

From: [Moncure, Halliday](#)
To: [Moncure, Halliday](#)
Subject: 11.23.2020 - HM notes tc with Dan Cohen, Liz Ray re OAG review - 10-144 CMR Ch 607 draft changes to be adopted (ASPIRE Rule 25A - Working Cars Working Families)
Date: Monday, November 23, 2020 5:20:11 PM
Sensitivity: Confidential

11.23.2020 – tc with Dan Cohen, Liz Ray
HM, BK

Dan -passed along OAG review to Cmmr's office. They want to adopt rule on schedule that currently under. Don't want to let proposed rule lapse or go out to public comment again. Interested in addressing suggestions to best of ability, but that's limitations and expectations we're working on.

-HM that may be fine but there are some legal concerns, including the statutory authority. Also we gave thorough review and need substantive responses from DHHS as we go thru rulemaking process. I'm not sure who at Cmmr's office reviewed or how carefully they may have read rule review
-timing concerns w/ statute

-Dan C – “just wanted to set expectations” – that is directive.

-background on legislation – working w/ Molly now to update legislation – will be part of biennial budget proposal. But who knows what legislature will do

-also need to think about this in context of TANF. Dept. has very broad discretion as a state and agency w/in state to operate w/in general boundaries. Can do things other than just what the legislature says – documented by state plan – never accepted by feds, just doc that it's received. Different than Medicaid.

-the program – statute gives very broad strokes...so we can continue operating past 7/1/2022

-Dan – SPRC, in house counsel and others have said we have authority to operate after 7/1/2022

HM – I don't know what SPRC or others may have looked at in that regard as they determined whether RFP was okay to issue under RFP requirements. This review now is of a rule and our review is separate under the MAPA

-Dan – as you said, contract RFP etc is outside scope of this rulemaking. Won't be contract language for OAG to review before rule is adopted.

Dan – levels of granularity – TANF, RFP and contract,...ability to delegate aspects of program to a vendor. Doesn't need to be connective tissue between rule and RFP/contract

-don't want to bind the Dept. to specifics

-not going to have a contract before rule is finalized

HM – At very least the rule and the contract should not conflict. gave example of NET – working together on rule, RFP, contract etc. The current rule is so unclear/vague. Can't tell services, eligibility, requirements.

Dan – disagrees. None of rule operation is in a vacuum. It’s modeled on other progs OFI administered

-the benefit is open ended. By design. Modeled after other TANF programs – like HOPE, as well as ASPIRE. High touch case mgmt. activity where someone gets a sense from individual of what their need is. Once you get through income eligibility threshold – solution different for different people

HM – happy to consider responses and any suggested revisions to documents.

Dan – why not raised during pre-review, also K Wells reviewed rule closely

-why HM comments not raised by commenters?

(HM responded – actually many of my concerns were raised by substantive comments like MEJP.)

Dan has not looked closely at HM review. Dan hasn’t looked closely at comments/responses

Brendan raised another big issue of concern - Funding contingencies. Hm relayed – basically DHHS wants to be able to change program requirements anytime, based on unknown \$ factors.

Dan – needed a stop mechanism for WCWF – generalized rollback . no individual is disparately treated

-next step – Liz’s team to review and respond to OAG review. Provide revised docs. HM said focus on rule and hold off on Summary of Comments/Responses, and MAPAs

-how is this going to work if no contract yet? If no K – not sure why Dept is in a rush to get final rule adopted if it ends up being substantially different. That is for agency to decide. But should be open to making changes and going back out for more comments.

Might need contingent effective date (based on contract start). DHHS seems open to that.

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Subject: OAG review - 10-144 CMR Ch 607 draft changes to be adopted (ASPIRE Rule 25A - Working Cars Working Families)

Sensitivity: Confidential

Dear clients –

This shall serve as our review as to form and legality of the Department’s draft final rulemaking documents for changes being made to 10-144 CMR Ch. 607, ASPIRE-TANF Program Rules, sent to us via email on 11/2/2020 (below), and the revised Summary of Comments document that was sent on 11/3/2020. The deadline for adoption is 12/18/2020.

