

What happens to recipients of cash assistance who can't find jobs or another work activity after 24 months?

It is the opinion of the legal staff at Community Legal Services that only those persons who refuse to work or refuse to engage in other work activities should lose TANF benefits. The mere fact that a person has not been able to find a suitable work activity should not result in the entire family being disqualified.

As March 1999 approaches, it is clear that not all of the recipients who have received 24 months of TANF will have found a job that employs them for 20 hours per week. Many of these recipients are already employed, according to DPW, but they have not found a job that averages 20 hours per week. Others who have not found employment will be exempt, mostly because of documented physical or mental disabilities. However, the question that is on everyone's mind is "what happens to those who are employable but have not been able to find a job?"

The immediate answer is, according to Act 35, that such individuals are expected to engage in some other "work activity," which, for most people, will involve working in an unpaid community service or workfare slot in exchange for their welfare grants. However, there is a likelihood that in both small towns and large cities there will be many who cannot find a slot, either because of a scarcity of organizations willing to provide such opportunities or because the recipient in question does not have the skills necessary to perform the available work activity. Many areas simply don't have the capacity in their nonprofit sector to absorb the tremendous demand for slots that will be created, especially given the additional expense imposed on non-profits in terms of supervision, paperwork and insurance.

Act 35 clearly envisioned this possibility and recognized that there would be some individuals who, through no fault of their own, were unable to participate in a work activity for the required average of 20 hours per week. The key words for this are found in §405.1 (d), which says, "Any applicant or recipient who *wilfully* fails to fulfill the obligations pursuant to subsection (a.2) shall be ineligible for cash assistance in accordance with section 432.3." (Emphasis added.) It is this

requirement of a finding of wilfulness that makes clear the intent of the legislature. The language referred to in this provision is consistent with the notion that only wilful failures are meant to result in ineligibility. (Wilful in this content means that someone has deliberately chosen not to work or has acted in such a way that it is clear that they do not intend to participate.)

Section 432.3 lays out the sanctions that apply to those who do not comply with the Department's employment requirements. Throughout that section it is clear that those who are to be meant to be sanctioned are those who actively "refuse to accept referral and participate in a work related activity." 62 P.S. § 432.3 (a)(iii). Similar language in other subsections talks about failure to comply or refuse to participate. Nowhere is there any language that would suggest that those who are unable to find employment or an appropriate work activity are to be sanctioned. In fact, the last part of the section states that, in addition to, or in lieu of the sanctions described, the cash assistance grant of an employed person who lessens their work effort to less than 20 hours per week may have their grant reduced, but only if the reduction in earnings was voluntary and without good cause. Once again, the General Assembly made it clear that only voluntary and unexcused behavior is meant to be punished.

Similarly, the other subsection, §405.1(a.2), referred to in the pivotal language in §405.1 (d) reinforces the concept that the legislature meant to punish only those who deliberately refused to cooperate, and not those who were unable to find work. Subsection (a.2), says that a recipient who has received assistance for 24 months must work an average of 20 hours per week, but also says that information indicating noncompliance with this requirement "shall be cause for a review of eligibility." Obviously, had the legislature intended to penalize all who did not fulfill the 20 hour requirement, the provision would have disqualified all such recipients, rather than merely suggest a review of eligibility. The reason for the review of eligibility is to explore the reasons for the unemployment and determine whether there has been a wilful failure to participate; only if there has been a wilful failure would there be reason to sanction the offending party.

In short, Act 35, while clearly placing a major emphasis on employment, also embodied the common sense notion that it was those who refused activity that should be punished and not those who, through no fault of their own, could not find the requisite hours of employment. Those individuals can certainly be directed to work activities, but they and their children are not to be denied aid for things over which they have no control.

For more information contact the Welfare-to-Work Group at Community Legal Services, Inc. of Philadelphia. Prepared by Richard P. Weishaupt.

Operations Memorandum - Employment & Training
OPS000904

9/18/00

9/18/0

SUBJECT: Good Cause for Education Post-24-Months

TO: Executive Directors

FROM: Raymond E. Schlechter, Director, Bureau of Operations

Purpose

To inform County Assistance Office staff of a new policy that allows clients participating in an approved education or training program, or who work, and who meet certain eligibility criteria, to be granted temporary good cause from meeting the 20-hour weekly work requirement after 24 months.

Background

The work-first design that guided the creation of the original policies and procedures in the early stages of State welfare reform in March of 1997, has enabled thousands of families to become self-sufficient and has proven to be a very successful guiding principle of reform in Pennsylvania.

Since implementation of the Temporary Assistance for Needy Families (TANF) Program in 1997, the Department of Public Welfare (DPW) has developed and adjusted its policies to further the purpose of reform that was to change public assistance from an entitlement program to one that provides temporary assistance to families moving toward self-sufficiency through work.

Consistent with that approach and in a continuing effort to find ways to better assist clients to reach self-sufficiency, DPW is refining its policy relative to clients engaged in educational activities. Individuals who began their move toward self-sufficiency early in the first two years on TANF by engaging in work, or an approved education or training activity to prepare for work, may be granted temporary good cause from the 20-hour weekly work requirement after 24 months, provided that certain eligibility criteria are met. This new policy is effective retroactive to July 3, 2000.

Discussion

Clients who have engaged in work, high school, GED, post-secondary or an education or training program and who meet the criteria listed below, may be granted good cause for up to six months or one additional complete semester for not meeting the 20-hour weekly work requirement after 24 months.

