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**FOOD AND NUTRITION SERVICES CERTIFICATION**

**ELIGIBILITY REQUIREMENTS**

**FNS 270 CONTROLLED SUBSTANCE FELONS**

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**FNS 270 Controlled Substance Felons**

**Change #18-2021**

**September 20 2021**

**270.01 REQUIREMENT FOR CONTROLLED SUBSTANCE FELONS**

- A. The following individuals are considered Controlled Substance Felons and are permanently disqualified from receiving FNS benefits unless they meet the exception listed in FNS 270.02 Exceptions to Permanent Disqualification:
1. An individual who both **committed and was convicted** under federal or State law **on or after August 23 , 1996**, of any offense classified as a felony by the law of the jurisdiction involved with an element of the possession, use, or distribution of a controlled substance; or  
  
**Note:** In New Jersey anyone convicted of a drug related crime and sentenced to serve one year or more in prison is considered a drug felon for FNS purposes.
- B. Things to consider when determining Controlled Substance Felons eligibility:
1. This includes Supplemental Security Income (SSI) and SNAP recipients.
  2. The justice system often combines two or more charges together to form a Habitual Felon charge. Do not consider the Habitual Felon charge itself, you must consider the individual charges that make up the Habitual Felon charge.
  3. Postponed convictions are not considered convictions while in the postponed period.
  4. Deferred prosecutions are not considered convictions until the deferral is removed.
  5. Only the drug related convictions are countable. Charges for probation or parole violations stemming from the drug felony conviction are not counted.
- C. Controlled Substance Felons provisions **do not** apply to the following individuals:
1. Individuals convicted of a controlled substance felony offense committed **on or before** August 22, 1996.
  2. Individuals convicted of a felony offense other than a controlled substance felony offense.

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## FOOD AND NUTRITION SERVICES CERTIFICATION

### ELIGIBILITY REQUIREMENTS

#### FNS 270 CONTROLLED SUBSTANCE FELONS

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3. Individuals with “deferred prosecutions” as these individuals have not been convicted until the deferral is removed.

#### D. Client’s Statement:

1. Applicants are required at application and recertification to sign a statement declaring whether any FNS unit member has been convicted of a drug-related felony committed on or after August 23, 1996. The statement is included in all state approved applications and recertification forms.
2. Impose disqualification based on client's statement of ineligibility or upon verification through Department of Correction OVS or other reliable sources.

#### 270.02 EXCEPTIONS TO PERMANENT DISQUALIFICATION

- A. An individual convicted of a **Class H or I** felony that involved possession, use, or distribution of a controlled substance committed on or after August 23, 1996, **in North Carolina** may reestablish eligibility for FNS benefits if they meet both conditions listed in 1 **and** 2 below:

1. Met the Minimum Disqualification Period; **and**

- a. Individuals that were committed to custody may regain eligibility for FNS benefits six months after release from custody, if all other requirements are met.

**Example:** Joe Doe was convicted of a Class H felon in North Carolina on June 5<sup>th</sup>. Joe was committed to custody and later released on August 3<sup>rd</sup>. The minimum disqualification period for Joe is August 3<sup>rd</sup> to February 2<sup>nd</sup>. Joe may regain eligibility effective February 3<sup>rd</sup>.

- b. Individuals that were never committed to custody may regain eligibility for FNS benefits six months after the date of conviction, provided there has been no additional controlled substance felony convictions within six months of the first conviction and all other requirements are met.

**Example:** Joe Doe was convicted of a Class H felon in North Carolina on June 5<sup>th</sup>. Joe was put on probation and was never committed to custody. The minimum disqualification period for Joe is June 5<sup>th</sup> to December 4<sup>th</sup>. Joe may regain eligibility effective December 5<sup>th</sup>.

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## FOOD AND NUTRITION SERVICES CERTIFICATION

### ELIGIBILITY REQUIREMENTS

#### FNS 270 CONTROLLED SUBSTANCE FELONS

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- c. If an individual is convicted of more than one Class H or Class I controlled substance felony over a period of time, the six-month disqualification rule still applies from the date of the most recent conviction.

**Example:** Joe Doe committed a Class H felon on June 5<sup>th</sup> and another on July 20<sup>th</sup>. Joe was convicted for both charges North Carolina on August 25<sup>th</sup>. Joe was put on probation and was never committed to custody. The minimum disqualification period for Joe is August 25<sup>th</sup> to February 24<sup>th</sup>. Joe may regain eligibility effective February 25<sup>th</sup>.

- d. If a subsequent conviction of a Class H or I controlled substance felony occurs during the six-month disqualification period, the individual is ineligible to receive FNS benefits until six months has elapsed from the most recent conviction.