As set forth, below, the rule needs quite a bit of work in order to clarify how, exactly, this new program is supposed to work, and to make the requirements legally enforceable. In addition, we suggest that the Department seek legislative action to amend 22 MRS 3769-F, which shall expire on July 1, 2022. Thus, after 6/30/2022, the Department has no authority to operate the WCFWF program.

General

1. **RFP and Contract**– AAGs Brendan Kreckel and Stanley Abraham are defending DHHS in an administrative appeal by the disgruntled bidder in the RFP for this program. A hearing has been scheduled for 12/9-12/10/2020. After a decision, then the parties shall have the right to further appeal to Superior Court per 5 MRS 11001 et seq. and MRCP 80C.
 - a. The disgruntled bidder (Penquis) did not seek a stay of the contract award, so I assume that the Dept. intends to proceed with the selected vendor regardless of the appeal. Please confirm.
 - b. We reviewed the RFP (attached) to ensure that the terms are consistent with what is in this rule, and part of our advice is to update the rule to reflect more of the specifics set forth in the RFP regarding how the program will work.
 - c. **We should also review the draft contract between DHHS and the vendor** and work with DHHS on finalizing same. Since this is a \$4-6M contract award, we understand that the contract shall also be reviewed by the State Purchasing Review Committee (per a March 3, 2016 Executive Order). Can you **please forward a draft of the contract?**
2. **Timing/Authority Concerns**: because of the delayed implementation of this new program,

there are various concerns about timing. The statute, 22 MRS 3769-F, is repealed effective July 1, 2022, and thus as of that date, DHHS shall have no authority to administer the Working Cars for Working Families program. The program will no longer exist per the statute.

- a. Even if the rule is adopted by 12/18/2020, it is unclear when the contract will be finalized and the vendor will begin work. Per the RFP, the contract with the entity that shall administer the program for DHHS is effective through Sept. 30, 2022, beyond DHHS's statutory authority to run the program. The RFP includes the option for DHHS to renew the contract two times, through Sept. 30, 2024. That is not currently authorized per 22 MRS 3769-F.
- b. Another issue is that the 24 month payment requirements for participants extend beyond 7/1/2022.

3. **Legislative Action is Required.** We urge the Department to work with its legislative liaison, Molly Bogart, to propose a legislative solution to this timing/authority problem as soon as possible. The statute could be revised so that it is effective beyond 7/1/2022, and/or it repeals when the \$6M funds are exhausted. Our office would be happy to work with you and Molly on proposed language and the legislative issues.

Importantly, throughout the rule this program should be referenced as temporary so that all parties are on notice of same, or, alternatively, that the program may extend beyond 7/1/2022 if the Legislature changes the law. The contract with the vendor should contain similar language to this effect. We should also add language to the Basis Statement to explain these issues clearly.

4. **Potential for state and/or federal audit.** If the statute does not change to provide authority to run the program beyond 7/1/2022, and DHHS continues to spend the funds beyond that time regardless (through the vendor contract and/or the rule), there is a risk that the state auditor will determine that DHHS is not properly following state law, and the auditor could send such a finding to the federal government as well. *See* 5 M.R.S. § 243. We understand this has occurred with the Maine Department of Labor.
5. **Concerns about vagueness:** as set forth in more detail below and attached, many provisions in the rule are vague, and it is hard to tell exactly how this program is supposed to work. *See, e.g.,* 5 M.R.S. § 8061 (rules must use plain and clear English which can be readily understood by the general public). Rules govern not only the people who may be eligible for benefits, but also those who provide the services, DHHS as an agency, and other parties affected by the regulation; here, the rule generally seems to avoid any restrictions on DHHS. For any given regulation, one should be able to determine: the services provided; who is eligible for the services; what requirements must be satisfied to receive the services; what individuals or entities may provide the services; any limits on the services, including when and how they may terminate; notice requirements; and appeal rights. Here, while there are numerous eligibility requirements, I cannot tell who gets the services/what people must do to get services. Also there is no description or definition of what, exactly is being provided in terms of services by this program. The rule does not reference the involvement of a vendor that will administer the program. The "Funding Contingencies" provisions should be removed. Too much discretion is reserved for DHHS (ie – there are few objective criteria or factors that

would bind DHHS's determinations), making challenges via litigation highly likely, where it would be difficult to defend DHHS decision making based on this rule language. We made suggestions where we could, but as it stands it is difficult to tell how, exactly, the program is supposed to work.