Prerequisite Criterion:

- The client had to have participated in work, high school, GED, or an education or training program, for which the hours can be documented, for at least two semesters of college study for 9 credit hours each semester OR a minimum of 270 hours of work or training spread over at least nine months, during the first 24 months on cash assistance. For the purpose of this criterion, the 270 hours may be met by any of the following, alone, or in combination: instructional time, course-related activities (excluding study time) and work. Additionally, the 270 hours need not be completed consecutively and can occur at any point during the client's first 24 months of assistance.

Workers should use information readily available on CIS to verify the hours of participation in work, education and/or training. If there is no available information on CIS, workers should assist the clients as much as possible in obtaining verification of the hours of participation.

Compliance Criteria:

- The client is in an education or training program for which the hours can be documented.
- The client's completion of the program will result in the satisfaction of the requirements of a government-sponsored employment and training program, a degree or certificate.
- The client must maintain satisfactory progress and attendance as defined by the institution.
- The client's combined total of instructional time and lab hours, when added together with the hours of work activity, must equal at least 20 hours weekly. It is possible and permissible that all 20 hours are achieved through participation in education or training.
- The client must meet the 20-hour weekly work requirement during breaks in the education or training program of more than 30 days.
- The client's reduction of work hours in order to resume the approved education or training program will not result in sanctions as long as the combined hours of education or training and work meet the 20-hour weekly work requirement.
- The client who stops participating in an education or training program in order to work in paid employment may have the good cause policy reapplied for the remainder of the six-month period upon return to the education or training provided that all other conditions are met.
- The caseworker must enter a Good Cause Code 71 AND a Good Cause Review Date on the CSPREN screen. The Good Cause Review Date must be no more than six months from the system date.

Next Steps

1. Share this Operations Memorandum with all CAO staff.
2. Direct any questions to your Area Manager.
3. Implement this policy retroactive to July 3, 2000.
4. Retain this memorandum until the release of revised Cash Assistance Handbook pages.

Last modified: Tuesday, September 19, 2000

**COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare**

OPERATIONS MEMORANDUM

Employment and Training

SUBJECT: Maximizing Participation Project CAO Procedures
TO: CAO Executive Directors
FROM: Raymond E. Schlechter
Director
Bureau of Operations

PURPOSE

To provide you with the final Maximizing Participation Project (MPP) CAO Procedures.

BACKGROUND

The MPP CAO Procedures were distributed in draft format at the MPP Training Sessions held across the state in May and June 2001. MPP will begin July 2, 2001 and is a program to assist clients in addressing the barriers interfering with their movement to self-sufficiency. It is designed to provide Temporary Assistance for Needy Families (TANF) recipients with the opportunity, tools, and services needed to move toward self-sufficiency through a variety of social and health-related services, education, training and ultimately employment opportunities.

MPP will provide a multi-disciplinary team center approach in providing services to eligible clients. Eligible clients include:

- 5th year TANF clients who have been unable to connect to the workforce or remain connected to the workforce;
- TANF clients who are exempt from the work requirement due to a verified physical or mental disability (Exempt Code 53), regardless of length of time on assistance; and
- TANF clients with multiple barriers or undiagnosed barriers that keep them from obtaining or maintaining employment that will lead to self-sufficiency.

The MPP's primary goal is to provide services and encouragement that will help the client move toward employment and self-sufficiency through:

- Increased hours per week of participation in a work activity
- Increased participation in employment,
- Increased participation in training, and
- Documentation to support SSI application for clients who cannot increase participation in these ways.

DISCUSSION

The attached MPP CAO Procedures have been revised since the DRAFT MPP CAO Procedures were distributed at the statewide training sessions. Some of the revisions include:

- A requirement that the Initial Service Plan be completed within 30 days of the completion of the Screening Tool.
- Time Out may begin only when:
 - the Screening Tool plus Release of Information forms have been completed and signed by the client,
 - the results of the Assessment have been received, and
 - the client agrees to the terms of the subsequent Final Service Plan. (Step #19 on the MPP Procedures Flow Chart)
- MPP Process Flow Chart (Attachment 1) has been revised to include additional steps and a highlighted version that will be used in Philadelphia County.
- TANF Work Activity Summary (Attachment 8) has been consolidated slightly.
- MPP Screening Tool (Attachment 10) has been revised.
- Draft Drug and Alcohol and HIV-Related Release of Information forms have been added. These forms are draft pending final approval.

The forms and the attached procedures are being prepared for distribution to the CAO through AIRS. Please photocopy the attached forms for your use until forms are received from AIRS.

Questions regarding MPP Procedures should be submitted using the Policy Clarification System.

MPP Implementation Task Force

It is expected that questions and inter-agency operational issues surrounding the implementation of MPP will develop. In order to address these quickly, BETP has developed an inter-agency task force containing representatives from OVR, Office of Mental Health and Substance Abuse, Office of Medical Assistance, the Bureau of Operations and local Mental Health and Drug and Alcohol Agencies. Questions submitted through the Policy Clarification System will be addressed and resolved through this task force.

NEXT STEPS

1. Review this Operations Memorandum with appropriate CAO staff.
2. If you have not already done so, please contact the appropriate partner agencies in your local systems area to establish your team meeting structure.
3. Implement MPP in your CAO effective July 2, 2001.
4. As noted on page 6 of the attached procedures, each county is to submit a plan regarding MPP caseload management and provide the MPP worker to client ratio.

