

NOTICE OF DECISION TO TAKE ACTION ON PROPOSED REGULATION

In accordance with section 4-168(d) of the Connecticut General Statutes, the Department of Social Services (“DSS”) hereby provides notice that it will proceed with adopting DSS regulation #13-07.

DSS is proceeding with the adoption of this regulation in order to complete the process of bringing the state into compliance with the requirements of Section 4004 of Public Law 112-96, which requires that states maintain policies and practices to prevent individuals receiving assistance under the Temporary Family Assistance program from using such assistance in an electronic benefits transfer transaction in a liquor store, casino, gambling casino, gaming establishment or retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

DSS received comments on the proposed regulation and has provided responses to those comments. Copies of the revised regulation and the response to comments are attached to this notice. As required by section 4-168(d) of the Connecticut General Statutes, the responses to comments contain the principal considerations that DSS received for opposing certain aspects of the proposed regulation and DSS’s reason for either agreeing with or rejecting the considerations, indicating its intended action.

Copies of the revised regulation and the response to comments are also available for copying and inspection pursuant to the Freedom of Information Act (Conn. Gen. Stat. §§ 1-200, et seq.) upon request to:

Department of Social Services
Office of Legal Counsel, Regulations and Administrative Hearings
55 Farmington Avenue
Hartford, CT 06105
Attn: Peter Hadler, Staff Attorney

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Phone: (860) 424-5385

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES
UNIFORM POLICY MANUAL**

Date:	Transmittal:	8570.32 Page 1
Section: Jobs First		Type: POLICY
Chapter: Benefit Issuance		Program: TFA
Subject: Restriction on Use of Cash Benefits		

8570.32 A. Definitions

For purposes of this section, the following definitions shall apply:

1. “Adult-oriented entertainment establishment” means a venue in which performers disrobe or perform in an unclothed state for the patrons’ entertainment and that restricts admission to adults;
2. “Casino, gambling casino or gaming establishment” means an off-track betting branch facility authorized pursuant to section 12-571a of the Connecticut General Statutes or a gaming facility as defined in section 30-37k(a)(2) of the Connecticut General Statutes, but does not include an establishment that offers casino, gambling or gaming activities incidental to the principal purpose of the business;
3. “Electronic benefit transfer transaction” or “EBT transaction” has the same meaning as provided in 42 USC 608(a)(12)(B)(iii); and
4. “Liquor store” means an establishment with a package store permit issued pursuant to subsection (a) of section 30-20 of the Connecticut General Statutes.

B. Restriction on Use of Electronic Benefits Transfer (EBT) Card

No person receiving cash assistance under the Temporary Family Assistance (TFA) program shall conduct an electronic benefit transfer transaction involving such cash assistance in a liquor store, adult-oriented entertainment establishment or casino, gambling casino or gaming establishment.

C. Penalties for Failure to Comply with Restriction

1. Any person receiving cash assistance through the TFA program who uses an EBT card in violation of paragraph B of this section shall be subject to the following penalties:
 - a. For the first violation, a warning that a prohibited transaction occurred;
 - b. For the second violation, a penalty in the amount of the EBT transaction that occurred at the prohibited location;
 - c. For the third violation, a penalty of one month’s suspension of the head of household’s TFA benefits, in addition to the amount of the EBT transaction that occurred in the prohibited location; and

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- d. For the fourth violation, the Department, at its discretion, may suspend the head of household's TFA benefits for any length of time that the Department determines to be appropriate or may terminate the head of household's TFA benefits permanently.
2. The Department shall construe all prohibited transactions that occur during the same calendar month as one cumulative transaction constituting a single violation.
3. For purposes of calculating a suspension penalty under subdivision 1.c. or 1.d of this paragraph, the Department shall reduce the assistance unit size by one member for the period of time that the suspension is in effect.
4. Whenever a penalty is imposed under this paragraph, the Department may appoint a protective payee pursuant to section 8570.25 of the UPM, based on financial mismanagement of TFA cash assistance, as described in section 8570.15 of the UPM.
5. The Department shall provide any person subject to a penalty under this section, which penalty causes a reduction, suspension or loss of benefits, with at least ten days advance notice before imposing such penalty.
6. Individuals who are notified that the Department intends to impose a penalty pursuant to this section, including a warning that a prohibited transaction has occurred, shall have the right to a hearing to contest the penalty in accordance with section 8525.05 of the UPM.

D. Notification of Policy

The Department shall provide TFA cash assistance recipients with information about the restrictions and penalties established in this section before imposing any of the penalties set forth in paragraph C of this section.

E. Enforcement of Penalty Provisions

The Department may audit the EBT transaction history of TFA recipients and such other evidence as necessary to ensure compliance with the restrictions set forth in this section.



RODERICK L. BREMBY
Commissioner

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MEMORANDUM

To: Individuals Who Commented on the Proposed Regulation Regarding
TFA EBT Transaction Restrictions, DSS Reg. No. 13-07

From: Roderick L. Bremby, Commissioner 
Department of Social Services
25 Sigourney St.
Hartford, CT 06106

Date: June 26, 2014

Re: Responses to Public Comment

The following are the Department of Social Services' (the "Department's") responses to comments received from the public concerning the proposed regulation referenced above. The Notice of Intent for this regulation was published in the Connecticut Law Journal on January 7, 2014. A copy of the regulation with revisions based on public comment is enclosed.

(1) Alternative means of complying with Section 4004 of Public Law 112-96

Comment: One comment indicated that the Department should explore alternative means of complying with Section 4004 of Public Law 112-96, such as utilizing technology capable of blocking electronic benefit transfer (EBT) transactions involving Temporary Family Assistance (TFA) benefits in prohibited locations.