6. **Major revisions should be made to make the rule more clear and enforceable**, which would likely make it "substantially different" than what was proposed under the APA. The substantially different determination is for the agency to make, and our office considers whether the determination is defensible. Under 5 MRS 8052(5)(B) the Department could still adopt a substantially different rule if, for example, changes are made pursuant to comments, or if the Department makes findings in support of the changes; it could make changes if it finds them necessary based on legal advice. If the Department agrees with this approach (and that the rule is substantially different), then the revised rule should be posted for an additional 30 day period of public comment.

Alternatively, the Department could allow for the proposed rule to lapse, and then start over with a new proposed rule. Proceeding in this manner would allow our offices more time to work closely together both on the contract with the vendor, as well as on improving the rule language. In the meantime, we would also seek a change in the statute from the Legislature.

7. Many improvements could be made to the form of this rule in order to improve one's ability to read/understand it, for purposes of citation to various sections, and enforcement of the rule provisions. For example, the Table of Contents should set forth each of the rule's sections (ie, Introduction, Definitions); I suggest removal of the subject matter index. All rules should have page numbers, section numbers, and all sub sections should be labeled per standard practice. 5 M.R.S. § 8056-A(2). If there's time, the Department could make those changes in the definitions section at this juncture. Regardless, I am glad to see that the language about the new program is in proper rule format.

- a. Also typically our office prefers to review an entire regulation, not just an isolated section of a regulation that is being changed (similarly, the entire rule should be filed with the SOS, not just the particular pages with changes). Here it appears that you have sent just the definitions and Section 18. It is hard to determine the legality of changes in isolation where we cannot also review the context of the entire regulation as a whole. Going forward, we advise that OFI get into this practice, similar to how OMS does its MaineCare rulemaking.

8. Please ensure that what is ultimately filed with the SOS are two copies of (a) clean version of adopted rule; and (b) redline/strike through format of the adopted rule that reflects all changes being made to what the currently legally effective rule (in addition to the MAPAs). Below you also attach a version of the rule that reflects changes from what was proposed to what is being adopted. I did not review that rule because it is not required by the APA, and I find also that it can get confusing in terms of versions of rules exchanged as we proceed with the rule review process.

1. What is the authority for “definitions apply only to single parents with a child under age 6” for “Child care, affordable,” and “Child care, appropriate” - ?

2. Definition of Food Supplement Employment Training (FSET) program –

a. Citation to 7 CFR 273.3 is incorrect; this regulation governs residency requirements. Did you mean to cite to section 273.7?

b. Citation to 22 MRS 3104 may be incorrect; this is the general statutory authority for SNAP program – no specific authority for FSET.

3. **Temporary Program.** Add language to clearly indicate that this is a temporary program per 22 MRS 3769-F, and – without legislative action, it shall expire as of July 1, 2022. It could be that the rule repeals by law (without APA rulemaking) but we would want to consider that issue further in the future; likely it would be better to repeal via the APA as well. Parties should be on notice of the program’s temporary nature, which will help protect DHHS in the event of future litigation when the program expires. We could massage this language so that it says something to the effect of, “without legislative action, the program expires 7/1/2022, or alternatively, it may be extended beyond that time.”

4. Remove “Philosophy” and shift that language up under “Authorization,” which should be called “Authorization and Scope.”

5. The language under subpart (A) of Administration is vague and thus problematic. It appears that the Department (or its vendor) wishes to exercise limitless discretion in determining what options are best for any given program participant, and the participants cannot enforce any particular option against DHHS/vendor (ie – they cannot argue DHHS must provide a certain type of transportation).

6. Definitions (B): remove “For purposes of this Program...” – redundant and unnecessary. The definitions are embedded within the section describing Working Cars for Working Families, so we do not need to re-state this for every term.

Suggest that you add definition for “Alternative Aid,” per 22 MRS 3763(8), since this is one of the 3 types of eligibility defined by 3769-F. Also it’s included in the RFP.