Attachment

Number of TANF Adults Disqualified Due to Sanctions-August 2001

County	Total Sanctions*	Pre-24 Month Sanctions Non-Compliance with ETP (a)			Non-compliance Child Support Requirements (e) (24)	Post-24 Month Sanctions Non-Compliance with ETP (a)		
		First Occurrence (b) (21)	Second Occurrence (c) (22)	Third Occurrence (d) (23)		First Occurrence (b) (27)	Second Occurrence (c) (28)	Third Occurrence (d) (29)
State Total	4,295	1,822	399	123	1,345	449	193	4
Adams	7	4	1	1	1	0	0	0
Allegheny	224	69	23	29	77	21	5	0
Armstrong	33	13	4	3	11	1	1	0
Beaver	56	34	7	0	9	3	3	0
Bedford	2	1	0	0	1	0	0	0
Berks	93	47	2	5	36	2	1	0
Blair	74	27	5	2	40	0	0	0
Bradford	22	7	6	1	8	0	0	0
Bucks	36	12	1	0	23	0	0	0
Butler	35	17	4	1	12	0	1	0
Cambria	36	9	2	2	23	0	0	0
Cameron	0	0	0	0	0	0	0	0
Carbon	9	5	1	1	2	0	0	0
Centre	10	7	1	0	2	0	0	0
Chester	17	9	1	0	7	0	0	0
Clarion	6	4	0	0	2	0	0	0
Clearfield	19	7	1	0	10	1	0	0
Clinton	3	2	0	0	1	0	0	0
Columbia	9	1	0	0	8	0	0	0
Crawford	42	14	4	3	20	0	1	0
Cumberland	6	1	1	1	3	0	0	0
Dauphin	81	23	1	2	52	1	1	1
Delaware	46	28	3	1	10	2	2	0
Elk	4	1	0	0	3	0	0	0
Eric	72	22	3	16	30	0	0	1
Fayette	130	78	30	5	17	0	0	0
Forest	2	0	0	0	2	0	0	0
Franklin	20	9	2	3	3	2	1	0
Fulton	1	1	0	0	0	0	0	0
Greene	20	8	1	0	10	1	0	0
Huntingdon	9	5	0	0	4	0	0	0
Indiana	19	12	3	1	3	0	0	0
Jefferson	7	6	0	0	1	0	0	0
Juniata	4	4	0	0	0	0	0	0
Lackawanna	78	39	7	1	30	1	0	0
Lancaster	62	22	2	0	38	0	0	0
Lawrence	42	20	8	3	5	2	4	0
Lebanon	17	11	3	0	3	0	0	0
Lehigh	87	41	12	7	27	0	0	0
Luzerne	99	43	9	2	44	1	0	0
Lycoming	47	8	8	1	28	2	0	0
McKean	21	11	8	0	1	0	0	1
Merzer	46	17	7	6	14	2	0	0
Mich	8	3	1	0	4	0	0	0
Monroe	14	7	1	0	6	0	0	0
Montgomery	50	12	2	0	36	0	0	0
Montour	1	1	0	0	0	0	0	0
Northampton	51	13	6	1	28	1	2	0
Northumberland	8	1	1	1	5	0	0	0
Perry	6	3	0	0	3	0	0	0
Philadelphia	2,192	935	133	6	550	400	167	1
Pike	3	1	0	0	2	0	0	0
Putter	5	3	1	0	1	0	0	0
Schuylkill	15	9	3	0	3	0	0	0
Snyder	10	3	1	1	5	0	0	0
Somerset	29	15	1	1	10	1	1	0
Sullivan	1	0	1	0	0	0	0	0
Susquehanna	7	4	1	1	1	0	0	0
Tioga	11	7	2	1	1	0	0	0
Union	10	5	5	0	0	0	0	0
Venango	22	14	5	0	3	0	0	0
Warren	3	1	1	0	1	0	0	0
Washington	70	30	10	4	23	3	0	0
Wayne	20	11	2	2	4	1	0	0
Westmoreland	98	45	10	7	33	1	2	0
Wyoming	1	0	0	1	0	0	0	0
York	7	0	1	0	5	0	1	0

* Source: ARM-570 report, one day count.

Sanction data represent a one-day count of individuals in sanction status on the day that the report is run. It is possible for the same individual to be counted in consecutive months (e.g. an individual who is sanctioned for their first ETP non-compliance in the beginning of January and does not comply with the ETP requirements until the end of March would be included in the First Occurrence count in January, February, and March).

(a) Non-compliance with Employment and Training Program - A mandatory participant who fails to cooperate with the work or work-related activity on the AMR; participate in RESET; accept a bona fide offer of employment; terminates employment; or fails to apply for work, without good cause. During the first 24 months of receipt of cash assistance, the sanction applies only to the individual. Other budget group members including children continue to receive cash assistance. A sanction imposed after 24 months receipt of cash assistance applies to the entire family and no cash assistance is received.

(b) First Occurrence - Minimum of 30 days or until the failure to comply ceases, whichever is longer.

(c) Second Occurrence - Minimum of 60 days or until the failure to comply ceases, whichever is longer.

Note: Within 15 days following the end of the 90 day period after the first or second sanction is imposed, the county assistance office is required to send a written reminder advising the sanctioned person that he can again become eligible and what he needs to do to comply.

