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## **Law 8,742, of December, 07<sup>th</sup>, 1973 – Organic Law on Social Assistance**

### ORGANIC LAW ON SOCIAL ASSISTANCE

#### CHAPTER I – Definitions and objectives

Art. 1. The social assistance, which is a citizen's right and duty of the State, is a non contributive Social Security policy, which provides the minimum social standards and is executed through an integrated set of actions from the public initiative and from the society, to guarantee the meeting of basic needs.

Art. 2. The social assistance purposes are:

I - the protection of the family, maternity, childhood, adolescence and old age;

II - the assistance to needy children and adolescents;

III - the promotion of integration into the labor market;

IV - the habilitation and rehabilitation of persons with disabilities and promotion of their integration into the communitarian life;

V - the guarantee of 01 (one) monthly minimum salary to persons with disabilities and elderly who prove to be unable to provide their own support or to have it provided by their family;

Sole Paragraph. The social assistance is carried out in integration with other sectorial policies aiming to tackle poverty, guarantee minimum social standards, provide conditions to meet social contingencies and the universalization of social rights.

Art. 3. Are considered entities and organizations of social assistance those providing, without lucrative purposes, services and advising to the beneficiaries cover by this law, as well as those working on the defense and guarantee of their rights.

#### CHAPTER II – Principles and guidelines

##### SECCION I - PRINCIPLES

Art. 4. The social assistance is governed by the following principles:

I - supremacy of the social needs care over the economic profitability requirements;

II - universalization of social rights, in order to make the recipient of the assistential aid reachable by other public policies;

III - respect for the dignity of citizens, their autonomy and right to benefits and quality services, as well as family and community life, being forbidden any vexatious probation of need;

IV - equal rights in access to treatment without discrimination of any kind;

V - wide dissemination of the benefits, services, programs and assistance projects, as well as of the resources offered by the Government and the criteria for its concession.

##### SECCION II - GUIDELINES

Art. 5. The organization of social assistance is based on the following guidelines:

I - political and administrative decentralization to States, Federal District and Municipalities, and single control of actions in each sphere of government;

II - participation of population through representative organizations, in the formulation of policies and control of actions at all levels;

III – The State responsibility primacy in conducting social assistance policy in every sphere of government.

### CHAPTER III – Organization and Management

Art. 6. The actions in the social assistance field are organized in a decentralized and participative system, which is constituted by entities and organizations of social assistance comprised within this law that articulate means, efforts and resources, and by a set of deliberative bodies integrated by the various sectors engaged in the field.

Sole Paragraph. The coordinating body of the National Policy for Social Assistance is the Ministry of Social Welfare.

Art. 7. The social assistance actions, within the agencies and welfare organizations, will observe the rules issued by the National Council of Social Welfare (CNAS), as mentioned in art. 17 of this law.

Art. 8. The Union, States, Federal District and Municipalities, being observed the principles and guidelines established in this law, shall determine their respective policies on Social Assistance.

Art. 9. The operation of social assistance entities and organizations depends on its prior enrollment with the respective Municipal Council of Social Services or Council of Social Welfare of the Federal District, as appropriate.

§1 The provisions of this law shall define the criteria for enrollment and operation of entities working in more than one municipality in the same State, or more than one State or the Federal District.

§2 The Municipal Council of Social Welfare and the Social Council of the Federal District will be in charge of inspecting the entities referred to in the caput as provided by law or regulation.

§3 Revoked by Law 12,101/09.

§4 The authorities and welfare organizations may, for the defense of their rights on the enrollment and operation, appeal to the National, State, Municipal and Federal District Social Assistance Councils.

Art. 10. The Union, States, Municipalities and the Federal District can enter into covenants with agencies and social welfare organizations, in accordance with plans approved by the respective Councils.

Art. 11. The actions of the three spheres of government in social assistance are articulated, being the coordination and general rules assigned to the federal sphere and the coordination and implementation of programs in its respective fields, to States, Federal District and Municipalities.

Art. 12. It is of the Union's competence:

I – be responsible for the concession and maintenance of the benefits of continuous provision defined in art. 203 of the Federal Constitution;

II - technically and financially support the services, programs and projects to tackle poverty at a national level;

III – provide, jointly with States, Federal District and Municipalities, support to emergency assistential actions.