For “Participant” – the definition states that it is a TANF recipient who is involved in TANF-ASPIRE activities. Consider broadening definition to include PaS participants and those eligible for alternative aid under 3763(8), since each of those types of eligibility could be a “Participant” in the WCFWF program. See, e.g., definition of “Participant” in RFP.

7. Why is the Department excluding self employment, which can be sustainable and a large segment of the population in Maine is self employed?

8. What does “any form of employment that involves a subsidy to the employer” mean?
Too vague.

9. "Earned income" – suggest the rule should copy and paste the definition the Dept. seeks to use for this program, and state clearly any limits.

10. Subsection (C) – Funding Contingencies. This section is too vague and ambiguous. I suggest removal in its entirety.

It is unclear what factors the Department will use to determine if "funding is not sufficient" to maintain current programming or reduce services. Who is making these decisions for DHHS? What objective criteria will be applied? What funding would be considered insufficient (\$500K, \$250K, another amount)? If these provisions are retained, suggest you put specific dollar figures in the rules. As it stands, this part of the rule allows for DHHS to alter or terminate the program, based on unknown criteria, and outside the APA regulatory process. If retained, these provisions should state that participants will be given x days' advance notice, not "as much notice as is reasonably practicable." I suggest at least 14 days notice.

- a. What does this provision (in C2) mean: "*The Department shall effectuate reductions and eliminations under this subsection on a generalized and categorical basis, and shall not make case-by-case elimination or reduction decisions.*"
- b. Subpart (C)(3) permits the Department to terminate all agreements and end all services "if funding is not sufficient" with "as much notice as is reasonably practicable." Remove.
- c. Remove subpart (C)(5), which says that "categorically applicable denials, reductions and service terminations based on funding limitations are not subject to administrative appeal." We don't know what "categorically applicable" means. We don't know how DHHS will make these decisions, based on what criteria/funding limits. Regardless, those aggrieved should be afforded the right to an administrative appeal based on principles of due process.

The vague nature of this language indicates that it is unclear how, exactly, this program is going to work. These provisions are highly likely to lead to litigation by dissatisfied program participants. In the event of a challenge to the rule under the APA, it is likely a court would determine the rule arbitrary, capricious, or an abuse of discretion. 5 MRS 8058(1).

11. **Eligibility Determination Process:**

a. (A)(3) too vague. How does the Dept. determine that "participation is appropriate for the applicant?" How does it determine "whether there are available resources that would remediate transportation barriers?" Suggest that the rule sets forth eligibility criteria and an application process. If folks satisfy those criteria and follow the process, they should receive benefits.

b. Application (B) – rule says the Dept "shall develop a uniform application..." The RFP states that the vendor shall develop the application in conjunction with the Department. Either is fine, but if the Dept. seeks to enforce this rule, the rule should state clearly that people must do x to apply. It should include specifically how people can satisfy the application process, perhaps directing them to an application website link, or indicating where they can obtain the form. What is required for application?

c. Enrollment (C) – again, what is required for people to get services? This provision purports to set forth four factors (someone must be determined "eligible," attend an in person

“assessment,” Dept. reviews transportation needs, employment, and “suitability for the program,” and people get services if there are sufficient resources to address their needs). But they are so vague and contingent on so much discretion by DHHS that they are meaningless, or at least unenforceable.

d. Waitlist (E) – suggest you extend the period of time within which a person must respond beyond 2 business days. Also – is it determined based on their date of receipt of notice or - ? Let’s work on revising the last couple of sentences. It’s confusing as currently drafted.

12. Sec. V(B)(2) Transportation Limitations: subpart (b) mandates that an applicant cannot get services under this program if any other adult living with the applicant has a working vehicle that isn’t being used. This other adult could be a roommate with no legal responsibility for the applicant, so it seems too restrictive and over burdensome for DHHS to mandate this.

- A. Sec. V(D)(3) – additional eligibility criteria for vehicle access: add location specification for courses? Or can they be online?
- B. Sec. V(D)(5) – down payment requirements. I am not sure whether the Dept. may restrict participants’ use of benefits from ASPIRE, FSET or HOPE in this manner. Can you refer to authority for this?

13. Assessment – I can see why the Department would want a separate assessment process from the threshold eligibility determinations for purposes of evaluation, however, these provisions are extremely broad and leave much up to DHHS discretion, which could subject them to challenge in the event of disputes about the program. Also – we suggest that assessments could be done via phone or Zoom, etc. because COVID.