(d) Third Occurrence - Permanent disqualification. As noted above, these data represent a one-day count of individuals in sanction status on the day the report is run. The total cumulative number of families that have received a permanent full family sanction to this point in time is 12. There are 14 adults and 24 children in these families.

(e) Cooperation with Support Requirements - An applicant/recipient who fails to cooperate in the determination of paternity and the establishment/enforcement of a child support obligation. The cooperation requirements can be excused if good cause for non-compliance is established (for example, physical or emotional harm to the child or applicant/recipient can reasonably be anticipated if paternity or support action is taken, the child was conceived as a result of incest or rape, etc.).

Appeal Rights - Each applicant and recipient has the right to ask for a hearing to appeal a decision or failure to act which affects his benefits.

Number of TANF Adults Disqualified Due to Sanctions

	Total Sanctions**	Pre-24 Month Sanctions Non-Compliance with ETP (a)			Non-compliance Child Support Requirements (e) (24)	Post-24 Month Sanctions Non-Compliance with ETP (a)		
		First Occurrence (b) (21)	Second Occurrence (c) (22)	Third Occurrence (d) (23)		First Occurrence (b) (27)	Second Occurrence (c) (28)	Third Occurrence (d) (29)
Dec.	5,820	4,405	36	0	1,379			
Jan. 1998	6,082	4,595	35	0	1,452			
Feb.	6,454	4,812	45	0	1,597			
Mar.	6,828	5,100	42	0	1,686			
Apr.	7,078	5,335	40	0	1,703			
May	7,181	5,459	38	0	1,684			
June	7,281	5,568	32	0	1,681			
July	7,114	5,426	34	0	1,654			
Aug.	7,126	5,467	37	0	1,622			
Sept.	7,028	5,464	33	0	1,531			
Oct.	7,219	5,647	32	0	1,540			
Nov.	7,010	5,460	34	0	1,516			
Dec.	*	*	*	*	*			
Jan. 1999	6,686	4,638	581	99	1,368			
Feb.	6,356	4,338	591	100	1,327			
Mar.	5,910	3,885	587	102	1,336			
Apr.	5,370	3,398	573	104	1,293	2	0	0
May	4,931	3,036	560	114	1,217	4	0	0
June	4,675	2,834	539	125	1,169	8	0	0
July	4,481	2,680	495	131	1,152	21	2	0
Aug.	4,268	2,485	467	147	1,146	23	0	0
Sept.	4,123	2,344	470	152	1,126	30	1	0
Oct.	3,867	2,155	422	151	1,104	32	3	0
Nov.	3,893	2,111	435	151	1,102	85	9	0
Dec.	3,937	2,098	433	168	1,091	134	13	0
Jan. 2000	3,949	2,045	414	164	1,151	160	15	0
Feb.	3,880	1,995	408	153	1,117	194	13	0
Mar.	4,049	2,009	397	157	1,153	307	26	0
Apr.	4,110	2,019	388	148	1,147	369	39	0
May	3,998	1,972	386	137	1,111	343	49	0
June	4,026	2,013	377	135	1,127	315	59	0
July	4,117	2,067	369	141	1,084	385	70	1
Aug.	4,041	2,023	350	146	1,109	342	70	1
Sept.	3,941	1,966	336	132	1,116	315	75	1
Oct.	3,931	1,939	319	130	1,195	286	59	3
Nov.	4,003	1,921	327	129	1,164	372	87	3
Dec.	3,966	1,843	322	132	1,175	390	100	4
Jan. 2001	4,049	1,782	353	132	1,254	409	116	3
Feb.	4,002	1,772	351	137	1,249	377	113	3
Mar.	4,090	1,791	351	144	1,266	399	134	5
Apr.	4,220	1,849	360	141	1,276	427	162	5
May	4,226	1,871	346	136	1,295	407	167	4
June	4,242	1,856	340	126	1,309	429	178	4
July	4,241	1,830	354	128	1,299	438	188	4
Aug.	4,295	1,822	359	123	1,345	449	193	4

Source: ARM-570 report

* After the November report, an error in the data accumulating program was detected. This has been corrected in subsequent reports.

Data represent a one-day count of individuals in sanction status on the day that the report is run. It is possible for the same individual to be counted in consecutive months (e.g. an individual who is sanctioned for their first ETP non-compliance in the beginning of January and does not comply with the ETP requirements until the end of March would be included in the First Occurrence count in January, February and March).

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Appeal Rights - Each applicant and recipient has the right to ask for a hearing to appeal a decision or failure to act which affects his benefits.

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

OPERATIONS MEMORANDUM #

Cash

SUBJECT: The Family Violence Option: Revised Child/Spousal Support Good Cause Requirements/Procedures

TO: Executive Directors

FROM: Sherri Z. Heller
Deputy Secretary for
Income Maintenance

PURPOSE

1. To provide information and procedures associated with the Family Violence Option (FVO).
2. To provide instructions for implementing revised requirements/procedures when a person claims good cause based on domestic violence for not cooperating with paternity and child/spousal support requirements.
3. To introduce the "Verification of Good Cause Based on Domestic Violence" form (PA/CS 1747) with completion instructions.

BACKGROUND

Pennsylvania has adopted the FVO, which authorizes the Department of Public Welfare (DPW) to screen and identify victims of domestic violence, refer those individuals to counseling and supportive services, and waive certain program requirements for good cause where compliance would make it more difficult to escape domestic violence or penalize individuals who are or have been at risk of domestic violence. This includes waivers of support cooperation requirements.