Art. 13. It is of the States's competence:

I – to allocate financial resources to Municipalities, as a participation in funding the payment of aid birth and burial, through criteria established by the States Councils of Social Assistance;

II - technically and financially support the services, programs and projects to tackle poverty at a regional and local level;

III – to provide, jointly with the Municipalities, support to emergency assistance actions.

IV – to stimulate and technically and financially support the associations and municipal consortia in the provision of social assistance services;

V – to provide social assistential services whose costs or lack of local demand justify a regional network of services, not concentrated within a specific State.

Art. 14. It is of the Federal District competence:

I – to allocate financial resources to fund the payment of aid birth and burial, through criteria established by the Social Assistance Council of the Federal District;

II – to pay for birth and funeral aid;

III – to implement projects to tackle poverty, including partnerships with civil society organizations;

IV – to provide support to emergency assistential actions;

V – to provide the assistential services referred to in art. 23 of this law.

Art. 15. It is of the Municipalities competence:

I – to allocate financial resources to fund the payment of aid birth and burial, through criteria established by the Social Assistance Council of the Municipalities;

II – to pay for birth and funeral aid;

III – to implement projects to tackle poverty, including partnerships with civil society organizations;

IV – to provide support to emergency assistential actions;

V – to provide the assistential services referred to in art. 23 of this law.

Art. 16. The deliberative spheres of the decentralized and participative social assistance system, of a permanent character and joint composition between government and civil society, are:

I – The National Council of Social Assistance;

II - States Councils of Social Assistance;

III - Council of Social Assistance of the Federal District;

IV – Municipal Councils of Social Assistance.

Art. 17. It is hereby established the National Council of Social Assistance (CNAS), the higher body for collective deliberation which is linked to the body of the Federal Public Administration responsible for the coordination of the National Policy for Social Assistance, whose members, appointed by the President of the Republic, have a two (two) year mandate, being allowed a single renewal for equal term.

§1 The National Council of Social Assistance (CNAS) is formed by 18 (eighteen) members and their respective alternates, whose names are appointed by the organ of the Federal Public Administration responsible for the coordination of the National Policy for Social Assistance, according to the following criteria:

I– 09 (nine) government representatives, including 01 (one) States representative and 01 (one) representative of the Municipalities;

II - 09 (nine) civil society representatives, among those representing users or organizations of user of the social assistance services, and workers from the sector, chosen under the Public Ministry fiscalization.

§2 The National Council for Social Assistance (CNAS) is chaired by one of its fellows, elected among its members for a 01(one) year term, allowed one renewal for the same period.

§3 The National Council for Social Assistance (CNAS) shall have an Executive Secretariat, which will have its structure governed by an act of the Executive Branch.

§4 The Councils referred in items II, III e IV, of art. 16 shall be respectively instituted by the States, Federal District and Municipalities, upon a specific law.

Art. 18. It is of the competence of the National Council of Social Assistance:

I- to approve the National Policy for Social Assistance;

II– to rule the actions and regulate the provision of services of public and private nature in the field of social assistance;

III- to monitor and control the certification procedure of entities and social assistance organizations in the Ministry of Social Development and Hunger Alleviation (Text by Law 12,101/09)

IV- to evaluate the annual report containing the list of entities and social assistance organizations certified as charities, and forward it to be acknowledged by the Councils of Social Assistance of the States, Municipalities and the Federal District (Text by Law 12,101/09)

V- to ensure the implementation of the decentralized and participative system of social assistance;

VI– as of the Second National Conference on Social Assistance, in 1997, ordinarily convoke, every 04 (four) years, the National Conference of Social Assistance, which will have the assignment to assess the social assistance situation and suggest guidelines for improving the system. (Text by Law 9,720/91)

VII- ([Vetoed](#))

VIII- to review and approve the budget proposal for Social Assistance to be forwarded by the body of the Federal Public Administration responsible for the coordination of the National Policy for Social Assistance;

IX- to approve criteria for transferring resources to States, Municipalities and Federal District, considering indicators that inform their more equitable regionalization, such as: population, per capita income, infant mortality and income concentration, besides disciplining the procedures for transferring resources to entities and organizations of social assistance, subject to the provisions of the Brazilian budget law.

