

Voter Act”. Specifically, Plaintiffs claim two violations: First, Plaintiffs allege that in September 2010, some offices of the Georgia Department of Human Services (“DHS”) were not providing DHS clients with voter registration forms with benefits applications and were not asking DHS clients whether they wanted to register to vote every time those clients visited a DHS office to apply for public assistance, renew or recertify such assistance or change their addresses for receipt of public assistance. Complaint, ¶¶ 26, 27. Second, Plaintiffs claim that the State of Georgia is not complying with the NVRA because voter registration applications (and presumably the required assistance) are not offered to DHS clients unless the clients are conducting the benefits transactions in person. Complaint, ¶ 31.

Plaintiffs’ Complaint should be dismissed under Fed.R.Civ.P. 12(b)(1) because this Court lacks subject matter jurisdiction for the following reasons: 1) Plaintiffs lack standing to bring this lawsuit; 2) prior to initiating this lawsuit, Plaintiffs failed to comply with the notice requirements set forth in the NVRA, 42 U.S.C. § 1973gg-9(b)(1); and 3) Plaintiffs’ claim relating to two DHS internal voter registration policies (which relate to Plaintiffs’ first claim) is moot because both policies had been corrected prior to Plaintiffs initiating this lawsuit.

Even if Plaintiffs' Complaint is not subject to dismissal pursuant to Fed.R.Civ.P. 12(b)(1), Plaintiffs' claims are subject to dismissal under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiffs claim that Defendants are in violation of the NVRA because public assistance offices are not providing voter registration forms or voter registration services and assistance to applicants and recipients as required under the NVRA. However, Plaintiffs failed to plead this claim with sufficient specificity or to identify any "particularized injury" that entitles them to any relief.

The grounds for Defendants' motion are set forth in more detail in the attached brief. For the reasons set forth herein and in the attached brief, Defendants submit that Plaintiffs' Complaint should be dismissed in its entirety with all costs cast against Plaintiffs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record and by mailing by regular first class mail to those attorneys not currently admitted *pro hac vice*. The attorneys who are being served by mail are indicated with an asterisk.

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This 27th day of June 2011.

/s/ Julia B. Anderson

JULIA B. ANDERSON

Senior Assistant Attorney General

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**GEORGIA STATE CONFERENCE
OF THE NATIONAL
ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE, and COALITION FOR
THE PEOPLES' AGENDA,**

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**CIVIL ACTION FILE
NO. 11-CV-1849-WBH**

v.

**BRIAN KEMP, in his official capacity as
Secretary of State, and CLYDE L.
REESE, III, in his official capacity as
Commissioner of the Georgia
Department of Human Services,**

Defendants.

**BRIEF IN SUPPORT
OF MOTION TO DISMISS**

Organizational Plaintiffs, the Georgia State Conference of the NAACP (“NAACP”) and the Coalition for the Peoples’ Agenda (“Peoples’ Agenda”), filed this lawsuit on June 6, 2011, against Georgia Secretary of State Brian Kemp (“Secretary Kemp”) and Commissioner Clyde L. Reese, III of the Georgia Department of Human Services (“Commissioner Reese”) seeking declaratory and injunctive relief under the National Voters Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg *et seq*, commonly known as the “Motor Voter Act”. Specifically, Plaintiffs allege that Defendants are failing to comply with their

responsibilities under Section 7 of the NVRA because some Department of Human Services (“DHS”) offices are not offering voter registration opportunities to applicants or recipients of public assistance each time an application is made, a renewal or recertification done, or a change of address for receipt of public assistance is completed. Complaint, ¶¶ 26, 27. Plaintiffs also claim that in limiting voter registration to DHS clients conducting benefits transaction in person (just as the NVRA does), the State somehow violates the NVRA. Complaint, ¶ 31. Plaintiffs ask the Court to grant declaratory and injunctive relief under Section 11 of the NVRA, 42 U.S.C. § 1973gg-9(b).

Plaintiffs’ Complaint is subject to be dismissed on the following grounds:

1) Plaintiffs do not have standing to bring this lawsuit; 2) prior to initiating this lawsuit, Plaintiffs failed to comply with the notice requirements set forth in Section 11 of the NVRA, 42 U.S.C. § 1973gg-9(b)(1); and 3) Plaintiffs’ claim relating to two DHS internal voter registration policies (which relate to Plaintiffs’ first claim) is moot because both policies had been corrected prior to Plaintiffs initiating this lawsuit.

Even if Plaintiffs’ Complaint is not subject to dismissal pursuant to Fed.R.Civ.P. 12(b)(1), Plaintiffs’ claims are subject to dismissal under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiffs claim that Defendants are in violation of the NVRA because public

assistance offices are not providing voter registration forms or voter registration services and assistance to applicants and recipients as required under the NVRA. Furthermore, Plaintiffs failed to allege how any action or failure to act by either Secretary Kemp or Commissioner Reese caused any “particularized injury” that entitles them to any relief.

STATUTORY BACKGROUND

In 1993, Congress passed the NVRA in 1993, 107 Stat. 77, 42 U.S.C. § 1973gg *et seq.*, to “increase the number of eligible citizens who register to vote in elections for Federal office,” to “protect the integrity of the electoral process,” and to “ensure that accurate and current voter registration rolls are maintained.” *Harkless v. Brunner*, 545 F. 3d 445, 449 (6th Cir. 2008) (quoting 42 U.S.C. § 1973gg-2(b)).

Section 4 of the NVRA requires states to establish procedures for voter registration in Federal elections “by application in person . . . at Federal, State, or nongovernmental offices designated under Section 7.” 42 U.S.C.

§ 1973gg-2(a)(3)B). Under Section 7, all offices in the state that provide public assistance must be designated as voter registration agencies. 42 U.S.C.

§ 1973gg-5(a)(2)(A).

Those public assistance agencies must: 1) distribute mail voter registration application forms; 2) provide assistance to applicants in completing the forms,

unless the applicant refuses such assistance; and 3) accept completed forms for transmittal to the Secretary of State. 42 U.S.C. § 1973gg-5(a)(4)(A). Section 7 further specifies that a mail voter registration application shall be distributed with each application for public service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance, unless the applicant/recipient declines in writing to register to vote. 42 U.S.C.

§ 1973gg-5(a)(6). The staff at state public assistance offices are required to provide the same degree of assistance with regard to the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance. 42 U.S.C. § 42 U.S.C. 1973gg-5(a)(6)(C).¹

The NVRA requires that “[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities” under the NVRA. 42 U.S.C. § 1973gg-8. Furthermore, the NVRA provides that “a person who is aggrieved by a violation of this Act may provide written notice of the violation to the chief election official of the State

¹ Subparagraph (a)(6) of Section 7 details the required contents of the mail voter registration form as well as a form known as the “declination” form, which indicates whether or not the applicant or recipient chose to register to vote. 42 U.S.C. § 1973gg-5(a)(6)(A). Plaintiffs have not asserted any violations related to the contents of the mail voter registration form or the “declination” form.

involved.” 42 U.S.C. § 1973gg-9(b)(1). If the noticed violation is not corrected with 90 days after receipt of the notice from the aggrieved person, such person may bring a civil action “for declaratory or injunctive relief with respect to the violation.” 42 U.S.C. § 1973gg-9(b)(2).

During its 1994 session, the Georgia General Assembly passed legislation to implement the requirements of the NVRA. 1994 Ga. Laws 1443 (Act 1207, H.B. 1429). The Secretary of State is designated the “Chief Election Official” as provided under Section 10 of the NVRA. O.C.G.A. § 21-2-210. Georgia has designated each office that provides public assistance as a voter registration agency. O.C.G.A. § 21-2-222(b). DHS is the state agency responsible for the administration of public assistance in the State of Georgia, including, but not limited to, the administration of the Food Stamp, TANF (Temporary Assistance for Needy Families), and Medicaid programs. *See* O.C.G.A. §§ 49-3-4 and 49-3-6.

Each public assistance office shall: 1) distribute mail voter registration application forms; 2) provide assistance to applicants in completing the forms, unless the applicant refuses such assistance; and 3) accept completed forms for transmittal to the Secretary of State. O.C.G.A. § 21-2-222(d).

O.C.G.A. 21-2-222(f) provides that each designated voter registration agency shall “[d]istribute with each application for such service or assistance and with each recertification, renewal, or change of address form relating to such

service or assistance, when such application, recertification, renewal, or change of address is made *in person*, the mail voter registration application form provided for in Code Section 21-2-223 unless the applicant declines in writing to register to vote.” (emphasis added).

STATEMENT OF FACTS

On January 25, 2011, an attorney for an organization called “Project Vote”, sent a letter to Secretary Kemp on behalf of the NAACP in which she alleged that “substantial evidence” existed demonstrating that the State was “systematically failing to provide voter registration services at its public assistance office.”

Defendants’ Exhibit A.²

In that letter, the NAACP said that a survey of Georgia’s NVRA compliance had been done, which included visits to eleven DHS offices and interviews with fifty DHS clients. *Id.* at 2. However, Georgia has at least one state public assistance office in each of its 159 counties and in some counties more than one.

<http://dfcs.dhr.georgia.gov/portal/site/DHSDFCs/menuitem.76e501556de17147077a8110da1010a0/?vgnnextoid=8eb92b48d9a4ff00VgnVCM100000bf01010aRCRD>.

(last visited on June 22, 2011).

² Copies of all other correspondence between the attorneys for the NAACP and Secretary Kemp’s office during the notice period are attached hereto as Defendants’ Exhibits A-1 through A-6.

The NAACP specifically alleged that “Georgia’s state law and internal DHS policies do not comply with the NVRA.” Defendants’ Exhibit A at 2. First, the NAACP alleged that Georgia law was contrary to the NVRA because it limits offering voter registration applications to “in person” applications for services, renewals, recertifications, and changes of address. *Id.* However, the NAACP did not cite any section of the NVRA in support of its position that the State is required to distribute voter registration applications or to provide voter registration services to applicants or recipients by mail, telephone or internet. Second, the NAACP alleged that DHS internal policy was in violation of the NVRA in that it provided that staff were not required to offer voter registration services to an applicant or recipient if he had previously declined in writing an offer to register to vote. *Id.* As discussed in Section C, *infra*, this issue is now moot.

On February 15, 2011, Secretary Kemp responded in writing to the NAACP’s January 15, 2011 letter. Defendants’ Exhibit A-1. Pursuant to his statutory duties to coordinate the State’s NVRA responsibilities, Secretary Kemp notified the NAACP in that letter that his office was commencing an internal investigation into its allegations. *Id.* at 1. In that regard, Secretary Kemp requested additional information and documents related to the NAACP’s claims. As Secretary Kemp explained in his letter, “with hundreds of DHS offices throughout the State, our ability to conduct an internal review for NVRA

compliance is severely limited without specific information about your investigation.” *Id.*

On February 25, 2011, the NAACP responded to Secretary Kemp’s request for information by stating that the investigation was conducted in September 2010 and providing only generalized information about the investigation. Defendants’ Exhibit A-2. The only specific information the NAACP provided to Secretary was a copy of two internal DHS policies and a list of the eleven DHS offices that were visited. *Id.* Despite repeated requests, Secretary Kemp was never provided with any other specific information from the NAACP relating to its allegation that “Georgia is systematically failing to provide the voter registration services at its public assistance offices that are required by the NVRA.” Defendants’ Exhibit A.

As shown from the correspondence between the NAACP’s attorneys and Secretary Kemp’s office, Secretary Kemp worked throughout the notice period to obtain additional information regarding the NAACP’s claims in an effort to determine their exact nature so that his office could coordinate with DHS to resolve them. Defendants’ Exhibits A-1 through A-6.

On April 22, 2011, Secretary Kemp sent a letter to the NAACP enclosing a copy of a memorandum issued by DHS the previous day which revised and clarified its voter registration requirements. Defendants’ Exhibit A-3. This memorandum stated that all public assistance applicants or recipients, including

Food Stamps, TANF, and Medicaid, must be offered voter registration services when applying in person for services, recertifying or renewing, or reporting a change of address. Defendants' Exhibit E.