**Example:** Joe Doe was convicted of a Class H felon in North Carolina on June 5<sup>th</sup>. Joe was put on probation and was never committed to custody. The minimum disqualification period for Joe is June 5<sup>th</sup> to December 4<sup>th</sup>. Joe committed another Class H felon in North Carolina on November 6<sup>th</sup> and was convicted on December 3<sup>rd</sup> and placed on probation. Joe's new minimum disqualification period is December 3<sup>rd</sup> to June 2<sup>nd</sup>. Joe may regain eligibility effective June 3<sup>rd</sup>.

- e. If an individual is convicted of a violation of probation or parole related to a Class H or I controlled substance felony the six-month disqualification period begins with the original date of conviction or release, not from the date of the probation or parole violation.

**Example:** Joe Doe was convicted of a Class H felon in North Carolina on June 5<sup>th</sup>. Joe was put on probation and was never committed to custody. Joe was found in violation of his probation and committed to custody on August 3<sup>rd</sup> and released on September 3<sup>rd</sup>. Because Joe was committed to custody for probation violation and not a drug charge, Joe's minimum disqualification period does not change. The minimum disqualification period is June 5<sup>th</sup> to December 4<sup>th</sup>.

2. After serving the minimum disqualification period per FNS 270.02 A. 1. the individual may regain eligibility if they meet the following requirements:
- a. The individual cannot be determined eligible to receive FNS benefits until notice of compliance is received from the **Area Mental Health**

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## FOOD AND NUTRITION SERVICES CERTIFICATION

### ELIGIBILITY REQUIREMENTS

#### FNS 270 CONTROLLED SUBSTANCE FELONS

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**Authority (AMHA).** Only the AMHA may determine if the controlled substance felon has meet the requirement to participate.

- b. Individuals already participating in drug and alcohol treatment programs must be referred to the AMHA for evaluation.
- c. When notified that the individual has successfully completed, or has continuously participated in, a required substance abuse treatment program **as determined appropriate by the AMHA**. Take the following actions:
  - i. If the AMHA determines **no ongoing treatment is appropriate and the individual has complied**:
    - The disqualification is considered cured and ongoing participation a treatment program is not required.
    - Once considered cured, **do not** disqualify individuals for the same conviction again. The disqualification is cured and the same conviction cannot be considered a condition of eligibility in future eligibility determinations.
  - ii. If the AMHA determines **ongoing treatment is appropriate and funds and programs are available** they may determine that participation in an ongoing treatment program is a condition of compliance:
    - The disqualification is considered cured as long as the individual successfully participates in the ongoing treatment as determined by the AMHA.
    - If the AMHA determines the individual is no longer successfully participating in the treatment program, the individual may be disqualified again for the same conviction.
    - If the AMHA determines the individual has successfully completed the ongoing treatment program and is no longer required to participate, consider the disqualification cured and the same conviction cannot be considered a condition of eligibility in future eligibility determinations.

**NOTE:** There is a co-payment for outpatient behavioral health services for individual who receive Medicaid benefits. On November 1, 2010, Medicaid implemented a new co-payment requirement. A co-payment of \$3.00 will be charged for clinic and outpatient services including

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## FOOD AND NUTRITION SERVICES CERTIFICATION

### ELIGIBILITY REQUIREMENTS

#### FNS 270 CONTROLLED SUBSTANCE FELONS

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visits for outpatient behavioral health services. Providers may bill the patient for the applicable co-payment amount, but may not refuse services for inability to pay co-payment.

#### 270.03 REFERRING INDIVIDUALS TO AREA MENTAL HEALTH

- A. For those individuals convicted in North Carolina determine the classification of the controlled substance felony as follows:
1. Use available information in the Department of Corrections Inquiry.
  2. Contact the individual's parole or probation officer.
  3. Use any resource available to your agency such as contacting the Clerk of Court. (Sometimes the Clerk of Court can provide a criminal record check with the full name of the individual; however, there may be a fee charged for this service.)
- B. At application, reapplication, full recertification, and when a new household member is reported. Address the following questions:
1. Has anyone in your home been convicted since August 22, 1996, of a controlled substance felony offense that was committed on or after August 23, 1996?  
  
If the answer to this question is "no," accept the FNS unit's written statement at application, reapplication, or recertification, unless questionable. Accept the FNS unit's verbal statement if a change in household composition is reported by telephone, and the FNS unit indicates that no FNS unit member has a controlled substance felony.
  2. Was the conviction classified as a Class H or Class I controlled substance felony charge?  
  