X- to monitor and evaluate the resources management as well as the social gains and the performance of the programs and projects approved;

XI- to establish guidelines, to assess and approve the annual and multiannual programs of the National Fund of Social Assistance (FNAS);

XI – to appoint the representative of the National Council of Social Assistance (CNAS) in the National Council of Social Security;

XIII- to draft and approve its internal regulations;

XIV- to disclose in the Federal Official Gazette all its decisions, as well as the accounts of the National Fund of Social Assistance (FNAS) and the correspondent opinions issued.

Art. 19. It is of the competence of the body of the Federal Government Administration, responsible for the coordination of the National Policy for Social Assistance:

I – to articulate and coordinate joint actions in the field of social assistance;

II – to propose to the National Council of Social Assistance (CNAS) the National Policy for Social Assistance, its general rules, the priority and eligibility criteria and quality standards regarding the provision of benefits, services, programs and projects;

III – to provide resources for the payment of the benefit of continuous provision defined in this law;

IV - to prepare and forward the social assistance budget proposal jointly with others from the Social Security;

V - to propose criteria for transferring the resources to which this law is referring to;

VI - to transfer the resources destined to social assistance, as provided in this law;

VII – to send for the evaluation of the National Council of Social Assistance (CNAS) quarterly and annual reports of activities and financial resources implementation;

VIII – to provide technical advice to States, Federal District, the Municipalities and to entities and organizations of social assistance;

IX - to formulate a policy for systematic and continuous qualification of human resources in the field of social assistance;

X – to develop studies and research to support the analysis of needs and the formulation of proposals for the area;

XI - to coordinate and update the registration system of entities and social assistance organizations, in articulation with States, Municipalities and Federal District;

XII – to articulate with the bodies responsible for health and welfare policies, as well as with other parties responsible for the sectorial socio-economic policies, aiming to increase the minimum level of care regarding basic needs.

XIII - to issue the necessary normative acts for the management of the National Fund of Social Assistance (FNAS) according to the guidelines established by the National Council of Social Assistance (CNAS);

XIV – to prepare and submit to the National Council of Social Assistance (CNAS) the annual and multi-annual programs for investment of resources from the National Fund of Social Assistance (FNAS).

#### CHAPTER IV - Benefits, Services, Programs and Projects of Social Welfare

##### SECTION I - Benefit of Continuous Provision

Art. 20. The benefit of continuous provision is the guarantee of 01 (one) minimum monthly salary to the person with disability and elderly with 70 (seventy) years or more, proving to have no means to provide it for their own maintenance or to have it provided by their family.



§2 For the purpose of granting this benefit, the person with disability is that incapable of an independent life and to work.

§1 For the purposes of the provisions in the caput family is the group of persons listed in art. 16 of Law 8,213, of July 24th, 1991 provided living under the same roof. (Text by Law 9720/98)

§3 It is considered incapable of providing the maintenance of a person with disability or an elderly a family whose monthly income per capita is less than  $\frac{1}{4}$  (one quarter) of the minimum salary.

§4 The benefit that this article refers to may not be accumulated by the beneficiary with any other benefit from the social security field or from any other regimen, except for those of medical assistance.

§5 The situation of being confined does not prejudice the right of an elderly or a person with disability to the benefit.

§6 The benefit concession will be subject to medical inspection and medical assessment, performed by the medical expertise services of the National Social Security Institute - INSS. (Text by Law 9,720/98)

§7 In case no services exist in the municipality where the beneficiary have his residence, it is assured as provided in regulations its referral to the next county having such services. (Text by Law 9,720/98)

§8 The monthly family income referred to in §3 should be declared by the applicant or his legal representative, being subject to the other procedures on the regulation for the request approval. (Text by Law 9,720/98)

Art. 21. The benefit of continuous provision should be reviewed every two (2) years to assess the continuity of the conditions that originated it.

§1 The payment of the benefit ceases as soon as the conditions referred to in the caput are overcome or in case of death of the beneficiary.

§2 The benefit will be canceled when irregularities in its concession or use are found.

## SECTION II - Eventual Benefits

Art. 22. Eventual benefits are understood as those aimed at paying for birth or death aid to families whose monthly income per capita is less than  $\frac{1}{4}$  (one quarter) of the minimum salary.