DHS had issued these two memoranda on August 1, 2009, updating the TANF and Medicaid Policy Manuals regarding voter registration. In both instances, the policies were changed to state that once a person declined in writing an offer to register to vote, staff was no longer required to ask whether that person wanted to register. Defendants' Exhibits B and C.³ This revision to prior policy was inconsistent with the NVRA and Georgia law which require that applicants or recipients must be offered voter registration services each time they apply in person when the applicant or recipient is applying for services, recertifying or renewing, or reporting a change of address. 42 U.S.C. §§ 1973gg-2(a)(3)(B) and 1973gg-5(a)(6)(A) and O.C.G.A. § 21-2-222(f)(1).

However, on November 1, 2009, DHS again revised the Medicaid Policy Manual, including the voter registration policy, and it was corrected to reflect that all applicants/recipients needed to be asked whether they wanted to register to vote. Defendants' Exhibit D. Thus, only the TANF policy was not in compliance with the NVRA on January 25, 2011, when the NAACP sent their notice.

³ At the time these memoranda were issued, the Department was known as the "Georgia Department of "Human Resources." The Department has since been reorganized and renamed as the "Georgia Department of Human Services." See O.C.G.A. § 49-1-1.

Plaintiff Peoples' Agenda never provided any notice of any violation of the NVRA to Defendants. On Friday, June 3, 2011, the NAACP sent a letter to Secretary Kemp stating that the "NAACP intends to move forward with litigation imminently, and has been joined in this effort by the Coalition for the Peoples' Agenda." Defendants' Exhibit A-6. Plaintiffs NAACP and Peoples' Agenda filed this lawsuit the following Monday, June 6, 2011. [Doc. 1].

STANDARD OF REVIEW

On a motion to dismiss, the Court must construe all facts in the light most favorable to the Plaintiff. *Hishon v. King and Spalding*, 467 U.S. 69, 73 (1984); *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir. 2006). However, conclusory allegations and unwarranted deductions of fact are not admitted as true. *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005). *See also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

In considering a motion to dismiss for lack of subject matter jurisdiction, a district court may consider facts outside of the pleadings. *Muhammad v. HSBC Bank USA, N.A.*, 399 Fed. Appx. 460 462 (11th Cir. 2010)(citing *Goodman ex rel. Goodman v. Sipos*, 259 F.3d 1327, 1231, n. 6 (11th Cir. 2001)).

ARGUMENT AND CITATION OF AUTHORITY

A. *Plaintiffs Lack Standing To Bring A Claim Under Section 7 Of The NVRA.*

The party invoking federal jurisdiction bears the burden of proving standing. *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1349 (11th Cir. 2009). In order to sue based on injuries to itself, an organization must meet the same three-part standing test that applies to individuals. *Nat'l Coal. For Students with Disabilities Educ. and Legal Defense Fund v. Scales*, 150 F. Supp. 2d 845, 849 (D.Md. 2001)(citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). Accordingly, both Plaintiffs must satisfy the following three constitutional requirements in order to have standing:

(1) they have suffered a particularized, concrete injury to a legally protected interest (injury in fact); (2) the injury is fairly traceable to the challenged action (causation); and (3) it is likely that the injury may be redressed by judicial action (redressability).

Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 1352 (11th Cir. 2005). *See also Common Cause*, 554 F.3d at 1349 (quoting *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1159 (11th Cir. 2008)); *ACORN v. Scott*, 2008 U.S. Dist. LEXIS 51671 at *6-7 (C.D. Mo. 2008) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61)(1992)).

Plaintiffs allege that they “have expended and continue to expend substantial time and resources in an effort to make voter registration available,” which

Plaintiffs allege would not have been necessary had Defendants complied with the law. Complaint, ¶ 4. While this allegation might be construed as articulating an injury in fact, the nature of this alleged injury precludes any finding of causation. Plaintiffs have not alleged a sufficiently particularized injury that is fairly traceable to any challenged action of the Defendants and therefore they cannot satisfy the causation requirement of standing. *Common Cause*, 554 F.3d at 1349; *Cox*, 408 F.3d at 1352-53.

The only claims Plaintiffs alleged with any particularity in their notice and/or Complaint are their claims that Georgia law and DHS' internal policies do not comply with the NVRA. Complaint, ¶¶ 31-32. Defendants have already addressed and resolved Plaintiffs' claim with regard to DHS' internal policies. *See* Section C, *infra*. As discussed in Section D, *infra*, Plaintiffs' claim that Georgia law is in violation with the NVRA is without merit. With regard to the remainder of their Complaint, Plaintiffs allege that the number of individuals who have registered at public assistance offices in Georgia has dropped significantly over the last several years. However, except for providing Secretary Kemp with a copy of DHS' internal policies and some general information, the NAACP has refused to provide any specific information or data in support of their claims that the Defendants are in violation of the NVRA. The bald assertions Plaintiffs rely upon, both in the NAACP's notice, and again in their Complaint, are simply insufficient.

Summers v. Earth Island Inst., 555 U.S. 488, 129 S.Ct. 1142, 1149 (2009) (to confer standing, plaintiffs must establish that they have sustained a “concrete, particularized injury in fact.”).

The claims made by Plaintiffs in this case appear to be similar in nature to those made by the Plaintiffs in the case of *ACORN v. Scott*, 2008 U.S. Dist. LEXIS 51671 (C.D.Mo. 2008). However, the *Scott* case is distinguishable from this case in two significant respects. First, the plaintiffs in *Scott* included an individual who alleged that she had been denied voter registration services. Second, in their notice to Defendants under Section 11, plaintiffs provided the Defendants with an eight-page report summarizing the results of their investigation and their fact-gathering methods. *Id.* at 12-13. In the case at hand, the NAACP refused to provide any information to Defendants other than a copy of the DHS internal policies and some general information about Project Vote’s 2010 investigation, despite repeated requests from Secretary Kemp for additional information. By refusing to provide any specific information regarding their investigation, Plaintiffs have also failed to allege any “particularized” injury” that is “fairly traceable” to the Defendants’ actions.

Here in the Eleventh Circuit, in the *Common Cause* case, the court’s conclusion that the plaintiffs had standing was based on the fact that two of the plaintiffs were registered voters who did not possess acceptable photo

identification and were challenging the new photo identification requirement. 544 F.3d at 1351. Similarly, in the *Cox* case, one of the plaintiffs had attempted to change her address at a voter registration drive conducted by the Charles H. Wesley Education Foundation. The foundation, along with several individuals, filed suit against the Secretary of State, challenging Secretary Kemp's refusal to accept voter registration forms collected at a private voter registration drive that were mailed into the Secretary of State in a bundle. Plaintiff alleged that the Secretary of State's policy violated her rights under the NVRA as well as the First, Fourteenth and Fifteenth Amendments to the U.S. Constitution. 408 F.3d at 1351.

In contrast to the *Scott*, *Common Cause*, and *Cox* cases, there are no individual plaintiffs in this case and the Plaintiffs have not identified any individuals who have been denied the opportunity to register to vote at any public assistance office. While an organizational plaintiff may be permitted to pursue claims on behalf of its members, that organizational plaintiff still bears the burden of proof in establishing standing by showing that its members have suffered a particularized injury sufficient to state a claim upon which relief can be granted. Plaintiffs have failed to state any such particularized claim in this case.

“To have Article III standing to pursue injunctive relief, even against violations of the Constitution, a plaintiff must have more than a merely hypothetical grievance: he or she must have an injury in fact that is capable of

being redressed by the injunction.” *Viridi v. Dekalb County Sch. Dist.*, 216 Fed. Appx. 867, 871 *Viridi* (11th Cir. 2007) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101, (1983)). “Past wrongs are insufficient to show an entitlement to an injunction against future wrongs. Moreover, standing is a jurisdictional bar.” *Viridi*, 216 Fed. Appx. at 871 (quoting *Lyons* at 871).

B. Plaintiffs Failed To Comply With The Notice Provisions Of The NVRA.

Even if the Court determines that Plaintiffs have standing for purposes of this motion to dismiss, Plaintiffs’ failure to provide notice under the NVRA requires dismissal of their claims. The NVRA requires that any “aggrieved person” seeking relief under the Act must “provide written notice of the violation to the chief election official of the State involved,” before initiating a civil enforcement action. 42 U.S.C. § 1973gg-9(b)(1). A private citizen is authorized to bring suit only “[i]f the violation is not corrected within ninety (90) days after receipt of a notice.” *Harkless*, 545 F.3d at 452 (quoting 42 U.S.C. § 1973gg-9(b)(2)).

The language and legislative history of 42 U.S.C. § 1973gg-9(b) indicates that Congress structured the notice requirement with the intention that it would provide states with an opportunity to attempt compliance before facing litigation. *ACORN v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997). *See also Vladez v. Herrera*, 2010 U.S. Dist. LEXIS 142209 at *34 (D.N. Mex. 2010). In *Broyles v. Texas*, 618

F. Supp. 2d 661, 691-92 (S.D. Tex. 2009), the court dismissed a claim brought by the plaintiffs under the NVRA because the first “notice” plaintiffs gave the Secretary of State was through the filing of their complaint. As the court noted in that case: “If notice was optional, the 90-day cure period would be superfluous.”

The content of the notice is also significant to determining whether the “notice” requirement has been satisfied. If “notice” is given but the person giving notice fails to provide sufficient information in order to allow the State to determine what the alleged violation is, then the “notice” is meaningless and fails to satisfy the requirements set forth in Section 11. *See Scott*, 2008 U.S. Dist. LEXIS 51671 at *13 (W.D. Mo. 2008) (ACORN provided an eight page report summarizing its fact-gathering methods and findings with its notice letter).

Plaintiff Peoples’ Agenda never provided notice to Secretary Kemp of any alleged violation of the NVRA prior to initiating this lawsuit. Rather, on Friday, June 3, 2011, the NAACP sent a letter to Secretary Kemp advising him that a lawsuit would be filed “imminently” and that the NAACP would be joined in that lawsuit by the Peoples’ Agenda. In fact, Plaintiffs’ filed this lawsuit the following Monday, June 6, 2011. [Doc. 1]. Peoples’ Agenda not only failed to meet the 90-day notice requirement, but that organization also failed to identify any alleged NVRA violation on the part of the State. *See Defendants’ Exhibit A-6*. The requirement of notice prior to exercising a private right of action for enforcement

of the NVRA does not mean that one organization can give notice, then have any number of additional organizations somehow claim credit for that notice and join in the filing of a lawsuit.

The purpose of the notice period is to provide the state with an opportunity to attempt compliance before facing litigation. *Miller*, 129 F.3d at 838. The NAACP sent a letter to Secretary Kemp on January 25, 2011, alleging that Georgia was “systemically failing to provide the voter registration services at its public assistance offices that are required by the NVRA.” Defendants’ Exhibit A at 2. However, the NAACP has failed to provide Secretary Kemp with any specific information in support of this claim. *Compare Scott*, 2008 U.S. Dist. LEXIS at *13 (plaintiffs provided Secretary of State with an eight-page report summarizing the results of their investigation and their fact-gathering methods plaintiffs provided Secretary of State with . Because Plaintiff Peoples’ Agenda failed to provide any notice at all, it must be dismissed from the case, and because Plaintiff the NAACP failed to provide proper notice to Defendants of any claims beyond the issues of Georgia law and DHS’ internal policies, their remaining claims should be dismissed for failure to comply with the notice requirement set forth in 42 U.S.C. § 1973gg-9(b)(1).

C. Plaintiffs' Only Recognizable Claim Is Moot.

“A case is moot when events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief.” *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents*, 633 F.3d 1297, 1308 (11th Cir. 2011). In this case, Plaintiffs' only recognizable claim became moot based on events that occurred even before this lawsuit was filed based on the Defendants' actions during the 90-day notice period and even before then. Plaintiffs complained that two internal DHS policies issued on August 1, 2009 were contrary to the requirements of the NVRA. Defendants' Exhibit B. However, one of those policies was corrected three months later on November 1, 2009. The other was corrected on April 21, 2011, prior to the initiation of this lawsuit.

