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October 8, 2009

**Re: Follow-up on KW-200 screening changes and other ADA matters**

Dear Cathy,

This letter is our six month follow-up on the new KW-200 and related matters, including:

- Data on voluntary screening for health, mental health and learning disabilities
- Scoring for the learning disabilities tool
- Suggestions for related manual sections

Our request for data on screening is based on our discussions about 921 KAR 2:370 back in February. We look forward to hearing from you.

**A. Questions on consent to screening and accommodations made**

As you may recall, we had a conference call on February 6 before 921 KAR 2:370 went before the Administrative Regulations Review Subcommittee. The purpose of the call was to reach accord on ADA-related language in the regulation itself and in forms incorporated by reference. Cary LaCheen and I participated as advocates and you led a team of several agency staff. We did in fact agree rather quickly on the definition of barriers in the regulation and on language for reasonable accommodation and alternate activities “approved by the Cabinet.”

We also had an extended discussion about the voluntary disclosure language in form KW-200 Kentucky Works Assessment as incorporated by reference. Cary and I had suggested specific language to explain that screening was voluntary but might serve the useful purpose of identifying disabilities, allowing for accommodations and facilitating appropriate work activities.

We suggested further that the disclosure language be incorporated in the KW-200 form, so that it would be read before consent was sought for each separate screening segment in the form: general health, mental health and learning disabilities. You and your colleagues suggested a different approach: the disclosure language would be incorporated in form PA-219 and provided to the participant as the interview began.

According to DCBS' Statement of Consideration of our comments:

“the Cabinet will revise the PA-219, Kentucky Works Fact Sheet, to contain information regarding the advantages of agreeing to be screened for disabilities and reasonable accommodations which could be offered if needed.”

Our concern was that, unless the disclosure language was read or spoken each time consent was sought, many clients would be reluctant to agree to screening. As we wrote in our February 3 letter to the chairs of ARRS, “Many clients, understandably, do not like to share personal information about their health problems, mental health issues, and learning difficulties with complete strangers. Many will choose not to do so if they do not understand the purpose of the questions.”

The questions on KW-200 itself are quite direct and, although they make consent voluntary, they offer no information on the purpose of assessment. As they appear before each screening segment, the questions on the current form are:

Do you agree to be screened for a physical disability assessment?  
Do you agree to be screen for a mental health assessment?  
Do you agree to be screened for a Learning Needs assesement?

During our conference call, as we each described the merits of our approach, it became clear to me that we were attempting to predict the future. We simply *didn't know* how participants would respond. At that point, I asked whether DCBS could capture numbers on consent to screening, so that we would know what happened in practice after six months or so. Your reply was “yes.”

We're now getting back to you to see how it's going—both on this topic and several concerns we raised later regarding the manual. Our follow-up questions on consent to screening follow:

### Questions

- 1) KW-200 Kentucky Works Assessment contains the three questions above, allowing the participant to consent to or decline screening for health, mental health and learning disabilities. From the first six months (or similar recent and defined period of time) please provide:
  - a) The number of participants assessed using the new KW-200
  - b) The number and percent of participants assessed who agreed to screening for
    - i) health
    - ii) mental health
    - iii) learning disabilities

Our review of the related form, KW-202 Transitional Assistance Agreement, suggests that data also now may be available on actual accommodations made. In its “Statement of Consideration Relating to 921 KAR: 2:370, Amended After Comments,” DCBS explained the underlying procedure in the KAMES system, as follows:

A statement will be added to KAMES specific to “reasonable accommodations” and will be a mandatory field requiring entry of the accommodation(s) if one is needed or entry of “none requested” or “no disability” by the worker. The form will print from KAMES and will contain information that is specific to the client and their situation.

KW-202 later was changed, in response to comments, to include the statement “Because of my disability, the Cabinet will help me by providing the following.” We presume that the same KAMES field described above, or a similar one, is connected with this statement. Cumulative data from the mandatory field should now be available to show whether accommodations have been provided. Our question:

- 2) For the same time period used in your answer to Question 1 above (or similar recent and defined period of time), please provide us with the:
  - a) Number of KW-202 forms completed
  - b) Number of participants with an accommodation listed on their KW-202
  - c) Number of participants with the field entry “none requested”
  - d) Number of participants with the field entry “no disability”

If you are limited in your ability to obtain data on any of these questions, please let us know the limitations you face.