**Note:** Individuals who have been convicted of a felony class other than H or I continue to be permanently disqualified from participating in FNS.
  3. Was the conviction in North Carolina?  
  
**Note:** Individuals who have been convicted outside North Carolina continue to be permanently disqualified from participating in FNS.
  4. Has it been at least six months since their release from custody, or if they were never committed to custody, has it been six months since the date of conviction?

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## FOOD AND NUTRITION SERVICES CERTIFICATION

### ELIGIBILITY REQUIREMENTS

#### FNS 270 CONTROLLED SUBSTANCE FELONS

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If the answer to any or all of the above questions is “yes,” verify the individual’s status as a Class H or I controlled substance felon. Verify that the individual has not been convicted of any other controlled substance felony offense during the six-month period of ineligibility. If the FNS unit answers no to all of the questions, determine eligibility based on eligibility criteria discussed in Section 200, Eligibility Requirements.

- C. Obtain a signed DSS-8219 Consent For Release of Confidential Information. The signed release is necessary in order for the substance abuse professional to notify the county of the individual’s progress with his treatment plan.
- D. Refer the individual to the local AMHA for assessment. Mental Health staff determines which substance abuse program is appropriate for the individual or determines treatment is not warranted. Refer the individual even though he may already be in a treatment program required by the court as the determination cannot be made by any other individual or organization.
- E. Verify compliance before approving benefits since assessment and/or participation in a treatment program is an eligibility requirement.
- F. Disqualify the individual from FNS if:
  - 1. Mental Health provides notification that the individual has failed to follow through with the required assessment and/or treatment; **or**
  - 2. The individual refuses to sign the consent form; **or**
  - 3. It has not been six months since release from custody or, if the individual was never committed to custody, six months after the date of conviction if there has been no additional controlled substance felony convictions.
- G. Add the disqualified individual back to the FNS case when the disqualification ends.
  - 1. For applications, add the disqualified individual to the FNS case if it has been six months since his release from custody. If the individual was never committed to custody, add the disqualified individual six months after the date of conviction if there are no additional controlled substance felony convictions and the treatment provision is met.

**EXAMPLE:** The individual was convicted on April 4 and was not committed to custody. The earliest he could be eligible for FNS benefits would be October 4.

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## FOOD AND NUTRITION SERVICES CERTIFICATION

### ELIGIBILITY REQUIREMENTS

#### FNS 270 CONTROLLED SUBSTANCE FELONS

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2. For ongoing cases, add the disqualified individual to the FNS case the month following his sixth month after release from custody. If the individual was never committed to custody, add the disqualified individual in the month following his six months after conviction if there have been no additional controlled substance felony convictions and the treatment provision is met.

**EXAMPLE:** The individual was convicted on April 4 and was not committed to custody. The earliest he could be added to the FNS case would be November 1.

#### 270.03 REACTING TO CHANGES

- A. The FNS unit is not required to report a controlled substance felony conviction. If the FNS unit fails to report the conviction during the certification period, do not establish a claim as this is not considered a reportable change.
- B. If a substance abuse felony is reported by a third-party source, refer to Section 515 of the Food and Nutrition Services Certification Manual and follow the appropriate procedures for changes reported by a third-party source.
- C. When an individual's disqualification period ends, treat as a change in situation. Add the individual to an ongoing case effective the first day of the month following the disqualification period.

#### EXAMPLES:

1. Client applied for FNS benefits. Client was convicted on September 5, 1999, of a Class H controlled substance felony offense committed on June 15, 1999, in N.C. He was never incarcerated, and he has not been convicted of another controlled substance felony offense during the six-month waiting period. The AMHA determined that treatment is not necessary. If he meets all other eligibility criteria, the client may be eligible for FNS benefits effective March 5, 2000.
2. Client was convicted on September 5, 1999, of a Class I controlled substance felony offense committed on June 15, 1999, in N.C. He was incarcerated until December 1, 1999, and he has not been convicted of another controlled substance felony offense during the six-month waiting period. The AMHA determined that treatment is necessary. If he meets all other eligibility criteria and completes the treatment program, he may be eligible for FNS benefits effective June 1, 2000.

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**FOOD AND NUTRITION SERVICES CERTIFICATION**

**ELIGIBILITY REQUIREMENTS**

**FNS 270 CONTROLLED SUBSTANCE FELONS**

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3. Client was convicted on September 5, 1999, of a Class H controlled substance felony offense committed on June 1, 1999, in Virginia. He is permanently disqualified from FNS because he has a drug-related felony outside of N.C.
4. Client was convicted on September 2, 1997, of a controlled substance felony offense committed on July 1, 1996. He is not disqualified from FNS because he committed the felony prior to August 23, 1996.