A claim that a case is moot involves the basic determination of justiciability of plaintiffs' claims and, as such, should be decided under Fed.R.Civ.P. 12(b)(1). *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents*, 633 F.3d at 1308. “Generally, the party asserting mootness bears the heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again.” 633 F.3d at 1310 (citations and quotations omitted). The government enjoys a rebuttable presumption that the objectionable behavior will not recur. *Id.* “[T]he Supreme Court has held almost uniformly that voluntary cessation [by a government defendant] moots the claim.” *Id.* (citations and quotations omitted).

DHS issued two memoranda on August 1, 2009, amending its TANF and Medicaid policies. In addition to other revisions, both policies' voter registration policies were revised to provide that once an applicant or recipient had declined in writing to register to vote, staff were not required to offer voter registration services in the future. Defendants' Exhibits B and C. This revision to prior policy was inconsistent with the NVRA and Georgia law. 42 U.S.C. §§ 42 U.S.C. 1973gg-2(a)(3)(B) and 1973gg-5(a)(6)(A) and O.C.G.A. § 21-2-222(f)(1).

DHS corrected its Medicaid voter registration policy on November 1, 2009. Defendants' Exhibit D. On April 21, 2011, DHS issued a memorandum to all DHS personnel as well as all personnel working at public assistance offices, which clarified DHS' voter registration policies, including the TANF August 1, 2009 policy. The April 21, 2011 memorandum states that all applicants or recipients must be offered voter registration services each time they apply in person when the applicant or recipient is applying for services, recertifying or renewing, or reporting a change of address. Defendants' Exhibit E.

As a state government, Defendants are entitled to the rebuttable presumption that no further violations will recur with regard to DHS' internal voter registration policies. DHS corrected its Medicaid voter registration policy in November 2009, only three months after that policy had been changed. DHS corrected its TANF voter registration policy in April 2011, following notice from the NAACP but

before this lawsuit was filed. Both of these actions by DHS demonstrate that the agency intended and intends to comply with its legal obligations under the NVRA and took immediate corrective action when it was made aware of a problem. *Nat'l Ass'n of Bds. of Pharm.*, 633 F.3d at 1310.

Based on DHS' April 21, 2011 memorandum, Plaintiffs' Complaint that DHS' internal policies regarding voter registration requirements are not in compliance with the NVRA is moot and should be dismissed. *Id.* See also *In re City of Fall River*, 470 F. 3d 30, 32 (1st Cir. 2006) (petition for writ of mandamus moot based on U.S. Department of Transportation's subsequent adoption of rules); *Charles H. Wesley Education Foundation, Inc. v. State Election Board*, 282 Ga. 707 (2008)(affirming trial court's decision that plaintiff's claim for declaratory judgment and mandamus was moot based on State Election Board's subsequent action on proposed rules).

D. Georgia Law Limiting The Requirement Of Voter Registration To In Person Transactions Complies With The NVRA.

Plaintiffs allege that Georgia law does not comply with the NVRA because only those participating in a covered transaction who appear in person at public assistance offices are offered the opportunity to vote. Complaint, ¶¶ 31 and 36. Plaintiffs' claim ignores the plain language of both the state and federal statutes, which both explicitly state that limitation.

Section 4 of the NVRA provides that “notwithstanding any other Federal or State law” . . . “each State shall establish procedures to register to vote in elections for Federal office” . . . “by application in person - -” . . . “at a Federal, State, or nongovernmental office designated under section 7 [42 USCS § 1973gg-5].”

Section 7 provides that state public assistance offices are “designated voter registration agencies” as provided under Section 4. 42 U.S.C. § 1973gg-5(a)(2)(A).

Georgia law incorporates the language from both 42 U.S.C. §§ 1973(b)(3)(B) and 1973gg-5(a)(2)(A) to provide that voter registration applications shall be distributed each time that an applicant or recipient makes an application, recertification, renewal or change of address “in person” at a public assistance office unless the applicant declines in writing to register to vote. O.C.G.A. § 21-2-222.

In interpreting the meaning of a statute, the Court must assume that Congress used the words of the statute as they are commonly and ordinarily understood and must construe the statute so each provision is given full effect. *United States v. McLymont*, 45 F.3d 400, 401 (11th Cir. 1995). The court must also read Section 4 and 7 together to determine their meaning and intent. *Graupner v. Nuvel Credit Corp. (In re Graupner)*, 537 F.3d 1295, 1299 (11th Cir. 2008) (related statutes should be read *in pari materia* to determine the legislative intent).

The “common and ordinary” meaning of “in person” is “face to face.” Section 4 provides for “application in person” at “designated” state offices, which includes public assistance offices. There is no language in Section 7 or any other Section of the NVRA that suggests that voter registration services are to be provided in any manner other than “in person.” To read the NVRA to require states to provide anything more than “application[s] in person” would not give “full effect” to the phrase “in person.” *McLymont*, 45 F.3d at 401. Absent an indication that applying the plain language of a statute would “yield patent absurdity, [the Court’s] obligation is to apply the statute as Congress wrote it.” *Robbins v. Chronister*, 402 F.3d 1047, 1050 (10th Cir. 2005). There is no language in Section 7 that supports a different reading. *See also TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”) (internal quotation marks omitted).

Section 4(a) also includes the phrase “notwithstanding any other Federal or State law.” 42 U.S.C. § 1973gg-2(a). “[T]he use of such a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.” *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993). *See also Liberty*

Maritime Corp. v. United States, 928 F.2d 413, 417, n. 4 (D.C.Cir. 1991) (the “notwithstanding” clause means the section to which it applies takes precedence over any other law, whether within the same statute or another statute). In *Cisneros*, the Supreme Court noted that “the Courts of Appeals generally have interpreted similar ‘notwithstanding’ language . . . to supersede all other laws, stating that [a] clearer statement is difficult to imagine.” *Id.* (citations and quotations omitted). *See also United States v. DeCay*, 620 F.3d 534, 540 (5th Cir. 2010) (“the use of a “notwithstanding” clause signals Congressional intent to supersede conflicting provisions of any other statute.”).

The Georgia legislature adopted the “in person” language from Section 4 into its law. O.C.G.A. § 21-2-222(f)(1) (which requires each voter registration agency to distribute a mail voter registration application form to each applicant or recipient who appears in person to request an application, recertification, renewal or change of address).

Plaintiffs allege that by limiting voter registration services at public assistance office to “in person” applications, the State of Georgia is acting “in direct contravention of the ‘guidance’ provided by the Department of Justice (“DOJ”) on implementation of the NVRA (citing to http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php). Complaint, ¶ 36.

The Department of Justice publishes guidance or promulgates regulations in order to implement federal laws, which it is charged to uphold and defend. *See e.g., See Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 30 (N.D. Ga. 2002) (citing Guidance Concerning Redistricting and Retrogression under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, 66 Fed. Reg. 5,411 (Jan. 18, 2001)); *Parr v. L & L Drive-Inn Restaurant*, 96 F. Supp. 2d 1065, 1086 (D. Hw. 2000) (citing 28 CFR Part 36, App., which implemented the standards required under Title III of the ADA). However, when it does so, such guidance or regulations are published in either the Federal Register or the Code of Federal Regulations. DOJ has not published any guidance or regulations implementing the NVRA.

On its web page, DOJ states that because many public assistance offices offer services by “internet, by telephone, or by mail,” . . . “States should ensure the availability of voter-registration opportunities to individuals using such remote service/assistance opportunities from designated agencies.”

(http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php)

(last accessed on June 27, 2011).⁴ When the NVRA was passed in 1993, telephone and mail services were certainly available and the internet was starting to become more widely available. If Congress had intended to require designated agencies to

⁴ This information was provided in response to the question: “Do the voter registration requirements of Section 7 of the NVRA apply to all application, renewal, recertification and change of address transactions with designated offices?”

distribute applications in this matter, as well as “in person”, it could have said so in the statute. DOJ has never formally issued any guidance or promulgated any rules to this effect. Even if DOJ had issued any advise or promulgated any rules to this effect, the “notwithstanding” clause of Section 4 would render such administrative regulations nugatory.

Based on the basic rules of statutory interpretation, the “notwithstanding” clause contained in Section 4 requires that no other section of the NVRA or any other law – or guidance or regulation -- can be read to override the language contained in Section 4. *Maritime Corp.*, 928 F.2d at 417. The inclusion of “in person” in O.C.G.A. § 21-2-222(f)(a) is consistent with Section 4 of the NVRA. Plaintiffs’ argument that Georgia law is not in compliance with the NVRA is without merit.

CONCLUSION

Based on the foregoing argument and citation of authority, Defendants respectfully submit that the Plaintiffs’ Complaint should be dismissed in its entirety and all costs case against the Plaintiffs.

Respectfully submitted,

SAMUEL S. OLENS 551540
Attorney General

[signatures continued on next page]

DENNIS R. DUNN 234098
Deputy Attorney General

STEFAN RITTER 606950
Senior Assistant Attorney General

/s/ Julia B. Anderson
JULIA B. ANDERSON 017560
Senior Assistant Attorney General

Please address all
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Senior Assistant Attorney General
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Atlanta, Georgia 30334-1300
(404) 463-3630
FAX (404) 657-9932

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **BRIEF IN SUPPORT OF MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record and by mailing by regular first class mail to those attorneys not currently admitted *pro hac vice*. The attorneys who are being served by mail are indicated with an asterisk.

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Kim Keenan *
Anson Asaka
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED
PEOPLE, INC.
NAACP National Office
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Baltimore, MD 21215

This 27th day of June 2011.

/s/ Julia B. Anderson
JULIA B. ANDERSON
Senior Assistant Attorney General

DEFENDANTS' EXHIBIT A



January 25, 2011

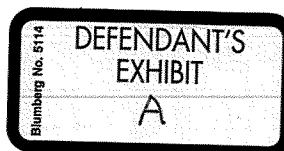
Via Facsimile and U.S. Mail
The Honorable Brian Kemp
Secretary of State of Georgia
214 State Capitol
Atlanta, GA 30334

Re: National Voter Registration Act Non-Compliance

Dear Secretary Kemp:

We write on behalf of the Georgia State Conference of the NAACP, eligible voters it represents, and others similarly situated, to notify you that, based on the investigation we have undertaken, offices of the Georgia Department of Human Services ("DHS") are not offering voter registration to public assistance clients as required by Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5 ("NVRA"). Section 7 establishes clear obligations on the part of state public assistance agencies to provide voter registration services, for which you as the State's chief election official share responsibility. The NVRA includes a private right of action in the event that a State fails to correct its noncompliance after its chief election official has received due notice. We urge you as the State's chief election official, acting in conjunction with DHS, to take immediate steps to bring the State into compliance with Section 7.

Pursuant to the NVRA, state public assistance agencies are designated as "voter registration agencies" and are required to provide certain specified voter registration services. 42 U.S.C. § 1973gg-5. Georgia public assistance offices must distribute a voter registration application, and a voter information form that includes the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" along with other information prescribed by the NVRA regarding the voter registration process, with public assistance applications, recertifications, renewals, and change of address forms. 42 U.S.C. § 1973gg-5(6)(B). Each office also must assist applicants in completing the voter registration form, accept completed voter registration forms, and forward the completed forms to the appropriate election



official. 42 U.S.C. § 1973gg-5(a)(4)(A).

Substantial evidence demonstrates that Georgia is systematically failing to provide the voter registration services at its public assistance offices that are required by the NVRA. The State's own report to the U.S. Election Assistance Commission reveals that Georgia public assistance offices received only 21,762 voter registration applications in 2007-2008. This represents a 79 percent decline since 1995-1996, when Georgia reported 103,942 registrations from public assistance offices. Voter registration at state public assistance offices has steadily declined over the past decade, except for a brief increase in 2003-2004, despite a sharp increase in the number of clients seeking public assistance benefits.

