



# Office of Temporary and Disability Assistance

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## Administrative Directive

### Section 1

<b>Transmittal:</b>	16-ADM-05
<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Center for Employment and Economic Supports
<b>Date:</b>	June 9, 2016
<b>Subject:</b>	Change in Documentation Requirements for Independent Medical Evaluations of Employability
<b>Suggested Distribution:</b>	Employment Coordinators Temporary Assistance Directors Supplemental Nutrition Assistance Program Directors Staff Development Coordinators
<b>Contact Person(s):</b>	OTDA Employment Services Advisor or Employment and Advancement Services Policy Bureau at (518) 486-6106
<b>Attachments:</b>	
<b>Attachment Available Online:</b>	<input type="checkbox"/>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
12 LCM-06		385.2	Section 332-b		Chapter 54 of the Laws of 2016

## **Section 2**

### **I. Summary**

This Administrative Directive (ADM) is to inform social services districts (districts) that Chapter 54 of the Laws of 2016 amended section 332-b of the Social Service Law (SSL) to add a new subdivision 4-a. This change requires that a practitioner conducting an independent medical evaluation of an applicant or recipient of temporary assistance referred by a district (district's practitioner) must provide a written explanation if his/her opinion of an individual's ability to work or participate in work activities differs from the opinion of the individual's treating practitioner. The district's practitioner must also present any documentation necessary as evidence to support his/her opinion.

### **II. Purpose**

The purpose of this ADM is to inform districts of a change to section 332-b of the Social Services Law regarding district medical evaluations of employability.

### **III. Background**

Section 332-b of the Social Services Law and 18 NYCRR 385.2(d) require that districts must, at application and recertification or whenever there is reason to believe that an applicant for or recipient of Temporary Assistance might have a mental or physical impairment, inquire whether the individual has any medical condition which would limit his/her ability to participate in work activities. If the applicant or recipient claims that he/she has a mental or physical impairment, the district must notify the individual of the opportunity to present to the district, within ten calendar days from notification, any medical documentation. The district may extend the time allowed for the submission of documentation based upon good cause. Such documentation includes but is not limited to, drug prescriptions and reports from the individual's treating health care practitioner. This documentation must contain a specific diagnosis resulting from any medically appropriate tests and specify any work limitation of the individual.

In instances where the district determines either that the documentation is insufficient to support an exemption/limitation from the requirement to participate in work activities or that further medical evaluation is appropriate, the district may refer the individual to a practitioner selected by the district, who is licensed to practice in New York State, for an independent examination of the individual's employability. Any documentation submitted by the individual at the time of the examination or within four business days of the examination must be considered by the district's practitioner as part of the documentation used to develop an opinion of the individual's ability to work or participate in work activities. Districts must issue the LDSS 4005, Notification of Temporary Assistance Work Requirements Determination (Exempt) or LDSS 4005 (a), Notification of Temporary Assistance Work Requirements Determination (Nonexempt), (or an approved local equivalent) to notify an individual of the district's determination.

#### **IV. Program Implications**

The change to Section 332-b of the Social Services Law requires that if a district refers an individual for an independent employability evaluation, and the district's practitioner issues an opinion that differs from the individual's treating health care practitioner, the district's practitioner must provide a written determination that specifies why he/she disagrees and must present evidence that supports the opinion. Documentation of the individual's employability status and the written notification issued to inform the individual of the district's determination must be maintained as part of the individual's case record.

#### **V. Required Action**

Districts must ensure that local procedures require that an independent evaluator who has an agreement with the district to provide medical evaluations for employability to provide a written determination that specifies why he/she disagrees with an individual's treating health care practitioner's disability determination and that evidence is provided which supports the determination. This new requirement may involve the revision of local forms which document the results of independent employability evaluations to include a section for the practitioner to explain why his/her opinion differs from that of the individual's provider and to provide evidence to support his/her opinion.

OTDA will require any health care practitioner participating in the OTDA Contract with Medical Providers for Consultative Medical and Psychological Examinations and Intelligence Assessment (See 12 LCM-06) to follow the requirements outlined in this ADM.

#### **VI. Systems Implications**

No system changes are necessary to implement these changes.

#### **VII. Effective Date**

The change outlined in this ADM is effective, July 3, 2016.

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#### **Issued By**

**Name: Phyllis Morris**

**Title: Deputy Commissioner**

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