

Senn, Nancy

From: Strange, John
Sent: Wednesday, November 09, 2016 9:57 AM
To: Senn, Nancy
Cc: Martin, Crystal
Subject: RE: Question on Applicability of FTA Regulation

Nancy,

As you know, the regulations provide(d) for a possible waiver due to undue financial burden under certain conditions. Those conditions are/were:

If compliance with the service criteria of §37.131 of this part creates an undue financial burden, an entity may request a waiver from all or some of the provisions if the entity has complied with the public participation requirements in §37.137 of this part and if the following conditions apply:

- (a) At the time of submission of the initial plan on January 26, 1992—
 - (1) The entity determines that it cannot meet all of the service criteria by January 26, 1997; or
 - (2) The entity determines that it cannot make measured progress toward compliance in any year before full compliance is required. For purposes of this part, measured progress means implementing milestones as scheduled, such as incorporating an additional paratransit service criterion or improving an aspect of a specific service criterion.
- (b) At the time of its annual plan update submission, if the entity believes that circumstances have changed since its last submission, and it is no longer able to comply by January 26, 1997, or make measured progress in any year before 1997, as described in paragraph (a)(2) of this section.

Since these conditions are all tied to the implementation date (1997), and since that date has long passed, it is no longer possible to meet these conditions for waiver. The fact that these waiver provisions are still a part of the entire scheme of federal regulations (Part 35) related to paratransit does not surprise me. It is unlikely that they would go back and remove these provisions given the specificity with which they detailed when they would apply. I think they intended this provision to help ease the initial implementation of the program, not to provide relief many years down the road.

It may be possible to get relief from the requirements if Madison is faced with an undue financial burden at some point in the future, but it will not be through these specific waiver provisions.

If you or the committee has any further questions, please let me know.

John

John Strange
Assistant City Attorney
Madison, Wisconsin

From: Senn, Nancy
Sent: Thursday, November 03, 2016 3:43 PM
To: Strange, John
Cc: Martin, Crystal
Subject: Question on Applicability of FTA Regulation

Metro is working with a new committee to address the impact on transportation of Family Care implementation in Dane County. The committee, Metro Paratransit Medicaid Waiver Funding & Policy Review Ad Hoc Committee, has a question that they would like input on from your office. The attached is language regarding provisions for a financial burden waiver to implementation of ADA paratransit requirements. This language appears in the current requirements (see link to source material in attachment) however, makes reference to full implementation by January 26, 1997. So the question is, are these waiver provisions applicable now?

Let me know if you need additional information.

Thanks,
Nancy

Nancy Senn,
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