal marriage performed in another state or other jurisdiction, such as a marriage certificate from that jurisdiction. This does not include civil commitment arrangements.

Applicants for and recipients of TA who claim and verify the status of their same-sex marriage must be treated accordingly and may not, just as with any marriage, require the local district to disregard their marital status for the sake of increasing or changing their benefits or any eligibility requirements incurred by married households.

Districts must treat all recognized marriages accordingly regardless of the category of assistance [Family Assistance, Safety Net Assistance-(SNA-FP or SNA-FNP)] or funding source. For example, for TANF funded assistance, filing unit rules continue to apply. In those instances where the same-sex partner of a custodial parent whose children have no blood relationship and were not legally adopted by his/her spouse, filing unit rules dictate that his/her same-sex spouse be treated as any other step-parent. For SNA cases, where one spouse of a same-sex marriage is in receipt of Supplemental Security Income (SSI), Rice budgeting would apply when the other spouse applies for TA.

## V. Required Action

Districts must implement this policy immediately. This may involve the necessity to change relationship codes on one or both individuals on active cases.

## **VI. Systems Implications**

There will be no systems or code changes however the correct WMS relationship codes may impact the WRTS logic for deriving the type of family.

## **VII. Additional Information (Optional)**

### **Medical Assistance**

For Medicaid eligibility purposes, individuals who declare that they have been legally married in a jurisdiction that recognizes and performs same-sex unions must, regardless of gender, receive full faith, credit and comity as all other legally married persons when a district makes any Medicaid eligibility and case decision in New York State.

Equal treatment means that terms such as “husband”, “wife”, and “spouse” are construed in a manner that encompasses legal same-sex marriages. Factors including but not limited to the following must be evaluated in the same manner for all legally performed marriages:

- Required signatures on applications;
- Household composition and size;
- Budgeting methodology;
- Determination of Legally Responsible Relatives;
- Spousal and Child Support issues;
- Health insurance premium payments;
- Chronic/long term care budgeting issues, including transfers of resources;
- Income from trusts;
- Homestead resource exemptions;
- Burial funds;
- Estates; and,
- Liens and recoveries

Generally, attestation by the Applicant/Recipient (A/R) that they are married is all that is required for Medicaid eligibility determinations. Documentation of a legally recognized same-sex marriage is only necessary in the same limited circumstances as documentation of any other marriage -- for example, when an individual seeks spousal budgeting for long-term care.

Districts are reminded to be sure that any manual notices issued for married individuals are worded in a gender-neutral manner before the notices are issued.

LDSS staff is instructed to call their Local District Support Unit Medicaid Liaison with any specific questions.

**VIII. Effective Date:**

This directive is effective immediately.

**Issued By**

**Name:** Russell Sykes

**Title:** Deputy Commissioner

**Division/Office:** Center for Employment and Economic Supports