Consequently, DPW has developed new standards and procedures for processing claims of good cause for noncooperation with support requirements based on domestic violence. The provisions of the Cash Assistance Handbook (CAH) Chapter 131, Support, relating to good cause for physical or emotional harm, no longer apply to

good cause claims based on domestic violence as defined in this memorandum. Only claims of good cause based on rape, incest and adoption will be handled under the standards in the current Chapter 131 of the CAH.

The legal basis for implementation of the FVO is found at 42 U.S.C.A. §§602(a)(7)(A) and 608(a)(7)(C)(iii) and 45 CFR §§260.50 – 260.59.

DISCUSSION

The following changes to the good cause procedures for victims of domestic violence are effective July 3, 2000. These changes apply to child and spousal support requirements in the Temporary Assistance for Needy Families (TANF) and General Assistance (GA) Programs.

1. Notice of the FVO and Identification of Victims of Domestic Violence

DPW will use two methods to inform applicants and recipients of the FVO and identify victims of domestic violence: universal notification and individual notice.

Universal Notification

The County Assistance Office (CAO) will screen and identify victims of domestic violence using the following forms available through Automated Inventory Requisitioning System (AIRS):

- Domestic Violence – You Have a Right to be Safe CM 305
- Domestic Violence Palm Card PUB 388

Both publications contain information on domestic violence and include phone numbers of local domestic violence shelters in each county.

Individual Notice

Individual notice of the right to claim good cause based on domestic violence should be given orally and in writing in a timely manner whenever compliance with welfare requirements is at issue.

The FVO, including child/spousal support cooperation requirements, the right to claim good cause and confidentiality protections, must be explained to applicants prior to the application interview and prior to referral to the Domestic Relations Section (DRS).

Explain and have the applicant/recipient sign the PA/CS 173-WP, Notice of Requirement to Cooperate and Right to Claim Good Cause for Refusal to Cooperate in Child Support Enforcement.

2. Confidentiality

DPW will keep all client information confidential. Confidentiality applies to collecting, using, and safeguarding client information for all assistance programs.

The CAO will **NOT** disclose the address of or the amount of benefits received by a victim of domestic violence to an individual making:

- a personal request using the Form PA 163, Request for Address and/or Amount of Assistance; or
- a telephone request.

NOTE: The PA 4, Authorization for Information, should not be construed to be the client's consent to release personal information about domestic violence.

Alternate Address

A victim of domestic violence may use an alternate address for receipt of mail. The caseworker should ask any applicant/recipient who self-identifies as a victim of domestic violence whether it is safe to send mail to the home address or whether it would be safer to mail it to an alternate address. If the individual wants to use an alternate address, record the alternate address in the case record and in the Client Information System (CIS) and inform her that she must regularly check that address for mail. The applicant/recipient may use the CAO address if she wishes. If the applicant/recipient chooses to use an alternate address, the CAO must record the home address in the case notes.

To ensure that the applicant or recipient receives mail generated by the CAO, the worker will:

- generate system notices which will be sent to the alternate address;
- generate manual notices when the CAO is the alternate address.

Do not forward mail to applicant's/recipient's home address.

Agreement of Mutual Responsibility (AMR)

To ensure confidentiality, specific information about domestic violence must not be recorded on the AMR. Record the phrase "Referred for supportive services" in the Plan for Self-Sufficiency block on the AMR.

Though it may be important for contractors to know of the potential for problems to occur at the training/employment site, it is the client's decision whether or not to share this information.

A detailed discussion of relevant facts regarding the domestic violence should be included in the case notes.

Family Violence Indicator

Currently, CIS does not have a Family Violence Indicator (FVI). DRS does have an FVI that ensures an applicant's/recipient's address is kept confidential. When activated, the DRS FVI ensures that the applicant's/recipient's address is not printed on any DRS notices and identifying information is not sent to the Federal Case Registry of other states.

3. The Standard for Establishing Good Cause

Good cause based on domestic violence is established if cooperation with support requirements may result in, and the individual, household or family member, has been subjected to:

- physical acts that resulted in, or threatened to result in, physical injury to the individual;
- mental abuse;
- sexual abuse;
- sexual activity involving a dependent child;
- being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;
- threats of, or attempts at, physical or sexual abuse; or
- neglect or deprivation of medical care.

Good cause may also be established if cooperation would:

- make it more difficult for individuals receiving TANF or GA to escape domestic violence; or
- unfairly penalize individuals receiving assistance who have been victimized by domestic violence or who are at risk of further domestic violence.

Note: The harm need not be serious or reduce the individual's capacity to care for the child adequately to establish good cause due to domestic violence. These requirements have been removed.

4. Establishment of Good Cause Based on Domestic Violence

To establish good cause based on domestic violence, the *Verification of Good Cause Based on Domestic Violence* form (PA/CS 1747 attached) must be completed. An applicant/recipient who wishes to claim good cause must do one of the following:

- Provide any type of documentation listed on the Verification of Good Cause Based on Domestic Violence form under Section 2, including law enforcement records, court records, medical/treatment records, social service records, child protective service records, or other records that document the domestic violence.
- Obtain third party verification of the domestic violence by any of the entities or persons listed in Section 3 with personal knowledge of the alleged domestic violence, which includes a domestic violence service provider, a medical, psychological, or social service provider, a law enforcement professional, a legal representative, an acquaintance, friend, relative, neighbor of the claimant, or other person. Section 3 of the form serves as an authorization to release information as well as the verification.
- If the recipient is unable to safely obtain any of the items of evidence described in Sections 2 and 3 of the form, the applicant/recipient may affirm that domestic violence is the basis for the good cause claim under Section 4 of the form. The applicant's/recipient's affirmation establishes good cause for up to six months.