Our investigation of Georgia's NVRA compliance included visits to eleven DHS offices throughout Georgia. We found that voter registration was not being offered at eight of those eleven offices, and that voter registration services were materially inadequate under the NVRA at the other three offices. As part of our investigation, fifty clients were interviewed after they completed an NVRA-covered transaction, among whom, forty-four (88 percent) reported that they had not been offered voter registration. Of the six clients at the three offices who reported that they were offered voter registration, only one reported having seen a voter information form. These interviews confirm that the low levels of registration at public assistance offices reported to the EAC reflect a failure of DHS offices to offer voter registration.

Moreover, compounding the problem, state law and internal DHS policies do not comply with the NVRA as well. For example, Georgia state law limits offering voter registration applications to in-person applications for services, renewals, recertifications, and changes of address. See, Ga. Code Ann. § 21-2-222(f) (2010). Under the NVRA, voter registration applications must be distributed with applications for services, renewals, recertifications, and changes of address regardless of whether the transaction occurs in-person, via the internet, or on the telephone.

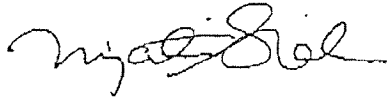
Other violations include, but are not limited to, a Georgia statewide policy limiting the circumstances under which DHS offices offer voter registration. Specifically, DHS' policy is that voter registration shall not be offered to a client during an NVRA-covered transaction if the client, during the course of a previous transaction, informed DHS in writing that s/he did not wish to register to vote at that time. This policy violates the language and structure of Section 7, including the requirement that designated state agencies "shall" conduct voter registration "with each application for . . . service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance." 42 U.S.C. § 1973gg-5(a)(6)(A). A client who declines to register on a particular occasion may wish to register during a subsequent covered transaction, whether because of a change of address or because she has simply changed her mind. The required registration opportunity must be provided with each covered transaction, and Georgia cannot withhold this opportunity merely because of a past declination that may have occurred months or years ago.

We would be pleased to work cooperatively with you and with the Commissioner of the Department of Human Services to develop a plan for bringing Georgia into compliance with the NVRA, as we have successfully done with other States. However, if Georgia fails to take steps to remedy its violations of Section 7 of the NVRA, we are prepared to initiate litigation. In this regard, please be advised that this letter serves as notice of a violation of the NVRA pursuant to

42 U.S.C. § 1973gg-9(b), thus allowing us to file suit at the conclusion of the statutory 90-day waiting period if the violation has not been fully remedied.

We look forward to hearing from you.

Sincerely,



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cc: Clyde L. Reese III, Esq.
Commissioner Georgia Department of Human Services
2 Peachtree Street, NW
Suite 29-250
Atlanta, Georgia 30303

DEFENDANTS' EXHIBIT A-1



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

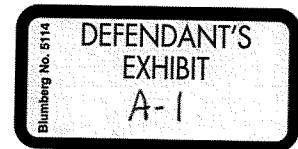
Vincent R. Russo
General Counsel

February 15, 2011

VIA OVERNIGHT DELIVERY

Niyati Shah
Project Vote
737 ½ 8th Street, SE
Washington, DC 20003

RE: National Voter Registration Act Compliance



Dear Ms. Shah,

I am in receipt of your correspondence dated January 25, 2011, regarding an alleged violation of Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5 (“NVRA”), by the Georgia Department of Human Services (“DHS”). At this time, our office has commenced an internal review of DHS’s NVRA compliance as part of our duty to coordinate the State’s NVRA responsibilities. In order to address the claims referenced in your letter within the timeframe prescribed in 42 U.S.C. § 1973gg-9(b), we need additional information and documentation which we are confident you assembled before sending your letter and, therefore, should have available. Please provide same to me by Friday, February 25, 2011, so that we can fully address any problems as quickly as possible.

As an initial matter, you indicated that an investigation of DHS’s NVRA compliance was conducted by your organization, including visits to eleven unidentified DHS offices. As you can imagine, with hundreds of DHS offices throughout the State, our ability to conduct an internal review for NVRA compliance is severely limited without specific information about your investigation. As such, I am requesting that you provide us with all documents and other information related to your investigation of DHS’s NVRA compliance. This request includes, but is not limited to, any documents pertaining to the investigation of those eleven DHS offices and the fifty individuals that you indicated were interviewed.

You also alleged that “substantial evidence” exists demonstrating that the State of Georgia is “systematically failing to provide voter registration services at its public assistance offices.” Although you referenced the difference in the number of voter registration applications in the years 1995-1996 and 2007-2008, no other evidence of a systemic failure was provided. Because any such evidence is vital to our assessment of DHS’s overall NVRA compliance, please advise whether your allegation of a systemic failure is based solely on the difference in

Niyati Shah
Project Vote
Page | 2

applications in those two years; if not, please provide us with any and all information or documentation to support your claim of a systemic failure.

Additionally, you contended that both Georgia law and DHS policies violate the NVRA because voter registration applications “must be distributed with applications for services, renewals, recertifications, and change of address regardless of whether the transaction occurs in-person, via the internet, or on the telephone.” As you are aware, Georgia law provides for the distribution of voter registration applications when an NVRA-covered transaction occurs in person. O.C.G.A. § 21-2-222(f) (2010). Furthermore, pursuant to O.C.G.A. § 21-2-219, voter registration application forms are provided electronically, and such forms may be located online at <http://sos.georgia.gov/elections/VRinfo.htm>. Based on our review of the NVRA and regulations governing same, we were unable to locate any legal requirement that voter registration applications must be distributed during Internet or telephone transactions. If you have authority to that effect, please provide it.

Finally, you indicted that “[o]ther violations include, but are not limited to, a Georgia statewide policy limiting the circumstances under which DHS offices offer voter registration.” Specifically, you alleged that it is DHS policy not to offer voter registration during an NVRA-covered transaction if an applicant previously declined, in writing, to register to vote. We are in the process of reviewing all policies and training materials to determine whether any such materials need to be updated. However, please refer us to the specific written policy, or, if your contention is that there is an unwritten policy, please provide the facts supporting that understanding. Additionally, as you indicated that other violations exist but did not identify any other violations, please provide information detailing any other violations.

I also want to notify you that our office attempted to send this letter via facsimile to (202) 546-3675, which is the number on the facsimile coversheet from Project Vote’s January 25 fax to our office, and received a message that the number is no longer in service. When I attempted to call your office telephone number, which is listed on your January 25 letter, it was also no longer in service. Lastly, when I attempted to call (888) 546-4173, which is the number on Project Vote’s website, it was also no longer in service. If your organization has updated its contact information, please let us know so that we can communicate in a timely manner.

Thank you for your offer to work cooperatively with our office in this matter. I look forward to receiving the above-referenced documents and information no later than February 25, 2011.

Sincerely,



Vincent R. Russo
General Counsel

cc: Clyde L. Reese III
Commissioner, Georgia Department of Human Services

DEFENDANTS' EXHIBIT A-2

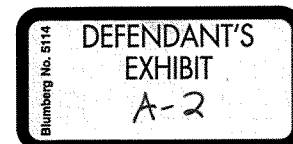


February 25, 2011

VIA FACSIMILE AND REGULAR MAIL

Vincent R. Russo, Esq.
General Counsel
Secretary of State of Georgia
214 State Capitol
Atlanta, GA 30334

Re: National Voter Registration Act Non-Compliance



Dear Mr. Russo:

We write in response to your letter dated February 15, 2011, in which you asked for certain information from us to enable you to investigate violations of the National Voter Registration Act ("NVRA") by offices of the Department of Human Services ("DHS") throughout the State of Georgia. While we appreciate your concern about your ability to conduct an appropriate investigation of NVRA non-compliance by an organization the size of DHS, as the Chief Election Official of Georgia it is precisely the Secretary's responsibility under federal law to do so. Indeed, your admission that the Secretary's "ability to conduct an internal review for NVRA compliance is severely limited" speaks volumes about the widespread violations and non-compliance by DHS offices throughout the State.

Nevertheless, because our interest is in obtaining compliance with Section 7 of the NVRA and increasing the number of low-income citizens registered to vote – and resorting to litigation only when we are unable to obtain voluntary compliance by the State – we hope that the additional information provided below will expedite your investigation and lead you to adopt policies, procedures, and oversight and enforcement mechanisms that bring Georgia into sustainable compliance with the NVRA. As we explained in our January 25, 2011 letter, the evidence that Georgia is systematically failing to comply with the NVRA includes the substantial decrease in the number of voter registration applications being submitted through DHS (as reflected in the reports Georgia has submitted to the Election Assistance Commission), despite the simultaneous

sharp increase in the number of public assistance clients. The information we obtained through our visits in September 2010 to a sample of eleven DHS offices, none of which were fully complying with the NVRA, represent cases in point confirming the widespread failure to offer voter registration at DHS offices. Accordingly, our concerns are not limited to the particular offices included in that survey.

Our investigators visited eleven DHS offices and interviewed a total of 50 clients who had completed an NVRA-covered transaction at those offices. The investigation concluded that, while the number and severity of violations varied across the eleven offices, none of these offices fully complied with the NVRA.

The DHS offices visited are as follows:

Gwinnett County DFCS
446 W. Crogan Street
Lawrenceville, GA 30045

DeKalb County DFCS
178 Sams Street
Decatur, GA 30030

Clayton County DFCS
877 Battlecreek Road
Jonesboro, GA 30236

Cobb County DFCS
325 Fairground Street
Marietta, GA 30060

Cherokee County DFCS
105 Lamar Haley Parkway
Canton, GA 30169

Fulton County DFCS
1249 Donald Lee Hollowell Parkway
Atlanta, GA 30318

Muscogee County DFCS
2100 Comer Avenue
Columbus, GA 31902

Bibb County DFCS
456 Oglethorpe Street
Macon, GA 31201

Richmond County DFCS
520 Fenwick Street

Augusta, GA 30903

Columbia County DFCS
6358 Columbia Road
Appling, FA 30802

Chatham County DFCS
761 Wheaton Street
Savannah, GA 31498

None of the eleven DHS offices included a voter registration form or voter information form with the benefits application packet. In fact, only three of the eleven DHS offices (Richmond, Columbia, and Chatham) were even able to provide a voter registration form when specifically asked to do so by our investigator. We were able to interview DHS clients in nine of these offices (six each in Gwinnett, Clayton, Cobb, Fulton, Muscogee and Chatham; five each in DeKalb and Richmond; four in Bibb; and none in Cherokee and Columbia); 44 reported that they were not offered voter registration (all clients at the Gwinnett, DeKalb, Clayton, Cobb, Fulton, Muscogee, and Bibb offices, and two at Richmond and three at Chatham), and almost none of these 50 clients were provided a voter information form. Similarly, of those DHS clients surveyed who had met with a caseworker during their visit to the seven of the DHS offices (four in Gwinnett, four in DeKalb, one in Clayton, four in Cobb, four in Fulton, four in Muscogee, and two in Bibb), none were offered the opportunity to register to vote by the caseworker. Only in Richmond County were all three DHS clients who had met with a caseworker, and who we interviewed, asked if they wanted to register to vote; while caseworkers in Chatham County offered voter registration to three of the five clients with whom they had met and who we interviewed. All of the clients we interviewed reported that they are U.S. citizens, although one person interviewed (in Cobb County) did not respond to that question.

With respect to your question whether the DHS policy on offering voter registration violates the NVRA, we are enclosing copies of the statewide policies that unlawfully instruct DHS offices to not offer voter registration once a client declines voter registration during a previous transaction. Similarly, with respect to your request for authority mandating the offering of voter registration services in connection with remote transactions (e.g., those occurring by telephone or internet), we note that the NVRA does not limit the offering of voter registration to in-person transactions. Moreover, please see the Department of Justice's NVRA guidelines "The Voter Registration Requirements of Sections 5, 6, 7 and of the National Voter Registration Act (NVRA): Questions and Answers," found at http://www.justice.gov/crt/about/vot/nvra/nvar_fa_q.php, stating that voter registration must be offered for remote transactions.