Based on review of the RFP, it appears that the Dept. contemplates doing the first step – determining whether someone is eligible (if they are in one of the 3 eligibility groups identified by statute), and then referring to the vendor to do the assessment portion of the review. This is fine if accurate, but the rule should state more detail about who is doing what.

14. Transportation Agreement – the rule should include at least basic requirements for DHHS that will be in each of these Agreements (ie – in exchange for the applicant’s agreements, the Dept. shall provide transportation services; provide x amount of notice before any change in services; etc). Is the TPA between DHHS and the Participant, or the Participant and the vendor (the RFP makes it sound as if it’s the latter). The RFP states that the TPA will be “developed by the Dept in conjunction with the vendor.” **Our office should review and provide legal advice on the Transportation Agreements prior to finalization of this rule as well as the contract between DHHS and the vendor.**

15. Eligibility Monitoring – per RFP. Suggest that you add to rule. Participants should be on notice of all that is required of them to receive services under this program.

16. Ownership of Vehicles: Content Specific to Vehicle Access Services: If the program participants own the cars, I am not sure that the various restrictions on applicants’ ownership and use of a vehicle would be enforceable. Also, even if they are enforceable, how, exactly, is

DHHS going to monitor and enforce the requirements? If the Dept. still holds title and remains owner of the vehicle, then there are numerous complicated issues to discuss about liability, insurance and other matters, and we likely would need to include DAFS and other AAGs from our office for purposes of same. Have you conferred with other state agencies about how these details are supposed to work? Are there other states with similar programs? We should discuss further.

17. Additional Vehicle Access Provisions: again – let’s discuss. Unlike with regular car loans, where the creditor retains title until a car is paid off, it appears that the Dept. does intend to transfer title to vehicles, but still require monthly premium payments to DHHS, where failure to pay results in return of the vehicle back to DHHS.

Sec. 2(d) states that ASPIRE, FSET and HOPE services/support may not be used by Participants to pay monthly premiums. What is the authority for this restriction? How will DHHS or the vendor track what funds, exactly, a Participant is using to make vehicle payments? May need to remove this provision because I’m not sure that authority exists, nor is it likely to be enforceable.

18. Program Graduation(Sec. 3) – after 24 months of payments, people keep the car. But authority for this program expires 7/1/2022. The Dept. may need to shorten this to 12 months, particularly given that the RFP award has been appealed, and thus it is unlikely this program will be up and running until sometime later in 2021. Let’s discuss.

19. IPV (Sec. 4) – should state specifically what value of the car that the Dept is using if/when it seeks an IPV against a participant. Also, it seems unfair that the participant’s payments on the car would not be credited in such a scenario.

20. **Add Vendor Requirements section** – perhaps before termination and appeals section. This should include at least some of the details from the RFP and the contract about what the vendor is required to do, including the assessments, determining and providing appropriate services, acquiring, storing and maintaining vehicles, processing and tracking of premium payments, how those payments must be used, providing limited warranty on the vehicle, wait lists, the vehicle return process, data/reporting and record keeping requirements. Also include that the vendor shall provide the services, with at least one physical location, open during regular business hours (M-F, 8-5).

21. Appeal Rights – ensure they are broad enough to encompass eligibility determinations as well as decisions on services (denial, reduction, suspension, termination). Suggest deletion of the last sentence that says services shall not continue if participant violated term of Agreement; if that is subject to appeal and appeal is timely made, it should be stayed.

22. **Need to Add a Services Section**: the rule does not define what services shall be provided by this program. The services section should likely appear before or just after the eligibility section. Based on this draft rule, we cannot tell exactly what is contemplated in terms of specific services, other than that some folks may get cars. Based on the RFP, it appears that the Dept.

sought for the bidders to submit detailed plans about how to “creatively and efficiently use program resources to remove work-related transportation barriers,” and “provide both short term and sustainable long-term transportation solutions.” Those plans are subject to approval by DHHS. From the plain text of the rule, people who satisfy the rule’s eligibility criteria should be able to determine what services they may be entitled to.