Note: A third party statement need not be sworn. All that is necessary is that the third party complete and sign Section 3 of the Verification form and that the source appears credible and valid.

The caseworker should provide whatever assistance the applicant/recipient needs in completing the verification form.

Note: There is no longer a procedure for investigation of a good cause claim. Do not refer for investigation.

Do not under any circumstances contact the putative father or non-custodial father regarding good cause when good cause based on domestic violence is claimed. Such contact could endanger the safety of a victim, her family or household.

5. CAO Determination and Notice of Good Cause

After a determination has been made, provide the applicant/recipient with notice of the determination via the PA 162, Notice to Applicant/Recipient.

If the claim is denied, the Notice must include:

- The right to appeal and request a fair hearing.
- What additional evidence or information is needed to substantiate the good cause claim and the timeframes in which the information must be provided.
- The option to withdraw the application for assistance.
- The option to request that assistance be closed.
- The option to cooperate in establishing paternity and obtaining support.

Note: The CAO no longer is required to send the Form 173-GC, Good Cause Determination, to the Bureau of Child Support Enforcement (BCSE) for a recommendation. The final determination of good cause is made by the CAO for all good cause claims, including good cause based on rape, incest or adoption when the good cause claim originated with the CAO.

6. Eligibility Requirements/Procedures After the Six-Month Waiver for an Applicant/Recipient Who Established Good Cause Based on Domestic Violence by Completing Section 4 of the Verification Form Affirming Domestic Violence

Good cause waivers must be reviewed no less often than every six months. An applicant/recipient who provided her written affirmation of good cause for the first six months and who continues to claim good cause may establish that claim by providing acceptable verification as listed in number 4 of this memorandum.

If the individual remains unable to provide verification in addition to the affirmation, the CAO will make a determination of good cause based on the credibility of the recipient and the validity of other supporting or conflicting evidence, giving strong consideration to the following factors:

- Domestic violence takes place in private – often with no witnesses and no documentation – making it difficult for victims to produce evidence of the domestic violence;

- Many ways of securing documentation – such as reporting the abuse to the police or attempting to return to the victim's former residence to obtain documents – can place victims in further danger;
- The applicant or recipient should be given the benefit of the doubt unless the CAO has a reasonable basis for finding the applicant or recipient not credible. All pertinent information in the decision of credibility should be noted in detail in the case record and on the PA 162, Notice to Applicant.

7. Time Frame for Authorizing Assistance When Good Cause is Claimed

Authorize assistance as soon as the Verification of Good Cause Based on Domestic Violence form is completed by the applicant/recipient and a determination is made by the CAO.

Where the applicant claims good cause due to domestic violence and verification is not readily available or is pending from a third party, authorize assistance no later than 30 days following application. This is consistent with the manner in which other applicants are treated when certain eligibility factors are not readily available or pending from a third party.

8. Time Frame for Support/Paternity Action after Denial/Expiration of Good Cause Claim

Neither DPW nor BCSE will attempt to establish paternity or obtain support for at least 30 days after the client has been informed orally and in writing of the denial of the good cause claim.

9. Review of Good Cause Waiver at Redetermination

CAH Section 176.2 requires the CAO to review the circumstances of the good cause waiver at each eligibility review but no less often than every six months.

Based on implementation of the FVO, a recipient who provided corroborative evidence of the good cause claim does not have to provide additional corroborative evidence upon reassessment of good cause if circumstances have not changed since the initial waiver was approved.

NEXT STEPS

1. Share this information with all appropriate staff.
2. Implement the changes outlined in this memorandum effective July 3, 2000, as they apply to victims of domestic violence.
3. Copy the attached PA/CS 1747, Verification of Good Cause Based on Domestic Violence, until the form is available for order through AIRS.
4. Direct all questions to your Area Manager.
5. This Operations Memorandum will become obsolete upon issuance of Cash Assistance Handbook Chapter 108, Family Violence Option.

Attachment

BOP Special Assistant Signoff/Date

BOP Director Signoff/Date

VERIFICATION OF GOOD CAUSE BASED ON DOMESTIC VIOLENCE

PLEASE READ THESE INSTRUCTIONS CAREFULLY.

- Block One – Completed for all Good Cause claimants
- Block Two – Completed only if records are available
- Block Three – Completed if statements are needed from Third Party.
- Block Four - Completed if no evidence/statements available.

1. Good Cause Claim

I, _____, claim good cause for not cooperating with child support cooperation requirements because of domestic violence. I have been asked to provide verification to support my claim. I have/will cooperate in providing verification below.

2. Records

■ I submit ONE of the following, if available:

- law enforcement records
- court records
- medical/treatment records
- social service records
- child protective services records
- other (specify) _____

3. Authorization/Verification by a Third Party

■ I authorize _____ to complete the verification below and to provide it to the Department of Public Welfare, _____ County Assistance Office for the purpose of verifying my good cause.