The contact information for Project Vote is current and accurate. However, Project Vote did have some problems with the telephones last week. For your convenience, Niyati Shah's email is nshah@projectvote.org, the office phone number is 202.546.4173, extension 302, and the mobile number is 202.553.5415. Please also provide us with your email addresses so that we can expedite communications in the future.

We look forward to your completing a prompt and thorough investigation. As noted in our January 25, 2011 letter, we are available meet with you, as well as representatives of DHS, to

discuss the specific policies and procedures needed to bring Georgia into compliance with the NVRA.

Sincerely,



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Dechert
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(212) 698-3822

cc: Clyde L. Reese, III, Esq.

Commissioner Georgia Department of Human Services
2 Peachtree Street, NW
Suite 29-250
Atlanta, Georgia 30303




B. J. Walker, Commissioner

Georgia Department of Human Resources • Division of Family and Children Services • Mark A. Washington, Assistant Commissioner
Two Peachtree Street, Suite 19-490 • Atlanta, Georgia 30303-3142 • 404-651-8409 • 404-657-5105

August 1, 2009

ECONOMIC SUPPORT SERVICES TANF MANUAL TRANSMITTAL NO. 21

TO: County Departments of Family and Children Services
Regional Directors
Regional Managers
State Staff

FROM: 
Mark A. Washington, Assistant Commissioner

RE: Updates and Revisions to the TANF Policy Manual

PURPOSE

The purpose of this transmittal is to revise previously released policies and incorporates changes to Voter Registration policy and reviews.

DISCUSSION

A shaded background identifies changes in the text that affect the meaning of the text. Changes that do not affect the meaning of the text (e.g., grammatical or spelling corrections) have not been identified. Significant changes are noted below; however other minor changes might also have been made to the following sections.

Chapter 1000

Section 1008 – Voter Registration – policy revised based on clarification from DHR Legal that once a person declines in writing to register to vote staff no longer have to make the offer to the recipients.

Chapter 1100

Section 1105 – Application Processing – policy revised to clarify the 10-day waiting period requirements for denying TANF applications during 45 days SOP.

Chapter 1300

Section 1345- Personal Responsibility Plan – policy revised to clarify that a minor parent that is receiving TANF cash assistance as a dependent child is required to complete only sections A and C of the TANF Family Service Plan.

Section 1349- Work Requirements- policy revised to clarify that all the work eligible clients can get exemption from work requirements.

Section 1375- Family Cap- policy revised to clarify that at the birth of an additional child the AU is subject to the Family Cap rules only if it has received cash assistance in Georgia.

Chapter 1700

Section 1710 – Reviews – revised to reduce workload challenges in the counties. The field staff can opt to review a case by conducting a face-to face or a telephone interview. Additionally, providing voter registration services during review process is required only if the TANF recipient has reported an address or name change and the move or name change necessitates a change in their voting status or location

Section 1720 – Changes – revised to include the National Voter Registration's requirement to provide a client with an opportunity to register to vote when an address change is reported and the client has not previously declined to register to vote.

Appendix F

Added Form 185- Affidavit of Paternity, Form 286- TANF FS Review Form and the Instructions to use these forms.

Revised format of Form 173-A, Appointment Letter. Since there is no change in the contents of the form, counties may continue using the old form with the revision date 12/07 until their supply ends.

Included OIS Form 5667 – Request for Investigation, in the manual.

Minor corrections to previously approved policy and typographical errors have also been made where necessary, but are not noted in this transmittal. In addition, minor stylistic changes and rearrangement of sentences and/or paragraphs that do not contain substantive changes or create new policy are also not identified.

IMPLEMENTATION

Changes are effective August 1, 2009.

INSTRUCTIONS FOR MANUAL MAINTENANCE

Remove the Table of Contents and replace it with the revised Table of Contents.

Remove Section 1008 and replace it with the revised Section 1008.

Remove Section 1105 and replace it with the revised Section 1105.

Remove Section 1345 and replace it with the revised Section 1345.

Remove Section 1349 and replace it with the revised Section 1349.

Remove Section 1375 and replace it with the revised Section 1375.

Remove Section 1710 and replace it with the revised Section 1720.

Remove Section 1720 and replace it with the revised Section 1720.

Remove Section 1820 and replace it with the revised Section 1820.

Remove Appendix F and replace it with the revised Appendix F.

Add Form 185- Affidavit of Paternity

Add Instructions to use Form 185.

Add Form 286- TANF Food Stamps Review Form.

Add Instructions to use Form 286.

Add Form 286 SP- TANF Food Stamps Review Form.

Remove Form 173 A – Appointment Letter and replace it with the revised Form 173 A.

Add OIS Form 5667 – Request for Investigation.

Insert this cover letter in Appendix G immediately preceding the cover letter for Manual Transmittal # 20.

ON LINE MANUAL UPDATE

The material contained in this transmittal will be updated in ODIS effective August 1, 2009.

Make the proper notation on the Record of Receipt of Manual Transmittals.



B. J. Walker, Commissioner

Georgia Department of Human Resources • Division of Family and Children Services • Mark A. Washington, Assistant Commissioner
Two Peachtree Street, Suite 19-490 • Atlanta, Georgia 30303-3142 • 404-651-8409 • 404-657-5105

August 1, 2009

MEDICAID MANUAL (OFI Policy Manual, Volume II) Transmittal NO.35

TO: County Departments of Family and Children Services
State DFCS Staff

FROM: Mark A. Washington, Assistant Commissioner
Division of Family and Children Services

RE: Medicaid Policy Updates/Changes

PURPOSE: For all COA's Section 2215 was updated to state that verification of identity is not required for qualified or undocumented aliens, and removed statement that a child born in another country to a U.S. citizen is required to choose their citizenship when they turn 18. Numerous sections were updated to reflect new voter registration procedures. If an applicant/recipient declines voter registration in writing, DFCS is not required to ask about it again. In Appendix C, time frames for when ACS should respond to emails and faxes were added, as well as contact numbers.

For ABD, in Section 2346, added step to say that if a Special Needs Trust is discovered, it must be sent to DCH Legal for approval. In Section 2399, information was added on how to treat an SSA Express account. Minor changes were made in Sections 2132, 2342, Appendix A1, and Appendix B.

For Family Medicaid, several sections were updated to reflect the change in Newborn policy that the child no longer needs to live with the mother. Appendix J was updated with procedures for coding citizenship/identity when the A/R has asserted good cause in an FS case. Procedures were also added for completing Newborn cases when the child no longer lives with the mother. In the TPL section, a statement was added explaining that PeachCare Rebound applications do not require an assignment of rights. Appendix D was updated with documentation requirements for when a Newborn eligible child no longer lives with the mother, and for documenting how assignment of rights for PeachCare rebounds was completed on PeachCare application. In Appendix B, the contact person for Women's Health Medicaid hearings was changed.

For Children in Placement, the Chafee Independence Program section was updated with basic eligibility criteria and procedures for handling closed records. Minor changes were also made in the Case Record Organization section.

In the Forms section, the form 94, 222 and 297M were updated with information about the requirement to cooperate with OCSS. The form 185 was also added.

DISCUSSION:

Specific changes to the Sections are discussed briefly under the Comments Section below.

UPDATES:**MANUAL TRANSMITTAL 35**

Section	Instructions for Manual Maintenance	Page	Comments
2132	Remove and Replace	7,9,14	Updated names and numbers for regional staff.
2174	Remove and Replace	1-5	Removed all references to the child having to live with the mother to be Newborn eligible. Updated policy and procedures to state that child no longer needs to continually live with the mother in order to receive newborn.
2215	Remove and Replace	1,4,9	Page 1, removed NOTE that a child born in another country to a U.S. citizen must choose their citizenship when they turn 18. Page 4- added statement that verification of identity is not required for qualified or undocumented aliens. Page 9, added identity to last sentence under "Exceptions"
2230	Remove and Replace	2	Added PCK Rebound application to applications that do not require assignment of rights.
2245	Remove and Replace	1	Removed statement that a Newborn eligible child must live with the mother.
2342	Remove and Replace	2-5	Changed "spouse" to "community spouse".
2346	Remove and Replace	3	Updated 2 nd paragraph in step 1 to say that if you discover a SNT you must send it to DCH legal for approval.
2399	Remove and Replace	15	Added how to treat an SSA Express account.
2610	Remove and Replace	1	Remove statement that child must continuously live with the mother to get Newborn Medicaid.
2657	Remove and Replace	4	In 2 nd block of chart 2657.1, added "identity"
2706	Remove and Replace	4	In step 2, added statement that agency is required to give voter registration form if a/r reports a new address in person.
2708	Remove and Replace	1	Added statement that agency is required to give voter registration form if a/r reports a new address in person.
2712	Remove and Replace	3	Added reference to Section

			2713 to last block of chart 2712.1.
2713	Remove and Replace	1	Added statement that agency is required to give voter registration form if a/r reports a new address in person.
2752	Remove and Replace	2	Added FAX number for DFCS Call Center.
2760	Remove and Replace	2,5	Page 2- minor clarification incase support section. Page 5- Added information on retention of Chafee Medicaid closed files.
2818	Remove and Replace	1-4	Pages 1-3, added basic eligibility criteria. Page 4, added info on how retention of closed Chafee records.
2980	Remove and Replace	1,3	Page 1, added statement that once a/r declines voter registration in writing, we do not have to ask again, added NOTE that we should offer forms if a/r reports address change in person that would affect voting location. Page 3, added address for ordering Motor Voter forms.
Appendix A1	Remove and Replace	2	Updated substantial gainful activity limits.
Appendix B	Remove and Replace	2,9	Page 2-Updated the DCH contact info for WHM hearings. Page 9- added step that all parties must be notified in the hearing appeal.
Appendix C	Remove and Replace	4,9,10	Added note to give time frames and when ACS should respond to emails and faxes. Contact number and email address added if updates not completed timely. Added a cheat sheet for claim and provider issues.
Appendix D	Remove and Replace	9,11	Page 9-Added documentation requirements for when a Newborn eligible child no longer lives with the mother. Page 11- added instructions to document that for Peachcare Rebounds the assignment of rights was completed on PCK application.
Appendix F	Remove and Replace		Updated form 94,222, 222SP and 297M with statement about requirement to cooperate with OCSS, Add Form 185.
Appendix F TOC	Remove and Replace		Updated with new forms and revision dates.
Appendix G	Add		Add MT35 Cover Letter in front of MT34 Cover Letter
Appendix J	Remove and Replace	12,13,14	Page 12- added instructions on coding citizenship/identity when a/r claims good cause in FS case, removed statement

			that valid values for newborn will need to be updated when CMD is completed. Page 13- added instructions for coding Newborn case when child lives with a female relative/caretaker other than the mother. Page 14- added instructions for coding a Newborn eligible child who is living with a male relative/caretaker
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Pen and Ink Changes:

Update the Record of Receipt of Manual Transmittals for ESS Policy Manual Volume 2, Medicaid.

DEFENDANTS' EXHIBIT A-3



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

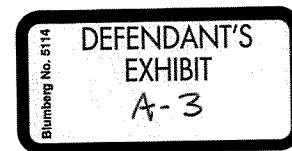
Vincent R. Russo
General Counsel

April 22, 2011

VIA FACSIMILE & REGULAR MAIL

Niyati Shah
Project Vote
737 ½ 8th Street, SE
Washington, DC 20003
Fax: (202) 546-3675

RE: National Voter Registration Act Compliance



Dear Ms. Shah,

I am in receipt of your February 25, 2011 letter, sent in response to my letter requesting more information regarding your January 25, 2011 allegation that the Georgia Department of Human Services ("DHS") was not in compliance with Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5 ("NVRA"). We have reviewed the two documents that you provided in response to our request for all documentation supporting your allegation of noncompliance. Those two documents do not support your allegation that there are "widespread violations" of the NVRA by DHS.