Based on the RFP, it appears that the services generally contemplated are:

- i. Public or private transportation;
- ii. Ride or vehicle sharing;
- iii. Shuttle services;
- iv. Driver education and training; and/or
- v. Vehicle ownership to include financial preparation.

So you could have a general introductory part of the Services subsection setting forth these, and then get into details.

And here is the detailed description of services from the RFP. These should be included in the rule (with slightly modified language to reflect the services to which someone is entitled):

- a. Driving Instruction:
 - i. ~~Provide or facilitate~~ driver instruction, driving practice, and driver’s test assistance.
 - 1) **The vendor shall** provide an assessment of need for levels of required driving instruction to determine if practice driving time is required or a full driver’s education course is required for the Participant.
 - ii. **The vendor shall** ensure only fully insured, inspected vehicles are used for driving instruction, driving practice, and during the road test of a driver’s license examination.
 - 1) Vehicles used must have full insurance coverage that protects the Participant and the Department from all liability that may be incurred during driving instruction and tests.
- b. Rides:
 - i. **The vendor shall** provide and coordinate public or private transportation, ride sharing, van or shuttle services, or similar services, including but not limited to:
 - 1) Dispatching transportation services and Participant support;
 - 2) Mitigation plans for transportation service disruption;
 - 3) Reliable and safe drivers subject to background checks and minimum qualifications such as a valid driver’s license and experience of a minimum of one (1) year operating a vehicle;
 - 4) Reliable and safe vehicles, with valid inspections, current insurance and up to date maintenance.
- c. Vehicle Ownership:
 - i. **The vendor shall** provide a third-party review of the eligibility determination prior to furnishing vehicles to Participants.
 - ii. **The vendor shall** provide access of procured vehicles directly to

Participants by:

- 1) Transferring ownership to Participants within ninety (90) calendar days of eligibility determination;
- 2) Providing education to Participants on driver safety and the responsibilities for owning and maintaining the vehicle prior to completion of the WC4WF Program, including but not limited to:
 - (a) Repairs and maintenance; and
 - (b) Financial literacy, budgeting household income, obligation and planning.
- 3) Ensuring Participants:
 - (e) Have a current valid driver's license in any state in the U.S;
 - (b) Are at least twenty-one (21) years of age;
 - (c) Demonstrate the ability to responsibly own and maintain a vehicle;
 - (d) Have not been convicted of any a crime as determined by self-attestation and a Department background check, including:
 - i. Operating Under the Influence, Driving Under the Influence or Driving While Intoxicated in the past ten (10) years.
 - ii. More than two (2) moving violations and at-fault accidents in the past five (5) years, or any moving violation in the six (6) months immediately preceding enrollment.
 - iii. Any crimes of violence leading to bodily injury of another.
 - (e) Pay a down payment as determined by the Department;
 - (f) Pay a monthly premium, for a duration of twenty-four (24) months, in an amount and frequency, as determined by the Department;
 - (g) Maintain current automobile insurance;
 - (h) Register vehicle in accordance with [29-A M.R.S. §351 - §562](#);
 - (i) Maintain current [State inspection](#);
 - (j) Obtain timely service and repair of the vehicle as identified, as needed; and
 - (k) Comply with program rules and restrictions associated with vehicle ownership, as determined by the Department.

Need to ensure that the details in the rule about how the down payment and monthly payments are determined and collected are consistent with the vendor contract. It appears based on the rule that premiums will be \$100-150.

Summary of Comments and Responses, and List of Changes to Final Rule – please see attached.

1. Various references to sections of the rule may require updating as the rule changes.
2. Some of the internal references to numbers of other responses may require updates.
3. Regarding Commenter 41 (comments 69, 70, 71, 72, 84, 94, 95), as noted above, we advise that the Department add more detail to the rule about, among other things: the services provided; how, exactly, the Dept./its vendor will determine what type of service people will receive; title transfer; when/how vehicles must be returned if there are program violations. Importantly, the response to #95 must be revised to reflect that, without action by the Legislature, the Dept. has no authority to run this program beyond 7/1/2022. We revised the responses to these comment to

reflect that the Dept. will update its rule.