Date: _____ Signature: _____

This statement is submitted by:

(Name)
(Title)
(Organizational Affiliation)
(Address)

■ I am: (Check One)

- A domestic violence service provider
- A medical, psychological or social service provider
- A law enforcement professional
- A County Children and Youth Representative
- A legal representative
- An acquaintance/friend/relative/neighbor of the claimant
- Other (specify) _____

I have knowledge of the claimant's experience with and/or steps to escape domestic violence and submit this statement to verify that _____, is unable to cooperate with child support cooperation requirements because of domestic violence. I believe cooperating with child support requirements may place the victim and/or children at risk of domestic violence and/or make it more difficult for the victim and/or children to escape domestic violence.

Date: _____ Signature: _____

4. Affirmation

■ I affirm that cooperating with paternity establishment or child support requirements will place me and/or my children at risk of domestic violence, make it more difficult for us to escape violence, and/or penalize us because of domestic violence. I do not have and am unable to safely obtain evidence to verify the domestic violence.

Date: _____ Signature: _____



Summary of Policy Guidance

Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)

Department of Health and Human Services Office for Civil Rights

The United States Department of Health and Human Services (HHS) is issuing policy guidance on the prohibition of discrimination on the basis of disability in Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 in the administration of TANF programs.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) created Temporary Assistance for Needy Families (TANF), and repealed the Aid to Families with Dependent Children Program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS) and the Emergency Assistance program (EA). Both the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 apply to TANF programs. See 42 U.S.C. § 608(c) (Federal TANF statute reiterating ADA/Section 504 application to TANF programs). Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12131. Section 504 of the Rehabilitation Act of 1973 prohibits the same discrimination by entities that receive Federal financial assistance. 29 U.S.C. § 794.

On August 27, 1999, the HHS Office for Civil Rights (OCR) issued two-part guidance on civil rights laws and welfare reform.⁽¹⁾ These materials explain how Federal civil rights laws apply to certain aspects of welfare reform. The purpose of the present guidance is to respond to a myriad of additional questions that have been raised by State agencies, counties, service providers, and persons with disabilities regarding the obligations to adopt methods for administering welfare programs to ensure equal opportunity for persons with disabilities in all aspects of a TANF program, including applications, assessments, work program activities, sanctions, and time limits. The guidance also is necessary because the Department has indicated that States may be subject to penalties if audits show that they "over-sanction," i.e., impose sanctions on individuals when sanctions are inappropriate.⁽²⁾

This policy guidance clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities, and on recipients of Federal financial assistance from HHS involved in TANF activities, in fulfilling their responsibilities pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act.⁽³⁾ Specifically, this guidance identifies essential requirements of an ADA-504 compliant TANF program that the Office for Civil Rights will apply in its compliance reviews and/or investigations of complaints of discrimination on the basis of disability in TANF programs. These requirements are not new; rather, they reiterate ADA Title II and Section 504 principles that OCR has been enforcing for many years.

The guidance also sets out "promising practices" - policies, procedures and other recommended steps that recipients and covered entities can take to ensure meaningful access to TANF programs by people with disabilities. These "promising practice" provisions are not mandatory requirements; they are one way for a TANF agency (as noted in footnote 3, this guidance uses the term "TANF agency" to refer to all covered entities under Section 504 and State and local governmental entities under Title II of the ADA) to meet obligations to ensure equal access through the provision of appropriate services, modify policies, practices and procedures to provide such access, unless doing so would result in a fundamental alteration to the program, and to adopt non-discriminatory methods of administration. Descriptions of possible approaches that comply with Section 504 and the ADA in this guidance should not be construed to preclude States from devising alternative approaches to meet these legal requirements.

OCR has provided substantial technical assistance for more than 20 years to recipients and covered entities seeking to ensure that people with disabilities can meaningfully access social service programs. This guidance applies that experience to the relatively new challenges presented in the complex context of administering TANF programs, and is consistent with OCR's commitment to seeking voluntary compliance by recipients and covered entities and its commitment to providing technical assistance. OCR will continue to be available to provide such assistance.

Policy Guidance

Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)

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Policy Guidance

Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)

A. BACKGROUND

1. Legislative and Regulatory Framework

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).⁽⁴⁾ This legislation repealed the Aid to Families with Dependent Children program (AFDC), the Job Opportunities and Basic Skills Training program (JOBS) and the Emergency Assistance program (EA) and created Temporary Assistance for Needy Families (TANF).

PRWORA requires that programs established with TANF funds serve one of four purposes, to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.⁽⁵⁾

Under TANF, States have flexibility in how they respond to individual family needs. In return, States are expected to move towards a strategy that provides appropriate services for needy families.⁽⁶⁾

PRWORA also specifies, among other things, that Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA) apply to any program or activity that receives Federal TANF funds.⁽⁷⁾

Title II of the ADA also applies to the programs and activities of all State and local government entities. Title II and Section 504 require State and local government entities and HHS Federal fund recipients to ensure equal access through the provision of appropriate services, to modify policies, practices and procedures to provide such access unless these modifications would fundamentally alter the nature of the service, program, or activity, and to adopt non-discriminatory methods of administration. The inclusion of these civil rights protections ensures equal opportunity for persons with disabilities to benefit from all aspects of welfare reform, including access to the proper support services to enable such individuals to work and to keep their families healthy, safe and intact.⁽⁸⁾

2. The Challenges

Notwithstanding gains in work for many TANF clients, other families with multiple barriers to work are at risk of losing benefits before obtaining employment or of being unable to benefit from TANF job training, education and other programs. Some former welfare beneficiaries have succeeded in moving to work despite extraordinary obstacles. However, others, due to known or unrecognized disabilities, need additional training, accommodations, and support services to prepare for or succeed at work.