It appears that you have additional documents that you have not provided, despite our request. For example, you indicated that your investigation of DHS's NVRA compliance consisted of having your investigators visit eleven DHS offices and interview 50 DHS clients. We appreciate your identifying the locations of the eleven offices and providing some additional details about the interviews you conducted. However, although you referenced information obtained from the investigative interviews (which you describe as "confirming the widespread failure to offer voter registration at DHS offices"), you did not provide any documents or details that would allow us to verify the existence of any actual NVRA-related violations. Therefore, we cannot recommend any policy amendments or personnel actions to DHS based on these specific allegations. Withholding records which you assert "evidence that Georgia is systematically failing to comply with the NVRA" seems to run counter to your stated interest in achieving compliance with Section 7 of the NVRA.

Nonetheless, based on the two documents you provided, our office has undertaken a review of DHS's voter registration policies in coordination with DHS and the Georgia Attorney General's Office. We have reviewed DHS's TANF, Medicaid, and Food Stamp policies in addition to the August 1, 2009 memoranda of DHR that you disclosed. Based on our review, it

Niyati Shah
Project Vote
Page | 2

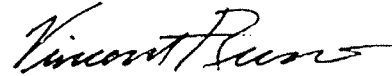
appears that DHS did not have consistent NVRA policies for the TANF, Medicaid and Food Stamp programs. DHS is in the process of updating the NVRA policies to ensure consistency and clarity between the policies. Once complete, any changed policies will be submitted to the Department of Justice (“DOJ”) for preclearance under Section 5 of the Voting Rights Act. See 42 U.S.C.S. § 1973gg-9(d)(1) (2011). In the meantime, DHS has issued the enclosed memorandum to its staff as an interim measure pending preclearance of any changed policies.

Neither the DHS memorandum nor its updated policies, however, will require voter registration applications to be distributed during transactions that do not occur in person. In your January 25, 2011 letter, you conclude – without citing any authority – that both Georgia law and DHS policies violate the NVRA because voter registration applications “must be distributed with applications for services, renewals, recertification, and change of address *regardless of whether the transaction occurs in-person, via the internet, or on the telephone.*” (emphasis added). In response to our request for legal authority supporting your conclusion, you simply cite the “Questions and Answers” webpage on the DOJ’s NVRA website. The DOJ’s opinions, however, do not trump the plain language of the NVRA, which states that “each State shall establish procedures to vote in elections for Federal office *by application in person* at a Federal, State, or nongovernmental office designated under section 7.” See 42 U.S.C.S. § 1973gg-2(a)(3)(B) (2011) (emphasis added).

Furthermore, in light of Congress’ decision to include the specific provision requiring designated agencies to provide voter registration services during in-home visits to persons with disabilities, it is our position that had Congress intended to expand voter registration at designated agencies beyond in-person applications, then Congress would have done so. Additionally, requiring the distribution of voter registration applications during transactions at designated agencies that do not occur in person (such as directing a person to a website to download the application and mail it in) would undermine the purpose of the Election Assistance Commission’s reporting requirements because such applications would all be classified as “mail-in” applications. Accordingly, while we support any agency’s decision to enact additional policies that promote voter registration of all eligible citizens in accordance with state and federal law, it is important that the NVRA voter registration policies remain within the scope of the NVRA.

If you have further documentation you would like to provide, please do not hesitate to send those records to my attention.

Sincerely,



Vincent R. Russo
General Counsel

cc: Commissioner Clyde L. Reese III
Georgia Department of Human Services
Two Peachtree Street, N.W.
Suite 29.250
Atlanta, Georgia 30303

Niyati Shah
Project Vote
Page | 3

Robert Kengle
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Lawyers' Committee for Civil Rights
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(via First Class Mail)

Brenda Wright
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Neil Steiner
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1095 Avenue of the Americas
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DHS

Clyde L. Reese, III, Esq., Commissioner

Georgia Department of Human Services • Division of Family and Children Services • Rachele Carnesale, Division Director
Two Peachtree Street, Suite 19-490 • Atlanta, Georgia 30303-3142 • Phone: 404-651-8409 • Fax: 404-657-5105

April 21, 2011

MEMORANDUM

TO: Regional Directors; Regional Managers; OFI Program Directors; and OFI Staff
FROM: Rachele Carnesale, Division Director 
SUBJECT: Voter Registration Requirements

Purpose

At the request of the Georgia Secretary of State, the Department of Human Services recently reviewed its policies and practices with regard to the National Voter Registration Act of 1993. Based on that review, it appears that the voter registration policy for the TANF program should be updated. When the TANF policy is updated, the voter registration policies for the Food Stamps and Medicaid programs may also be revised to ensure consistency. The purpose of this memorandum is to clarify DHS' obligations under the NVRA and to provide county DFCS offices with interim policy/guidance until the applicable program policies can be updated in the On-line Directives Information System (ODIS).

Background

Congress enacted the National Voter Registration Act of 1993 (NVRA), or "Motor Voter Act", to enhance voter registration opportunities for every American. Section 7 of the NVRA requires States to offer voter registration in all offices that provide public assistance and all offices that administer State-funded programs primarily engaged in providing services to persons with disabilities.

Policy Clarification

All OFI programs (Food Stamps, TANF, Medicaid, and Childcare) must offer voter registration services to DFCS applicants and recipients (A/R) in person when the A/R is:

1. Applying for services;
2. Recertifying for or renewing services; or
3. Reporting a change of address.

When voter registration services are offered to an A/R during one of the above referenced activities, the A/R must be given a voter registration application and declaration statement (DS-2007), which documents either the acceptance or declination of the voter registration service by the A/R. Each case manager shall submit the completed DS-2007 forms to his/her supervisor at the close of each business day. Each supervisor shall review the activity lists of their staff to see if there is a declaration statement for each A/R seen that day in person who applied for or was recertified for public assistance, or who reported an address change. Upon review of the DS-2007 forms, the supervisors shall submit the forms to the staff person that is responsible for completing the Daily Recap and Reporting Form (V.1 2010). A duplicate copy of the reporting form (V.1 2010) must be attached to the Declaration statements that were completed that day, and the packet shall be filed in a central location by month and year, and retained for 24 months.

All other procedures in the voter registration policies for the TANF, Food Stamps and Medicaid programs, including the mailing of completed voter registration applications, shall remain in place until further noted. If you have any questions, please contact your Regional Field Program Specialist(s) or one of the Program Helpdesks on the OFI website.

DEFENDANTS' EXHIBIT A-4



RECEIVED
SECRETARY OF STATE

2011 MAY -6 PM 4:21

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May 4, 2011

VIA FACSIMILE AND REGULAR MAIL

Vincent R. Russo, Esq.
General Counsel
Secretary of State of Georgia
214 State Capitol
Atlanta, GA 30334

Re: National Voter Registration Act Non-Compliance

Dear Mr. Russo:

As you know, we -- along with the Lawyers' Committee for Civil Rights Under Law, Project Vote, Dēmos, and the American Civil Liberties Union -- represent the Georgia State Conference of the NAACP in connection with its effort to bring the State of Georgia into compliance with the voter registration requirements of Section 7 of the National Voter Registration Act of 1993 ("NVRA"). We write in response to your letter dated April 22, 2011, in the continued hope that Georgia will voluntarily commit to complying with Section 7. To do so, Georgia must implement policies, practices, and procedures for sustained distribution of voter registration applications, and for training, oversight, and monitoring necessary to overcome past shortcomings and to ensure that all eligible public assistance clients in Georgia are provided the opportunity to register to vote mandated by the NVRA. We are prepared to meet with you to discuss specific recommendations to bring Georgia into compliance with Section 7 without resorting to litigation.

We appreciate your recognition that Georgia's Department of Human Services ("DHS") "did not have consistent NVRA policies for the TANF, Medicaid and Food Stamp programs," and that the State therefore is revisiting the policies that, as we discussed in our prior correspondence, violate the NVRA. We also welcome your acknowledgement that Georgia may not implement any changes in the manner in which DHS distributes voter registration applications without first obtaining preclearance under Section 5 of the Voting Rights Act.

Unfortunately, your letter fails to identify what remedial measures the State has taken or intends to take to provide voter registration opportunities to the many individuals whose rights have undoubtedly been violated by DHS's inconsistent NVRA policies for the TANF, Medicaid, and

Blumberg No. 8114
**DEFENDANT'S
EXHIBIT**
A-4



Vincent R. Russo, Esq.
May 4, 2011
Page 2

Food Stamp programs. We ask that you specifically apprise us of any corrective action that has been taken since our January 25, 2011 letter. Other aspects of your response also require clarification. For instance, your response was ambiguous with respect to the current status of the DHS TANF and Medicaid policies that we forwarded to you in our February 25, 2011 letter. We ask that you clarify whether any or all of these policies are presently in effect or whether any of them has been wholly or partly withdrawn or otherwise suspended. Additionally, please advise whether either DHS or the Secretary of State has issued any other new or amended policies regarding implementation of the NVRA at public assistance offices since our January 25, 2011 letter, other than the policy document attached to your letter of April 22, 2011.

Beyond this policy issue, your response does not rebut the clear evidence from Georgia's own voter registration reports that there has been a widespread failure to comply with Section 7 of the NVRA's voter registration requirements for quite some time. There were only 4,430 registrations through DHS offices in 2010, and an average of just 6,420 registrations per year from 2004 through 2010. By contrast, recent revisions to public assistance procedures in Ohio and Missouri have shown that with proper and full implementation of the NVRA, a substantially larger number and percentage of public assistance clients will seek to register to vote in conjunction with their applications for, or maintenance of, public assistance benefits. Since the date of our settlement agreements with those two states, Ohio's Department of Job and Family Services has received a *monthly* average of 15,458 completed voter registration applications, and Missouri's Department of Social Services has received a *monthly* average of 10,308 applications.

Indeed, a county-by-county look at the number of voter registrations shows that many Georgia counties obviously are making little or no effort to provide voter registration opportunities, let alone the effort required to fulfill the NVRA's mandate to provide voter registration services to each person applying for, recertifying for, or changing their address for services. Thirty-nine (39) counties failed to register a single voter through their DHS offices for at least one out of the past seven years. In fact, over the past seven years, an average of ninety-five (95) counties per year registered twenty-five (25) or fewer voters.

As explained in our prior correspondence, the information we obtained from visits to several DHS offices reinforces and confirms the State's widespread noncompliance with the NVRA as shown by the State's reported voter registration statistics. As you requested, we provided in our February 25, 2011 letter specific, office-by-office information obtained from those visits. In response, the State does not contend that this information is incorrect, nor does it provide any counter evidence showing that the State is in compliance with Section 7 of the NVRA. Instead, your letter requests that we provide the underlying raw documents related to the office visits.

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Vincent R. Russo, Esq.
May 4, 2011
Page 3

This request would appear to serve no purpose other than to divert the discussion away from the changes required to DHS's policies, practices, and procedures. Accordingly, we do not believe that it would be productive to provide those documents to you at this time.

Finally, we are disappointed with Georgia's position concerning the distribution of voter registration applications during telephone, internet, and other remote transactions. It unfortunately appears that no further discussion of that issue would be productive. We therefore reserve our right to commence litigation with respect to this issue.

In light of the foregoing, it is disheartening that your letter fails to identify any remedial measures and did not respond to our offer to meet with you in an attempt to bring Georgia into compliance with the NVRA without the need for litigation. Nevertheless, in a final attempt to resolve these issues without litigation, we are willing and prepared to meet with you within the next ten (10) days to discuss changes to DHS's policies, practices, and procedures regarding implementation of the NVRA.

Sincerely,



Neil A. Steiner

cc: Laughlin McDonald, Esq.
Brenda Wright, Esq.
Allegra Chapman, Esq.
Robert Kengle, Esq.
Mark Posner, Esq.
Kim Keenan, Esq.
Anson Asaka, Esq.
Nicole Zeitler, Esq.
Niyati Shah, Esq.
Clyde L. Reese, III, Esq.