4. Commenter 52 (comment 121, 124, 125) – the response to this comment (121) may change if the Department follows OAG advice and removes the “Funding Contingencies” provisions. We suggest you add detail to the rule to clarify who exactly is paying for the background checks (124): DHHS? The Vendor? Participants? Also add detail to make clear that payments should go back into the program (not used as profit by the vendor) (125).

Regarding comment 129 – if the state transfers title to participants, I agree that it may have difficulties trying to enforce the restrictions on the use of the vehicles, as well as if/when payments are not made, in getting the car returned. Generally one needs specific statutory authority to place liens on property, and I am unaware of such authority for this program.

5. Commenter 54 (MEJP) – we agree with many of these suggestions and think various changes should be made to the rule, as noted in the attached and in the rule. In particular –

a. Given that self employed people are eligible for TANF, Alternative Aid, HOPE, Pas, Food Supplements and General Assistance, there does not appear to be a rational basis for excluding self employed people from this benefit program, and this could be a risk of litigation if the rule remains as is.

b. Add the “good cause” bases from ASPIRE policy specifically in this rule so people are aware of what is required and options for appeal etc (referenced in response to comment 140). This applies to several other comments as well.

c. Comment 146 – agree. Dept. should remove restriction on services based on whether someone who an applicant lives with owns a car. See above.

d. Comment 159 – agree. Dept. should tighten up the language to make it less ambiguous. See above and attached. We can assist with revising language as needed.

e. Comment 172 – agree. Services should continue pending appeal. See advice above and MaineCare rules re member appeals. If there is other authority to the contrary, please refer that to us and let’s discuss.

6. Commenter 107 (Penquis) – had some good points/questions about the issue of use of car of another adult in the household, in person meetings, why the restriction on use of cars for mileage. We suggest that the rule be changed in response to some of these comments.

7. Depending on further discussion and how the rule is revised, the List of Changes to Final Rule will need amendment. Also, after we decide about changes, note that the Department will need to determine whether the final rule is “substantially different” than what was proposed. If it is substantially different, we advise that it be posted for another 30 day comment period. We can discuss this issue further.

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Other MAPAs – given the extent of changes that likely will be required for this rule, the MAPAs will require revision, particularly the Basis Statement. We are happy to assist with those revisions. But let’s figure out the rule language first then revisit the MAPAs.

After you’ve had a chance to review these comments, let’s schedule a time to discuss.

Thank you.

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Sent: Monday, November 2, 2020 9:00 PM
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Cc: Ray, Liz <Liz.Ray@maine.gov>; Baer, Julian <Julian.Baer@maine.gov>; Sturtevant, Timothy <Timothy.Sturtevant@maine.gov>
Subject: ASPIRE Rule 25A for OAG Review (Adopted Stage)
Sensitivity: Confidential

Good evening Brendan and Halliday,

We have another rule for review. This rule is the top priority with OFI.

For your reference, I have attached the following documents:

1. MAPA 3 ASPIRE25 No Fin (This document will go no further in the process, but it is our understanding your office likes to have it as a reference point.)
2. Fact Sheet ASPIRE25 v6 (This document will go no further in the process, but it is our understanding your office likes to have it as a reference point.)

I will provide the comments, hearing transcript, and a spread sheet that helps to cross-reference them via Teams Chat as the sheer volume will exceed the attachments limits in Outlook.

For your review, I have attached the following documents:

1. APA checklist ASPIRE25A v2
2. Basis Statement ASPIRE25A v3
3. MAPA 1 ASPIRE25A v3

4. MAPA 4 ASPIRE25A v3
5. Summary and Responses to Comments ASPIRE25 v8
6. Rule Pages ASPIRE 25A (Clean) v5
7. Rule Pages ASPIRE 25A (TC All) v5
8. Rule Pages ASPIRE 25A (TC since proposed) v5 (This copy will go to the commissioner's office, but not to the secretary of state).

The Commissioner deadline to adopt the rule is December 18, 2020. We estimate that the Commissioner will need 2 weeks to review and adopt the rule. We would like to have your initial review of the rule no later than Thanksgiving to allow enough time for changes you may propose and review of same. We apologize for the short time frame. It has taken us quite a while to respond to the 302 comments.

Please let me know if you need additional information or documents for your review, thank you.

Sincerely,

Michael E. Downs
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