



Office of Temporary and Disability Assistance

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Local Commissioners Memorandum

Section 1

Transmittal:	15-LCM-20
To:	Local District Commissioners
Issuing Division/Office:	Center for Employment and Economic Supports
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Subject:	Clarification of Drug/Alcohol Change in Level of Care and Determining Compliance
Contact Person(s):	Temporary Assistance Directors, SNAP directors, Staff Development Coordinators and Employment Directors.
Attachments:	None
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Section 2

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to provide policy clarification on the following areas of drug and alcohol (D/A) treatment requirements pertaining to temporary assistance (TA)¹ applicants and recipients (A/Rs) identified as problematic either by Social Service Districts (SSDs) or the Office of Administrative Hearings (OAH):

- A. appropriate action by the SSD when there is a level of care change initiated by the treatment provider;
- B. determining compliance by the temporary assistance (TA) applicant/recipient (A/R); and
- C. circumstances in which to impose a durational D/A sanction for failure to provide verification of compliance with treatment.

¹ Whenever 'Temporary Assistance' or 'TA' is used in this document, it means 'Family Assistance' and 'Safety Net Assistance.' Statutorily, these programs are referred to as 'Public Assistance.'

II. Background

The 1997/98 State Budget and the Welfare Reform Act of 1997 made several changes to the Social Services Law, including new requirements for screening, assessment and treatment for TA A/Rs with D/A abuse problems. 97 ADM-23 “*Public Assistance (Family Assistance/Safety Net Assistance) Changes Resulting from The Welfare Reform Act of 1997*” and 01 ADM-10 “*Revised Alcohol and Drug Abuse Screening and Referral Form, Revised Referral Protocols Targeting TANF Applicants/Recipients*” provide the requirements for these provisions.

Pursuant to 18 NYCRR § 351.2(i), all adult household members and any head of household (regardless of age) must be screened for D/A abuse using the screening form developed by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) in consultation with this Office. When the screening process indicates that there is reason to believe that an A/R is abusing or dependent on alcohol or drugs, or there is other evidence that an A/R is abusing or dependent on alcohol or other substances, the SSD must require the A/R to undergo a formal alcohol or substance abuse assessment which may include drug testing. This formal assessment must be performed by an OASAS credentialed alcohol and/or substance abuse counselor (CASAC). If the formal assessment determines the A/R is unable to work by reason of his or her need for treatment for alcohol or substance abuse, the SSD’s CASAC must refer the A/R to an appropriate alcoholism and/or substance abuse treatment program, if available.

Questions received indicate a need for policy clarification to improve administration of these provisions, and those regarding non-compliance set forth in 18 NYCRR § 351.2(i).

III. Program Implications

A. **Appropriate action by the SSD when there is a level of care change initiated by the treatment provider.**

If an A/R is determined unable to work by reason of alcoholism or substance abuse, the A/R must be referred to an appropriate treatment program and must attend such treatment if the recommended treatment is available.

If a change in level of care is recommended by a treatment facility’s OASAS credentialed CASAC, the A/R must be referred for re-assessment to the CASAC of the SSD responsible for payment to determine the appropriateness of the recommendation. Any changes in the level of care suggested by a treatment facility must be approved by the SSD. To determine the appropriateness of the change recommended by the treatment facility, a face to face re-assessment with the A/R is not required. The SSD may evaluate the recommended change in

level of care by other means such as phone conference(s) with the treatment provider's CASAC or a review of documents received from the treatment provider. This applies to any change in level of care, whether an increase or decrease in treatment is required. Unless there is a court order requiring a particular level of care, the SSD makes the final decision to approve any change. The SSD is responsible for referring an A/R to services which are in the best interest of the A/R.

If the SSD and treatment provider cannot reach an agreement on the level of treatment, the SSD must make the final decision, including how to resolve the impasse. Resolutions may include arranging treatment for the A/R with an alternate treatment provider.

B. Determining compliance of the applicant/recipient

Whether or not an A/R has completed his/her treatment program will be determined solely by using the guidelines and rules of the treatment program. As prescribed in 18 NYCRR 351.2, the treatment provider and the SSD must monitor and maintain contact with each other regarding an A/R's progress and compliance.

A TA A/R may be required to provide documentation of compliance with the treatment plan. If an SSD receives verification of an individual's compliance with treatment from the treatment facility, the SSD must not require the A/R to provide the same information. When an A/R establishes that he/she made reasonable efforts to obtain verification of compliance with treatment directly from the treatment provider and the treatment provider failed or refused to provide the verification, the SSD must assist the A/R in obtaining the verification.

An SSD must not deny or discontinue a recipient's TA for failure, without good cause, to provide verification of compliance with required D/A treatment. The penalty for an A/R's failure, without good cause, to document compliance with D/A treatment is the imposition of a durational prorata sanction as prescribed in 18 NYCRR § 351.2 (i) (2) (iii) and 97 ADM-23. The required notice language for failure to document compliance with required treatment is found in 97 ADM-23, Section J(2)(F)(5) or SSDs may use Client Notice System codes PX 1, PX 2 or PX 3.

If an A/R is determined able to work with treatment needed, the A/R may be required to provide documentation of their compliance with D/A treatment as part of their employment plan. For this population, failure to provide the documentation would result in a conciliation and possible employment sanction.

C. Circumstances in which to impose a D/A sanction

Pursuant to 18 NYCRR § 351.2(i)(2)(iii), a durational prorata sanction must be imposed if a TA A/R is required to participate in an appropriate treatment program and fails to participate in such program without good cause, or leaves such program prior to completion of the program without good cause.

If an appropriate treatment provider is not available and the A/R is therefore unable to attend treatment, no negative action may be taken.

An A/R determined unable to work by reason of alcoholism or substance abuse cannot be sanctioned for failure to comply with increased or decreased level of care, unless the CASAC of the SSD responsible for payment has determined the new level of care is appropriate.

As stated above, an A/R who fails, without good cause to document compliance with D/A treatment is subject to the imposition of a durational prorata sanction.

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