DEFENDANTS' EXHIBIT A-5



The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

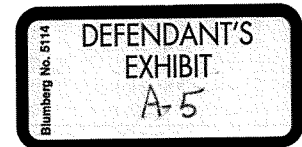
Vincent R. Russo
General Counsel

May 12, 2011

VIA FACSIMILE & REGULAR MAIL

Neil Steiner, Esq.
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Fax: (212) 698-3599

RE: National Voter Registration Act Compliance



Dear Mr. Steiner,

Thank you for your letter dated May 4, 2011, sent in response to my prior correspondence with Ms. Niyati Shah of Project Vote. We share your interest in ensuring that the voter registration procedures and policies at Georgia's Department of Human Services ("DHS") are in compliance with Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5 ("NVRA"). To correct your apparent misunderstanding of this office's efforts to coordinate the State's responsibilities under the NVRA, we want to clarify several matters raised in your May 4, 2011 letter.

In regard to your request for the "current status of the DHS TANF and Medicaid policies" that were enclosed in your February 25, 2011 letter, please be advised that the records you provided were internal manual transmittals, not policies, from the Georgia Department of Human Resources dated August 1, 2009. As you will recall, this past January, the Secretary of State's Office in coordination with DHS and the Georgia Attorney General's Office commenced a full review of the voter registration policies for the Medicaid, TANF and Food Stamp programs administered by DHS. Following review of those policies, it appeared that the TANF policy needed to be updated. Therefore, DHS issued a memorandum (a copy of which was previously provided to you) on April 21, 2011, as an interim measure while the voter registration policy for the TANF program is being updated. The April 21 memorandum also notified DHS staff that the voter registration policies for the Food Stamp and Medicaid programs may be revised to ensure consistency between the policies and reminded all staff of their obligations under the NVRA. We hope this information clarifies any perceived ambiguity in our prior response.

You also requested that we apprise you of any "corrective action" taken since January 25, 2011. As you are aware, we previously asked you to provide all information and documentation

Neil Steiner, Esq.
Dechert LLP
Page | 2

related to your investigation of 50 DHS clients from less than ten percent of the state's counties. You failed to provide information, including first or last name, for any DHS client or employee interviewed during your investigation or any DHS employee who provided services to those clients. Naturally, any organization's ability to assess and determine appropriate corrective action requires disclosure of such pertinent information. Accordingly, I am again asking that you provide the information and documentation previously requested in the February and April letters you received from our office.

Additionally, you stated your belief that recent revisions to public assistance procedures in Ohio and Missouri have resulted in proper and full implementation of the NVRA because there has been an increase in the monthly average of completed voter registration applications. It is our understanding, however, that the figures cited in your May 4, 2011 letter include incomplete applications, duplicates, triplicates, declinations, and others denied for non-qualifying reasons. We are interested in knowing what percentage of the applications you cited result in actual registration, as that is the relevant inquiry. As an aside, Georgians are registering at increasing rates, as evidenced by the 19.9 percent increase in registered voters from 2004 through 2010. By contrast, the total number of voters registered in Missouri from 2004 through 2010 decreased 1.3 percent despite your settlement with Missouri in 2009. See Missouri Secretary of State, <http://www.sos.mo.gov/elections/registeredvoters.asp> (last visited May 10, 2011).

Lastly, we appreciate your offer to "discuss specific recommendations to bring Georgia into compliance with Section 7 without resorting to litigation." We naturally share your desire to avoid litigation and any associated costs. Kindly provide me with the specific recommendations referenced in your May 4, 2011 letter at your earliest convenience, and after we have reviewed the same, we will be happy to schedule a meeting with you.

Sincerely,


Vincent R. Russo
General Counsel

cc: Commissioner Clyde L. Reese III
Georgia Department of Human Services
Two Peachtree Street, N.W.
Suite 29.250
Atlanta, Georgia 30303

Robert Kengle
Mark Posner
Lawyers' Committee for Civil Rights
1401 New York Ave., NW, Suite 400
Washington, DC 20005

Brenda Wright
Allegra Chapman
Demos
220 Fifth Ave., 5th Floor
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Page | 3

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Anson Asaka
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Niyati Shah
Nicole Kovite
Project Vote
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Washington, DC 20003

DEFENDANTS' EXHIBIT A-6

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LLP

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June 3, 2011

VIA FACSIMILE

Vincent R. Russo, Esq.
General Counsel
Secretary of State of Georgia
214 State Capitol
Atlanta, GA 30334
Tel: 404.656.2881
Fax: 404.656.0513

Re: National Voter Registration Act Non-Compliance

Dear Mr. Russo:

We are in receipt of your May 12, 2011 letter, which was sent in response to our May 4, 2011 letter. It is disappointing that you have declined our offer to meet and discuss how to bring Georgia into compliance with Section 7 of the National Voter Registration Act of 1993 ("NVRA") without first receiving "specific recommendations" and imposing other unnecessary preconditions. Such preconditions are counterproductive, and only serve to slow a resolution of this matter.

With respect to the "specific recommendations" you requested, you no doubt have copies of the publicly available settlement agreements entered into by Indiana, New Mexico, Ohio and Missouri and referenced in our prior correspondence; if not, we can provide them to you. These agreements generally set forth the types of policies, practices, and procedures essential for the sustained distribution of voter registration applications and the training, oversight, and monitoring necessary to ensure compliance with Section 7 of the NVRA. Naturally, while those settlement agreements may provide a general framework, any resolution with Georgia would need to be customized to Georgia's specific shortcomings and NVRA violations, its government organization and public assistance system, its population and demographics and other relevant unique facts or circumstances.

Because it is clear that this matter cannot be resolved promptly through direct discussions, the Georgia State Conference of the NAACP intends to move forward with litigation imminently, and has been joined in this effort by the Coalition for the Peoples' Agenda. After you have had an opportunity to review our Complaint and discuss it with your client, it is our hope that the Secretary will change his mind and attitude towards an amicable resolution. Our clients' goal is

US Austin Boston Charlotte Hartford Los Angeles New York Orange County Philadelphia Princeton San Francisco
Silicon Valley Washington DC EUROPE Brussels Dublin London Luxembourg Moscow Munich Paris ASIA Beijing Hong Kong

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EXHIBIT
A-6

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LLP

Vincent R. Russo, Esq.
June 3, 2011
Page 2

not litigation; it is improving voter participation through increased voter registration, which requires George to comply fully with Section 7 of the NVRA.

Naturally, even as litigation progresses, we would be happy to meet with you at your convenience to discuss the changes that must be implemented to bring Georgia into compliance and to ensure ongoing compliance with Section 7.

Sincerely,

Neil A Steiner
Neil A. Steiner

DEFENDANTS' EXHIBIT B



B. J. Walker, Commissioner

Georgia Department of Human Resources • Division of Family and Children Services • Mark A. Washington, Assistant Commissioner
Two Peachtree Street, Suite 19-490 • Atlanta, Georgia 30303-3142 • 404-651-8409 • 404-657-5105

August 1, 2009

MEDICAID MANUAL (OFI Policy Manual, Volume II) Transmittal NO.35

TO: County Departments of Family and Children Services
State DFCS Staff

FROM: Mark A. Washington, Assistant Commissioner
Division of Family and Children Services

RE: Medicaid Policy Updates/Changes

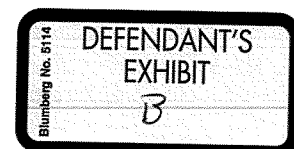
PURPOSE: For all COA's Section 2215 was updated to state that verification of identity is not required for qualified or undocumented aliens, and removed statement that a child born in another country to a U.S. citizen is required to choose their citizenship when they turn 18. Numerous sections were updated to reflect new voter registration procedures. If an applicant/recipient declines voter registration in writing, DFCS is not required to ask about it again. In Appendix C, time frames for when ACS should respond to emails and faxes were added, as well as contact numbers.

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For Family Medicaid, several sections were updated to reflect the change in Newborn policy that the child no longer needs to live with the mother. Appendix J was updated with procedures for coding citizenship/identity when the A/R has asserted good cause in an FS case. Procedures were also added for completing Newborn cases when the child no longer lives with the mother. In the TPL section, a statement was added explaining that PeachCare Rebound applications do not require an assignment of rights. Appendix D was updated with documentation requirements for when a Newborn eligible child no longer lives with the mother, and for documenting how assignment of rights for PeachCare rebounds was completed on PeachCare application. In Appendix B, the contact person for Women's Health Medicaid hearings was changed.

For Children in Placement, the Chafee Independence Program section was updated with basic eligibility criteria and procedures for handling closed records. Minor changes were also made in the Case Record Organization section.

In the Forms section, the form 94, 222 and 297M were updated with information about the requirement to cooperate with OCSS. The form 185 was also added.



DISCUSSION:

Specific changes to the Sections are discussed briefly under the Comments Section below.

UPDATES:**MANUAL TRANSMITTAL 35**

Section	Instructions for Manual Maintenance	Page	Comments
2132	Remove and Replace	7,9,14	Updated names and numbers for regional staff.
2174	Remove and Replace	1-5	Removed all references to the child having to live with the mother to be Newborn eligible. Updated policy and procedures to state that child no longer needs to continually live with the mother in order to receive newborn.
2215	Remove and Replace	1,4,9	Page 1, removed NOTE that a child born in another country to a U.S. citizen must choose their citizenship when they turn 18. Page 4- added statement that verification of identity is not required for qualified or undocumented aliens. Page 9, added identity to last sentence under "Exceptions"
2230	Remove and Replace	2	Added PCK Rebound application to applications that do not require assignment of rights.
2245	Remove and Replace	1	Removed statement that a Newborn eligible child must live with the mother.
2342	Remove and Replace	2-5	Changed "spouse" to "community spouse".
2346	Remove and Replace	3	Updated 2 nd paragraph in step 1 to say that if you discover a SNT you must send it to DCH legal for approval.
2399	Remove and Replace	15	Added how to treat an SSA Express account.
2610	Remove and Replace	1	Remove statement that child must continuously live with the mother to get Newborn Medicaid.
2657	Remove and Replace	4	In 2 nd block of chart 2657.1, added "identity"
2706	Remove and Replace	4	In step 2, added statement that agency is required to give voter registration form if a/r reports a new address in person.
2708	Remove and Replace	1	Added statement that agency is required to give voter registration form if a/r reports a new address in person.
2712	Remove and Replace	3	Added reference to Section

			2713 to last block of chart 2712.1.
2713	Remove and Replace	1	Added statement that agency is required to give voter registration form if a/r reports a new address in person.
2752	Remove and Replace	2	Added FAX number for DFCS Call Center.
2760	Remove and Replace	2,5	Page 2- minor clarification incase support section. Page 5- Added information on retention of Chafee Medicaid closed files.
2818	Remove and Replace	1-4	Pages 1-3, added basic eligibility criteria. Page 4, added info on how retention of closed Chafee records.
2980	Remove and Replace	1,3	Page 1, added statement that once a/r declines voter registration in writing, we do not have to ask again, added NOTE that we should offer forms if a/r reports address change in person that would affect voting location. Page 3, added address for ordering Motor Voter forms.
Appendix A1	Remove and Replace	2	Updated substantial gainful activity limits.
Appendix B	Remove and Replace	2,9	Page 2-Updated the DCH contact info for WHM hearings. Page 9- added step that all parties must be notified in the hearing appeal.
Appendix C	Remove and Replace	4,9,10	Added note to give time frames and when ACS should respond to emails and faxes. Contact number and email address added if updates not completed timely. Added a cheat sheet for claim and provider issues.
Appendix D	Remove and Replace	9,11	Page 9-Added documentation requirements for when a Newborn eligible child no longer lives with the mother. Page 11- added instructions to document that for Peachcare Rebounds the assignment of rights was completed on PCK application.
Appendix F	Remove and Replace		Updated form 94,222, 222SP and 297M with statement about requirement to cooperate with OCSS, Add Form 185.
Appendix F TOC	Remove and Replace		Updated with new forms and revision dates.
Appendix G	Add		Add MT35 Cover Letter in front of MT34 Cover Letter
Appendix J	Remove and Replace	12,13,14	Page 12- added instructions on coding citizenship/identity when a/r claims good cause in FS case, removed statement

			that valid values for newborn will need to be updated when CMD is completed. Page 13- added instructions for coding Newborn case when child lives with a female relative/caretaker other than the mother. Page 14- added instructions for coding a Newborn eligible child who is living with a male relative/caretaker
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Pen and Ink Changes:

Update the Record of Receipt of Manual Transmittals for ESS Policy Manual Volume 2, Medicaid.