## **B. Scoring of learning disability screening tool**

We also noticed that the final revised version of the KW-200 contains the questions from the Washington State learning disability screening tool, but no instructions on how to score the responses or when to refer clients for a professional learning disability assessment. The advantage of this particular learning disability screening tool is that it has been tested and validated, and that as a result, researchers have determined what score is highly predictive of whether an individual has a learning disability, and therefore, who should be referred for a professional evaluation.

In other states, scoring instructions usually are included on the tool itself. Without scoring, the likely result is that clients with learning disabilities will not be diagnosed, and thus, will not receive the supports and accommodations they need to succeed in the Kentucky Works program. It is also possible that some clients will be referred for professional evaluations who would not be referred if the scoring mechanism were used.

We urge you to correct this problem by revising the screening tool to include the scoring instructions, and to include the scoring instructions and instructions about referral in the forms instructions and in the sections of the Manual that discuss the KW-200. If scoring

is somehow accomplished by KAMES during the interview, please let us know how this is done.

### **C. Follow-up on manual revisions**

In late March, DCBS circulated proposed changes in Volume IIIA of the Operations Manual intended to implement the ADA and Section 504 of the Rehabilitation Act. In a letter from the National Center for Law and Economic Justice, dated March 27, advocates set out a number of concerns about the amendments. Recently, we reviewed the Sections addressed in our letter. We found that in some cases our suggestions had been followed closely, in others that changes were made but were different than what we suggested, and in others no changes were made. It is beyond the scope of this letter to revisit all our concerns, but we our review suggested that we bring up the following items that are closely connected with the changes in 921 KAR 2:370:

#### **1. New definition of barriers**

The Kentucky Works regulation now defines barriers broadly, in a manner that includes disabilities and other barriers, as follows:

“Barriers” means a limitation in an individual’s ability to become employed and self-sufficient or to comply with K-TAP requirements.

921 KAR 2:370 Section 1(16)

While this definition now clearly encompasses ADA disabilities, a key section of the manual discuss other barriers without mention of disabilities. MS 2145 provides a list of barriers in Section A but does not including general health, mental health or learning needs among them. Instead, these needs are discussed only in Section B, which emphasizes that completion of questions about them is optional.

We suggest adding reference health, mental health and learning needs to Section A while retaining the voluntary disclosure language in Section B. The change would bring Section A more clearly in line with the new scope of the definition and make clear to staff that disabilities are within the scope of barriers assessment. It could be as simple as adding to Section A, preferably in the middle of the list, the following: “The presence of general health, mental health or learning disabilities that may require accommodation.”

#### **2. Exemption from work activity**

The Kentucky Works regulation now makes clear that exempting an individual with a disability is a reasonable accommodation required by the ADA for some individuals. 921 KAR 2:370 Section 3(7) states in part:

- (b) A reasonable accommodation or program modification may include:
  - 1. Excused participation from an activity;

2. Participation for a reduced number of hours;
3. Participation in an activity for a longer period of time than is accountable; or
4. Participation in an activity that is not countable in accordance with Section 2(1)(c)12 of this administrative regulation.

Volume IIIA MS 4005 KW Participation Requirements mentions only two of these four accommodations: hours and type of activity. It does not mention either the exemption from work activities for individuals unable to participate as a result of a disability or participation for a longer time than is countable. Instead, it states that:

“F. On a case-by-case basis, in order to accommodate a disability, the hours of participation and type of activity (core, non-core, or allowed) are adjusted to meet the needs of the participant.”

We recommend expanding this statement to encompass all four types of accommodations in the regulation itself. We also recommend adding a subsection to Volume III MS 2324 KW Exemption Criteria to track the disability-related exemption from participation that is now in the regulation. Although we understand that DCBS prefers to use the term “excused participation,” the absence of any mention of the accommodation in MS 2324 may lead workers to believe it is not permitted.

We have heard from advocates that DCBS staff do not appear to be familiar with the new rules requiring staff to exempt individuals from the work activities when necessary as a reasonable accommodation. Have you conducted training on this issue, and if not, is it in the works? Has the change been conveyed to staff by methods other than training (such as agency memos)?

### **3. Manual section on “ADA and the Rehabilitation Act”**

In our March letter, we suggested that Volume III MS 4010 “ADA and the Rehabilitation Act” needed a number of changes and additions—and therefore should be held up until further work could be done. We notice that it was not issued. We do believe it would be useful to have a section on this topic. Cary can provide best practice examples or suggestions and we request the opportunity to review a new version.

**Conclusion:** We understand that our suggestions for the manual have to go through “the process” Meanwhile, we hope you can answer our questions on consent to screening and the number of accommodations made during the last few months fairly quickly. It would be great to get a sense of how things are working.

Sincerely,

Richard J. Seckel  
Director