§1 The concession and value of benefits referred to in this article shall be regulated by the Councils on Social Assistance of the States, Federal District and Municipalities, through criteria and terms defined by the National Council of Social Assistance (CNAS).

§2 Other eventual benefits may be established to meet needs arising from temporary situations of vulnerability, with priority for children, families, elderly, person with disability, pregnant woman, nursing mother and in cases of public calamity.

§3 The National Council of Social Assistance (CNAS), after hearing the representatives from the States and Municipalities which are part of it, may suggest, to the extent of the existing budget of the three government spheres, the creation of subsidiary benefits in a value up to 25% (twenty five percent) of the minimum salary for each child up to the age of 06 (six), according to the monthly family income established in the caput.

## SECTION III - Services

Art. 23. Assistential services are understood as those continuous activities aimed at improving people's living and which actions, which are focused on basic needs, observe the objectives, principles and guidelines established in this law.

Sole Paragraph. Within the organization of the Social Assistance services it will be created programs for protecting: (Text by Law 11,258/05)

I- children and adolescents at personal and social risk according to the provisions of art. 227 of the Federal Constitution and Law 8,069, of July 13th, 1990; (Included by Law 11,258/05)

II – people living on the streets (Included by Law 11,258/05)

#### SECTION IV - Social Assistance Programs

Art. 24. The social assistance programs include integrated and complementary actions with goals, time and area of coverage defined to qualify, encourage and improve the benefits and assistential services.

§1 The programs referred to in this article shall be defined by the correspondent Councils of Social Assistance, respecting the aims and principles of this law, being given priority to professional and social integration.

§2 The programs for the elderly and the integration of persons with disabilities will be properly articulated with the benefit of continuous provision set out in art. 20 of this law.

#### SECTION V - Project to tackle poverty

Art. 25. The projects to tackle poverty include the institution of economic and social investment in popular groups, seeking to subsidize, financially and technically, initiatives that ensure them resources, productive and management capacity for improving the general conditions of living, rise of the quality of life standards, preservation of the environment and its social organization.

Art. 26. The incentive to projects to tackle poverty will be based on mechanisms of articulation and participation of different government areas and in a system of cooperation between government and nongovernmental bodies and civil society.

#### CHAPTER V - Funding of Social Assistance

Art. 27. The National Fund for Community Action (Funac), instituted by Decree 91,970 of November 22th, 1985, ratified by Legislative Decree 66, of December 18th, 1990, is transformed into the National Fund of Social Assistance (FNAS).

Art. 28. The funding of benefits, services, programs and projects established in this law will be made through resources from the Union, State, Federal District and Municipalities, through other social contributions provided to in art. 195 of the Federal Constitution and those integrating the National Fund of Social Assistance (FNAS).

§1 The body of the Federal Public Administration responsible for the coordination of the National Policy for Social Assistance shall manage the National Fund of Social Assistance (FNAS) under the guidance and control of the National Council of Social Assistance (CNAS).

§2 The Executive Branch, within 180 (one hundred and eighty) days as of the day of publication of this law shall establish the regulations and functioning of the National Fund of Social Assistance (FNAS).

Art. 28-A. It constitutes the revenue of the National Fund for Social Assistance, the results of the real estate disposal pertaining to the former Brazilian Legion of Assistance Foundation (Included by Provisional Measure 2187-13/01)

Art. 29. The resources for social assistance under the Union's responsibility will be automatically transferred to the National Fund of Social Assistance (FNAS), as the revenue is realized.

Sole Paragraph. The resources under the Union's responsibility for funding the benefit of continuous provision, referred to in art. 20, may be transferred by the Ministry of Social Security and Social Assistance directly to the INSS, the agency responsible for its implementation and maintenance. (Included by Law 9,720/98)

Art. 30. It is a condition for the transfer of resources herein mentioned to Municipalities, States and the Federal District, the establishment and operation of:

I – a Council of Social Assistance of joint composition of government and civil society;

II – a Social Assistance Fund, guided and oriented by the respective Councils of Social Assistance;

III – a Social Assistance Plan.