DEFENDANTS' EXHIBIT C




B. J. Walker, Commissioner

Georgia Department of Human Resources • Division of Family and Children Services • Mark A. Washington, Assistant Commissioner
Two Peachtree Street, Suite 19-490 • Atlanta, Georgia 30303-3142 • 404-651-8409 • 404-657-5105

August 1, 2009

ECONOMIC SUPPORT SERVICES TANF MANUAL TRANSMITTAL NO. 21

TO: County Departments of Family and Children Services
Regional Directors
Regional Managers
State Staff

FROM: 
Mark A. Washington, Assistant Commissioner

RE: Updates and Revisions to the TANF Policy Manual

PURPOSE

The purpose of this transmittal is to revise previously released policies and incorporates changes to Voter Registration policy and reviews.

DISCUSSION

A shaded background identifies changes in the text that affect the meaning of the text. Changes that do not affect the meaning of the text (e.g., grammatical or spelling corrections) have not been identified. Significant changes are noted below; however other minor changes might also have been made to the following sections.

Chapter 1000

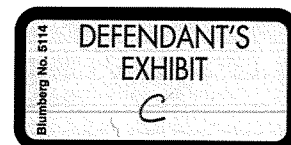
Section 1008 – Voter Registration – policy revised based on clarification from DHR Legal that once a person declines in writing to register to vote staff no longer have to make the offer to the recipients.

Chapter 1100

Section 1105 – Application Processing – policy revised to clarify the 10-day waiting period requirements for denying TANF applications during 45 days SOP.

Chapter 1300

Section 1345- Personal Responsibility Plan – policy revised to clarify that a minor parent that is receiving TANF cash assistance as a dependent child is required to complete only sections A and C of the TANF Family Service Plan.



Section 1349- Work Requirements- policy revised to clarify that all the work eligible clients can get exemption from work requirements.

Section 1375- Family Cap- policy revised to clarify that at the birth of an additional child the AU is subject to the Family Cap rules only if it has received cash assistance in Georgia.

Chapter 1700

Section 1710 – Reviews – revised to reduce workload challenges in the counties. The field staff can opt to review a case by conducting a face-to face or a telephone interview. Additionally, providing voter registration services during review process is required only if the TANF recipient has reported an address or name change and the move or name change necessitates a change in their voting status or location

Section 1720 – Changes – revised to include the National Voter Registration's requirement to provide a client with an opportunity to register to vote when an address change is reported and the client has not previously declined to register to vote.

Appendix F

Added Form 185- Affidavit of Paternity, Form286- TANF FS Review Form and the Instructions to use these forms.

Revised format of Form 173-A, Appointment Letter. Since there is no change in the contents of the form, counties may continue using the old form with the revision date 12/07 until their supply ends.

Included OIS Form 5667 – Request for Investigation, in the manual.

Minor corrections to previously approved policy and typographical errors have also been made where necessary, but are not noted in this transmittal. In addition, minor stylistic changes and rearrangement of sentences and/or paragraphs that do not contain substantive changes or create new policy are also not identified.

IMPLEMENTATION

Changes are effective August 1, 2009.

INSTRUCTIONS FOR MANUAL MAINTENANCE

Remove the Table of Contents and replace it with the revised Table of Contents.

Remove Section 1008 and replace it with the revised Section 1008.

Remove Section 1105 and replace it with the revised Section 1105.

Remove Section 1345 and replace it with the revised Section 1345.

Remove Section 1349 and replace it with the revised Section 1349.

Remove Section 1375 and replace it with the revised Section 1375.

Remove Section 1710 and replace it with the revised Section 1720.

Remove Section 1720 and replace it with the revised Section 1720.

Remove Section 1820 and replace it with the revised Section 1820.

Remove Appendix F and replace it with the revised Appendix F.

Add Form 185- Affidavit of Paternity

Add Instructions to use Form 185.

Add Form 286- TANF Food Stamps Review Form.

Add Instructions to use Form 286.

Add Form 286 SP- TANF Food Stamps Review Form.

Remove Form 173 A – Appointment Letter and replace it with the revised Form 173 A.

Add OIS Form 5667 – Request for Investigation.

Insert this cover letter in Appendix G immediately preceding the cover letter for Manual Transmittal # 20.

ON LINE MANUAL UPDATE

The material contained in this transmittal will be updated in ODIS effective August 1, 2009.

Make the proper notation on the Record of Receipt of Manual Transmittals.

DEFENDANTS' EXHIBIT D



B. J. Walker, Commissioner

Georgia Department of Human Resources • Division of Family and Children Services • Mark A. Washington, Assistant Commissioner
Two Peachtree Street, Suite 19-490 • Atlanta, Georgia 30303-3142 • 404-651-8409 • 404-657-5105

November 1, 2009

MEDICAID MANUAL (OFI Policy Manual, Volume II) Transmittal NO.36

TO: County Departments of Family and Children Services
State DFCS Staff

FROM: Mark A. Washington, Assistant Commissioner
Division of Family and Children Services

RE: Medicaid Policy Updates/Changes

PURPOSE: For all COA's, Section 2706 was updated to clarify that if a review is completed without a review form, a copy of the rights and responsibilities and DMA 285 must be sent/given to the A/R. The DMA285 must be signed and returned. Section 2215 was updated with the newest Web-1 link and the 2008 and 2009 income amounts to use when calculating 40 qualifying quarters. The voter registration section was updated to state that voter registration services must be offered to all adult applicants/recipients that come into the office.

For ABD, Section 2060 now states that Data Broker meets the property search requirement. In 2555, the address and contact information for sending an IME request was updated. Minor changes were made in sections 2133, 2205, 2312, 2342, and 2407. A new section on the GAMMP program was added to the Referrals section.

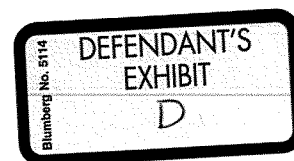
For Family Medicaid, Section 2065 was reformatted to follow the layout of Section 2060. Minor changes were made also made in 2620. In Appendix B, the contact person for Women's Health Medicaid hearings was changed.

There are no changes for Children in Placement.

In the Forms section, the latest form 94SP and 138SP were added, as well as a new Absent Parent information form. The 297M and 297M SP were updated, as well as the SNT routing form, PCK Report Back form, WHM Review form and WHM Physician's statement. Minor changes were also made to the 173, 173SP, 218, 218SP, 700 and 700SP.

DISCUSSION:

Specific changes to the Sections are discussed briefly under the Comments Section below.



UPDATES:

MANUAL TRANSMITTAL 36

Section	Instructions for Manual Maintenance	Page	Comments
2060	Remove and Replace	7	In last paragraph, added that data broker meets property search requirements.
2065	Remove and Replace	3-7	Changed the order of the entire section to better align with the order of 2060.
2133	Remove and Replace	7	Added that skilled nursing care is included in GAPP services.
2205	Remove and Replace	3	Moved paragraph about stroke SMEU requests under when to request SMEU verification.
2215	Remove and Replace	10,12	Page 10- Correct web address for SAVE/Web-1. Page 12-add 2008 and 2009 earning amounts for calculating 40 qualifying quarters.
2312	Remove and Replace	2	Removed "which causes an excess in the burial exclusion limit" from the first paragraph.
2342	Remove and Replace	5,7	Added note about what date to use when looking at property transfer and added that Hospital is not included when looking at transfers.
2407	Remove and Replace	8	Changed 2 nd bullet from start with 3 rd bullet to refer to all of step 12.
2555	Remove and Replace	3	Updated address and contact information for sending IME requests.
2620	Remove and Replace	3	Step 5, add exception that children over the age limit for a COA cannot be included to increase BG size.
2706	Remove and Replace	3	Add statement to NOTE that 297A and DMA285 must be sent if no review form is received.
2932	Add		New section on GAMMP
2980	Remove and Replace	1,3,4	Page 1- removed statement that agency is no longer required to offer voter registration services if an A/R declines in writing. Page 3- added website where forms can be downloaded. Page 4- added NOTE to step 2, combined steps 5 and 6 and added website where forms can be downloaded.
Appendix B	Remove and Replace	2,3	Page 2- updated email address on who to contact at DCH for a WHM hearing. Page-3 added SMEU to Agency Holding hearings chart. They are handled by OSAH. Clarified what to do when some requests a continuation of

			benefits from an SSI termination.
Appendix F	Remove and Replace		Added newest 94SP, 138SP, updated 173 and 173SP, 218 and 218SP, 297M, 297M SP, 700, 700 SP, SNT routing form, PCK Report Back form, and WHM review form and Physician's statement. Added new Absent Parent information form.
Appendix F TOC	Remove and Replace		Updated with new forms and revision dates.
Appendix G	Add		Add MT36 Cover Letter in front of MT35 Cover Letter
TOC2900	Remove and Replace		Updated with section 2932
Main TOC	Remove and Replace		Updated with section 2932

Pen and Ink Changes:

Update the Record of Receipt of Manual Transmittals for ESS Policy Manual Volume 2, Medicaid.

DEFENDANTS' EXHIBIT E




DHS

Clyde L. Reese, III, Esq., Commissioner

Georgia Department of Human Services • Division of Family and Children Services • Rachelle Carnesale, Division Director
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April 21, 2011

MEMORANDUM

TO: Regional Directors; Regional Managers; OFI Program Directors; and OFI Staff
FROM: Rachelle Carnesale, Division Director 
SUBJECT: Voter Registration Requirements

Purpose

At the request of the Georgia Secretary of State, the Department of Human Services recently reviewed its policies and practices with regard to the National Voter Registration Act of 1993. Based on that review, it appears that the voter registration policy for the TANF program should be updated. When the TANF policy is updated, the voter registration policies for the Food Stamps and Medicaid programs may also be revised to ensure consistency. The purpose of this memorandum is to clarify DHS' obligations under the NVRA and to provide county DFCS offices with interim policy/guidance until the applicable program policies can be updated in the On-line Directives Information System (ODIS).

Background

Congress enacted the National Voter Registration Act of 1993(NVRA), or "Motor Voter Act", to enhance voter registration opportunities for every American. Section 7 of the NVRA requires States to offer voter registration in all offices that provide public assistance and all offices that administer State-funded programs primarily engaged in providing services to persons with disabilities.

Policy Clarification

All OFI programs (Food Stamps, TANF, Medicaid, and Childcare) must offer voter registration services to DFCS applicants and recipients (A/R) in person when the A/R is:

- 1. Applying for services;
- 2. Recertifying for or renewing services; or
- 3. Reporting a change of address.

When voter registration services are offered to an A/R during one of the above referenced activities, the A/R must be given a voter registration application and declaration statement (DS-2007), which documents either the acceptance or declination of the voter registration service by the A/R. Each case manager shall submit the completed DS-2007 forms to his/her supervisor at the close of each business day. Each supervisor shall review the activity lists of their staff to see if there is a declaration statement for each A/R seen that day in person who applied for or was recertified for public assistance, or who reported an address change. Upon review of the DS-2007 forms, the supervisors shall submit the forms to the staff person that is responsible for completing the Daily Recap and Reporting Form (V.1 2010). A duplicate copy of the reporting form (V.1 2010) must be attached to the Declaration statements that were completed that day, and the packet shall be filed in a central location by month and year, and retained for 24 months.

All other procedures in the voter registration policies for the TANF, Food Stamps and Medicaid programs, including the mailing of completed voter registration applications, shall remain in place until further noted. If you have any questions, please contact your Regional Field Program Specialist(s) or one of the Program Helpdesks on the OFI website.

