December 8, 2005

Ronald Speier
Office of Legal Affairs
Office of Temporary and Disability Assistance
40 North Pearl Street, 16th Floor
Albany, NY 12243

Re: Proposed Change to Title 18 NYCRR

Dear Mr. Speier:

As Director of Legislative Affairs of the New York City Bar Association, I write to comment on the changes to section 350.4(a)(7) of 18 NYCRR that have been proposed by the Office of Temporary and Disability Assistance ("OTDA"). Our Committee on Social Welfare believes the proposed changes, which would require a family in receipt of Family Assistance ("FA") to wait a minimum of 45 days after their FA relief has expired before becoming eligible to receive Safety Net Assistance ("SNA"), to be both unconstitutional and very poor public policy.

The proposed amendment eliminates the requirement that an abbreviated application must be made available to those FA recipients reaching the 60-month time limit and seeking SNA. It also eliminates the requirement that recipients reaching the FA time limit be provided SNA without application if the recipients' failure to submit an application resulted from district error, delay, or inaction. As OTDA's regulatory impact statement makes clear, the intended effect of the elimination of the abbreviated application form and the automatic conversion to SNA is to create a gap in benefit receipt after the FA case closed. Under the proposed amendment, a family whose FA case was closed would be without assistance for at least the 45 days that regulation requires must elapse after an application for assistance is submitted before benefits are provided. OTDA asserts that this 45-day hole in the safety net is necessary because the current regulation allowing for seamless transition to SNA "diluted the self-sufficiency message the State sought to send." In contrast, OTDA predicts that suspending assistance to families who rely on public support to meet their basic human needs for at least 45 days and sending these families into crisis "sends a very clear message that assistance is intended to be temporary." In other words, OTDA claims that the gap in benefits and the harms it creates will communicate that families really should not be relying on government benefits anyway. OTDA ignores the likelihood, however, that creating such

an immediate crisis in the lives of already poor and struggling families will leave individuals *less* able to undertake the steps necessary to find employment while pushing them deeper into poverty.

As a legal matter, our committee believes this proposed change clearly violates Article 17, Section 1, of the New York State Constitution. This Section, in relevant part, provides that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." N.Y. Const., art. XVII § 1. New York's highest Court has repeatedly held that this section requires the state to provide affirmative support to those persons determined to be needy. See e.g., Aliessa v. Novello, 96 N.Y.2d 418, 428 (2001) ("This Court ... has interpreted article XVII, § 1 as prohibiting the Legislature from 'refusing to aid those whom it has classified as needy'")(citation omitted); Tucker v. Toia, 43 N.Y.2d 1, 7 (1977) ("In New York State, the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution."). OTDA's proposed change would be a direct violation of this provision, as it would require the state to eliminate support - for a minimum of 45 days - to families already classified by the local district and, in turn, the state to be needy. In short, the Constitution does not permit a cessation in benefits based on factors unrelated to need. See Aliessa, 96 N.Y.2d at 429; Tucker, 43 N.Y.2d at 9.

Additionally, OTDA's proposal is simply bad policy, as it would result in a dangerous interruption in benefits to people who have already been determined by the state to require public support. Families on FA depend on public funds to meet their most basic needs for such things as housing, food, and medical care. These families cannot afford to do without the funds to pay for these essential goods and services for what would minimally be 45 days, and most likely longer. It is not hard to imagine the many hardships such as homelessness, hunger and illness that will likely affect needy families forced to endure a sudden elimination of FA funds. OTDA implies that such hardships are necessary in order to create a sense of urgency in order to motivate able-bodied individuals to find employment; it borders on absurd, however, to suggest that individuals poor enough to qualify for SNA require such a draconian demonstration of the hardships of poverty. Needy families who face the emergency of lost assistance will be forced to devote their energies to immediate, day-to-day survival rather than to productive efforts such as job training, job readiness, and job search activities that OTDA seems to imagine will fill this time. The harshness and counterproductivity of this measure are heightened by the likelihood that the closure of a family's case will likely lead to disruption in receipt of benefits such as food stamps, Medicaid, child care assistance, or housing assistance.

OTDA also claims that this amendment will allow local districts to "more accurately assess the recipients' needs and engage them in appropriate self-sufficiency activities." How the disruptive and punitive case-closing mandated by the amendment would enhance local districts' ability to conduct such needs assessment, however, is unexplained. In actuality, elimination of the abbreviated application and seamless transition process will increase local districts' administrative burdens and thus leave them with fewer resources to devote to these activities. (Indeed OTDA acknowledges that this

change will increase administrative burdens on local districts when it explains that a purpose of the abbreviated application and seamless transition was to reduce those burdens.)

It appears that the only other purpose served by this proposed change is a small reduction in the state budget. OTDA has stated in its Regulatory Impact Statement that as a result of its own prediction that 10-20% of needy people will likely fail to re-apply for SNA, between $4.7 million and $9.6 million in savings will be effectuated. OTDA itself acknowledges, however, that most of the individuals cut off from assistance will reapply at some point, thus limiting any potential savings from the revision. Setting aside the accuracy of OTDA's estimates, the Association believes strongly that such cost reduction cannot serve as a basis for abrogating the State's legal and moral responsibility to serving its most impoverished residents.

For all of these reasons, the Association urges OTDA to withdraw its proposal to amend section 350.4(a)(7) of 18 NYCRR.

Sincerely,

Jayne Bigelsen
Director of Legislative Affairs
The New York City Bar Association
(212) 382-6655