Sole Paragraph. It is also a condition for the transfer of resources from FNAS to States, the Federal District and Municipalities a budgetary proof of own resources aimed at social assistance, allocated in their respective Social Assistance Funds, as from the fiscal year of 1999. (Included by Law 9,720/98)

#### CHAPTER VI – General and Transitory Provisions

Art. 31. The Public Ministry shall assure the effective respect for the rights set forth in this law.

Art. 32. The Executive Branch, within 60 (sixty) days as of the publication of this law and obeying the rules that it institutes, will prepare and forward a bill project providing for the extinction and reorganization of the social assistance bodies of the Ministry of Social Welfare.

§1 The bill project referred to in this article will define ways of transferring benefits, services, programs, projects, human resources, goods and real estate to the municipal level.

§2 The Minister of Social Welfare shall appoint a Commission responsible for drafting the bill project referred to in this article, which will count on the participation of organizations of users, workers from the sector and entities of social assistance.

Art. 33. Within 120 (one hundred and twenty) days as of the enactment of this Law, it is extinguished the National Council of Social Service (CNSS), being in consequence revoked Decrees-Law 525, of July 1st, 1938 and 657, of July 22<sup>nd</sup>, 1943.

§1 The Executive Branch will take all necessary measures to establish the National Council of Social Assistance (CNAS) and transfer the activities that will become of its competence within the term specified in the caput, to ensure that there is no breaking of continuity.

§2 The estate from the body referred to in the caput will be transferred within 60 (sixty) days to the National Council of Social Assistance (CNAS), which will promote, through criteria and deadlines to be set up, the review of the procedures for enrollment and certification of entities of philanthropic purposes and organizations of social assistance, being observed the provisions of art. 3 of this Law.

Art. 34. The Union will continue to perform a supplementary role on social assistance actions that currently executes within the domain of States, Municipalities and Federal District, in order to implement the provisions of this law, for a maximum period of 12 (twelve) months, counted as of the date of publication of this law.

Art. 35. The body of the Federal Public Administration responsible for the coordination of the National Policy for Social Assistance shall operate the benefit of continuous provision referred to in this law and may, for that, rely on the assistance of other federal government agencies in the manner to be established in regulations.

Sole Paragraph. The regulation referred to in the caput shall define ways to prove the right to the benefit, conditions of its suspension, procedures in case of trusteeship and guardianship, enrollment, payment and supervision body, among other aspects.

Art. 36. Entities and social assistance organizations that commit irregularities concerning the application of resources transferred by the governments will have their registration in the National Council of Social Assistance (CNAS) canceled and will be subject to civil and criminal proceedings.

Art. 37. The benefit of continuous provision will be due after the accomplishment, by the applicant, of all legal and regulatory requirements demanded for its concession, including the submission of the necessary documentation, being the payment done within forty-five days as of the accomplishment of all exigencies referred to in this article. (Text by Law 9,720/98)

Sole Paragraph. If the first payment is done after the deadline provided in the caput, for its updating it will be adopted the same criteria used by INSS to update the first payment of the social security benefits in arrears. (Included by Law 9,720/98)

Art. 38. The age referred to in art. 20 of this law shall be reduced to sixty-seven years as of January 1st, 1998. (Text by Law 9,720/98)

Art. 39. The National Council for Social Assistance (CNAS) upon decision of absolute majority of its members, respected the social security budget and the availability of the National Fund of Social Assistance (FNAS) may propose to the Executive Branch the modification of the monthly income limits per capita defined in §3 of art. 20, and caput of art. 22

Art. 40. With the implementation of the benefit provided in arts. 20 and 22 of this law, it is extinguished the lifelong monthly income, the birth-aid and funeral-aid existing within the Social Security, as provided in Law 8,213, of July 24, 1991.

§1 The transfer of beneficiaries from the social security system to the social assistance should be done in a way that the services provided to the population do not experience a breaking of continuity. (Text by Law 9,711/98)

§2 It is ensured to persons older than seventy years old or invalid, the right to request a lifelong monthly income to INSS until December 31st, 1995, since meeting alternatively the requirements of items I, II or III, of §1 of art. 139 of Law 8,213, of July 24th, 1991. (Text by Law 9,711/98)

Art. 41. This law shall enter into force upon its publication.

Art. 42. All dispositions to the contrary are revoked.