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Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Department of Health and Human Services TITLE NUMBER: 78

CITE AUTHORITY: West Virginia Code 9-9-11(d)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: W. Va. Works Program Sanctions

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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78 CSR 23

**TITLE 78
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 23
West Virginia Works Program Sanctions**

1. General.

1.1.Scope. - This rules establishes and sets forth the schedule of sanctions; identifies factors and considerations for sanctions; provides notice and reasons for sanctions, and, establishes due process procedures in contested cases when sanctions are imposed by the West Virginia Department of Health and Human Resources in the administration of the West Virginia Works Program pursuant to provisions of W. Va. Code § 9-1-1 et seq.

1.2. Authority. - W. Va. Code § 9-9-11(d).

1.3. Filing date. - _____, 2015.

1.4. Effective date. - _____, 2015.

2. Definitions.

2.1.Assistance Group - Means all at-risk individuals living in a residence together who purchase and prepare meals for the group.

2.2.De minimis Violation - Means a minor violation or failure to perform an act required by this rule. A de minimis violation is not per se an automatic sanction violation but could be actionable or result in a sanction if the violation is willful or determined by the case manager not to constitute good cause.

2.3.Department - Means the West Virginia Department of Health and Human Resources.

2.4.Good Cause - Means a legitimate and verified, in accordance with applicable DHHR policy, excuse for failing to

perform an act required by a Personal Responsibility Contract, Self-Sufficiency Plan such as, including but not limited to, physical and mental capacity or the unavailability of child care. See, Income Maintenance Manual Chapter 13.10

2.5. Personal Responsibility Contract - Is a written contract between each of the adult(s) or emancipated minor(s) of the WV WORKS program, or non-recipient Work-Eligible Individual(s), and the Case Manager, as the representative of the Department.

2.6. Sanction - Means a sanction that results in the termination of a beneficiary's cash assistance. A sanction violation includes, but is not limited to, fraud, noncompliance of the personal responsibility contract, failure or refusal to comply with the requirements of the work component may adversely affect the beneficiary's W. Va. WORKS eligibility or the amount of his WV WORKS check. See, Income Maintenance Manual, Chapter 9.

2.7. Self-Sufficiency Plan - Means a written plan that lists the goals of each individual and the tasks necessary to accomplish those goals.

2.8. Termination - Means the act of ending a beneficiary's cash assistance for the term specified by the sanction.

2.9. West Virginia WORKS Program - Means a program that provides monthly cash assistance based on the goals of assisting economically dependent and at-risk families to become self supporting, enhancing the well-being of children, and on assisting families near the poverty level remain self-sufficient. The West Virginia Works Program is also known as Temporary Assistance to Needy Families program (TANF).

2.10. Work-Eligible Individual - Means an individual that is not included in the W. Va. WORKS payment but is required to participate in an activity.

3. Breach of Personal Responsibility Contract, Fraud or Deception, Code Violation, Rule Violation and Department Policy.

The Department shall terminate, unless good cause exists or there was a de minimis violation, cash assistance benefits to an at-risk family if it finds any of the following:

Fraud or deception by the beneficiary in applying for or receiving program benefits;

A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract and any amendments or addenda to the contract; or

A violation by the beneficiary of any provision of the personal responsibility contract or any amendments or addenda to the contract, Ch. 9, Art. 9, or any rule or policy promulgated by the secretary pursuant to this Ch. 9, Art. 9 of the W. Va. Code.

When a member of the Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on his Personal Responsibility Contract or Self-Sufficiency Plan, termination of benefits may be imposed unless the case manager determines that good cause exists or there existed a de minimis violation.

4. Sanctions.

The sanctions are applied in the form of termination of benefits for a specific length of time. The length of termination of benefits is determined as follows:

First sanction -- entire assistance group ineligible for one month.

Second sanction -- entire assistance group ineligible for 3 months.

Third sanction -- entire assistance group ineligible for 6 months.

Fourth and subsequent or ongoing sanctions -- entire assistance group ineligible for 12 months.

5. Notice.

5.1. In the event the Department determines that benefits received by the assistance group are subject to reduction or termination, written notice of the reduction or termination and the reason for the reduction or termination shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last-known address at least thirteen days prior to the termination or reduction.

5.2. The notice shall state the action being taken by the Department and grant the assistant group a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the Department and due process of law.

6. Burden of Proof.

6.1. In any hearing conducted pursuant to the provisions of this rule, the assistance group has the burden of proving that his or her benefits were improperly reduced or terminated and shall bear his or her own costs, including attorneys' fees.

7. Fair Hearing.

The hearing shall be conducted by a fair and impartial hearings officer before the West Virginia Department of Health and Human Resources Board of Review pursuant to the West Virginia Administrative Procedures Act, § 29A-5-1 et seq. and 69 CSR 1.

8. Annual Report.

The Department shall provide an annual report regarding the sanctions relating to the West Virginia WORKS Program, including their relative stringency when compared to those of contiguous states, frequency of imposition and the overall success of those sanctions at deterring individuals from taking advantage of the program and accomplishing the overall purpose of the program, to the Legislative Oversight Commission on Health and Human Resources Accountability, the President of the Senate and the Speaker of the House on January 1 of each year.