Response: Prior to adopting the method of compliance with Section 4004 set forth in the proposed regulation, the Department met with representatives of JP Morgan Chase, the contractor who provides EBT account services for the Department, to discuss various alternatives. After these meetings, it was determined that there are no viable alternatives that are both technologically feasible and cost effective. EBT cards issued by the Department commingle TFA funds with funds from other sources, including child support payments and cash benefits issued pursuant to other programs administered by the Department. Connecticut does not currently have access to blocking technology that is capable of differentiating between TFA funds and funds from these other sources. A systematic blocking policy would, therefore, prevent EBT card holders from accessing non-TFA funds at prohibited locations, which goes beyond what is required by Section 4004 and would reduce client access to non-TFA funds. Issuance of TFA-exclusive EBT cards in addition to EBT cards for other funds was considered, but determined to be cost prohibitive.

(2) Use of penalties not required or authorized by federal law

Comment: One comment suggested that imposing penalties when TFA funds are used in an EBT transaction at a prohibited location is not required or authorized by Section 4004.

Response: While there is nothing in Section 4004 that requires the Department to impose penalties on TFA recipients whose TFA funds are accessed or used in an EBT transaction at a prohibited location, there is nothing in Section 4004 that prohibits this option. A review of the preamble to the proposed federal regulations reveals that the Office of Family Assistance, Administration for Children and Families, Department of Health and Human Services contemplates that imposing penalties on recipients for violating the prohibitions is one option that states may take to comply with the federal regulations. *See* 79 Fed. Reg. 7127, 7132 (February 6, 2014).

(3) Difficulties associated with locating automated teller machines (ATMs)

Comment: Another comment expressed concern that ATMs can be moved from location to location, which may make it difficult for the department to accurately track the location of an ATM at any given time.

Response: The Department is mindful that ATMs are occasionally relocated and that this presents challenges when attempting to determine whether a particular EBT transaction occurred at a prohibited location. The proposed regulation requires the Department to provide recipients with advance notice of its intent to impose a penalty, and affords recipients the right to a hearing to contest a penalty, even a warning. If a recipient contends that the transaction did not occur at a prohibited location, the Department will investigate in order to ascertain the location of the ATM at the time of the transaction.

(4) Notice of restrictions

Comment: One comment recommended that the Department provide periodic notice of the restrictions imposed by the proposed regulation.

Response: While no change has been made to the proposed regulation based on this comment, the Department agrees that providing recipients with periodic notice of the restrictions is appropriate. Accordingly, the Department will provide a notice to all TFA recipients on an annual basis. More information about the Department's continued efforts to inform TFA recipients of the restrictions imposed by the proposed regulation is available in the Department's *Report on the State of Connecticut's Implementation of Policies and Practices Required by Public Law 112-96, Section 4004*, which is available on the Internet at <http://www.ct.gov/dss/lib/dss/pdfs/tanf/connecticutffa-ebtreport.pdf>.

(5) Indicator on ATMs at prohibited locations

Comment: Another comment suggested that ATMs at prohibited locations should bear a prominent sticker indicating that the ATM may not be used to conduct an EBT transaction involving TFA benefits.

Response: The Department believes its efforts to notify TFA recipients of the restrictions imposed by the proposed regulation are sufficient and that the costs associated with attempting to place a physical indicator on every ATM located at a prohibited location would outweigh any benefit associated with doing so. The Department will continue to evaluate the feasibility of and need for additional forms of notice, including the use of signs or stickers on ATMs located in prohibited locations.

(6) Timely review of EBT transactions

Comment: One comment encouraged the Department to ensure that its review of EBT transactions is completed in a timely fashion so that recipients are informed of prohibited transactions shortly after they occur.

Response: The Department shares the concern that timely review and notification of violations is essential to the implementation of this new policy. Accordingly, we revised the proposed regulation to require the Department to (1) audit EBT accounts for prohibited transactions each calendar month, and (2) construe all prohibited transactions that occurred during the same calendar month as a single violation. This will ensure that TFA recipients receive timely notice of a prohibited transaction and are not subjected to multiple penalties for numerous prohibited transactions that occur in a short period of time, before the Department has an opportunity to detect and notify the recipient of the prohibited transactions.

(7) Suspension of TFA benefits

Comment: One comment requested that the Department specify in the proposed regulation that any penalty resulting in a suspension of TFA benefits applies only to the individual in the assistance unit who conducted an EBT transaction in the prohibited location.

Response: The Department agrees that a suspension penalty should not be applied to the entire TFA assistance unit. We have revised the proposed regulation so that a suspension penalty applies only to the head of the TFA household. Because the head of the TFA household is the payee and ultimately responsible for the use of the household's EBT card, the Department believes it is most appropriate to apply any suspension penalty against this person, and has changed the proposed regulation accordingly.

(8) Access to benefits

Comment: Noting that Section 4004 requires states to ensure that recipients are able to access their cash benefits with minimal or no fees or charges, and to make information about this access publically available, one comment suggested that the proposed regulation should expressly address these issues.

Response: The portion of Section 4004 referenced by this comment dictates what information a state receiving a Temporary Assistance for Needy Families (TANF) block grant must include in its written plan on the operation of a TANF-funded family cash assistance program. Consequently, the Department has amended its state plan as required by Section 4004, but will make no change to the proposed regulation based on this comment. The Department's amended state plan is publically available on the Internet at <http://www.ct.gov/dss/cwp/view.asp?A=2352&Q=491876>.

Enclosure

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