According to a recent report by the Presidential Task Force on Employment of Adults with Disabilities, studies show that as much as 40 percent of the adult welfare population may have learning disabilities. The studies also found that up to 28 percent of welfare beneficiaries have mental health conditions.⁽⁹⁾ A significant number of these beneficiaries also have physical disabilities, while some have multiple impairments or face multiple barriers to work.⁽¹⁰⁾

Reports of the Presidential Task Force on Employment of Adults with Disabilities point to a multitude of employment barriers faced by persons with disabilities, including inadequate work opportunities resulting from discrimination and inadequate education and job skills, as well as lack of access to health insurance. The complexity of existing work incentives and lack of benefits counseling also raise significant employment hurdles for people with disabilities.⁽¹¹⁾

3. State Activities

In the course of its enforcement activities, OCR has found that States vary significantly in the extent to which they have planned and implemented policies, practices, and procedures to identify barriers to employment for people with disabilities and provide necessary supports and services. Many States have undertaken substantial efforts to address the needs of individuals with disabilities, especially for individuals with learning disabilities. Other States, however, have no systems established for assessing the needs of people with disabilities or for ensuring access to programs or services of their TANF programs. In still others, although States have made significant efforts to design TANF policies, practices and procedures promising equal opportunity for individuals with disabilities, TANF agency personnel lack adequate training and educational or training programs identified as necessary for beneficiaries are not available.

For some public entities, TANF policies relating to individuals with disabilities consist only of exemption from TANF requirements. This practice, however, denies individuals with disabilities access to TANF services and results in discriminatory exclusion of many individuals with disabilities from the program.⁽¹²⁾ The Federal TANF statute is founded on the public policy that individuals formerly on welfare will be better off if provided with job and/or training opportunities rather than continued public assistance. This same policy should be applied, where appropriate, to those formerly eligible for public assistance who have disabilities, but who can work if provided with modified training or accommodated job opportunities. Applying and implementing this policy may require modification of agency procedures, policies and practices to allow people with disabilities to benefit from the employment and training opportunities offered to others.

4. OCR Guidance

On August 27, 1999, the HHS Office for Civil Rights (OCR) issued two-part guidance explaining how Federal civil rights laws apply to certain aspects of welfare reform on civil rights laws and welfare reform.⁽¹³⁾ The purpose of the present guidance is to respond to additional questions that have been raised by State agencies, counties, service providers, and persons with disabilities regarding the obligations to adopt methods for administering the TANF program to ensure equal opportunity for persons with disabilities in all aspects of the program, including applications, assessments, work program modifications, sanctions, and time limits.

This policy guidance clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities that are involved in the delivery or administration of TANF programs, and on recipients of Federal financial assistance from HHS involved in TANF activities, in fulfilling their responsibilities pursuant to Title II of the ADA and Section 504 of the Rehabilitation Act. Specifically, this guidance identifies essential requirements of an ADA-504 complaint TANF program that the Office for Civil Rights will apply in its compliance reviews and/or investigations of complaints of discrimination on the basis of disability in TANF programs. These requirements are not new; rather, they reiterate ADA Title II and Section 504 principles that OCR has been enforcing for many years. This guidance is limited to the social services context, and is not intended to address the obligations of employers under Section 504 or Title I of the ADA.

The guidance also sets out "promising practices" - policies, procedures and other recommended steps that recipients and covered entities can take to ensure meaningful access to TANF programs by people with disabilities. Many of the "promising practices" are based on reports of current TANF practices in a number of States and other localities. These "promising practice" provisions are not mandatory requirements; they are one way for a TANF agency (as noted in footnote 3, this guidance uses the term "TANF agency" to mean all covered entities under Section 504 and State and local governmental entities under Title II of the ADA) to meet the obligation to provide individuals with disabilities with an equal opportunity to benefit from TANF programs, to reasonably modify TANF policies for individuals with disabilities and to adopt non-discriminatory methods of administering TANF programs. Descriptions of possible approaches that comply with Section 504 and Title II of the ADA in this guidance should not be construed to preclude States from devising alternative approaches to meet these legal requirements.

This guidance does not, and is not intended to, reflect the best of the full range of TANF practices with respect to individuals with disabilities. The "promising practices" portion of the guidance should therefore be regarded as a work in progress while States continue to develop more and better solutions to issues raised by disability in administering TANF programs.

B. LEGAL AUTHORITY

The Disability Policy Framework

The legal framework governing the administration of programs, projects, and activities by State agencies and service providers are set out in regulations promulgated by the Department of Justice⁽¹⁴⁾ and the Department of Health and Human Services.⁽¹⁵⁾ A recitation of the key provisions is set out in OCR's August 27, 1999 Technical Assistance materials concerning welfare reform and disability issues.

Two concepts central to Section 504 and Title II of the ADA are of particular importance to administration of TANF programs in a manner that ensures equality of opportunity for individuals with disabilities. These concepts are: (1) individualized treatment; and (2) effective and meaningful opportunity.

Individualized treatment requires that individuals with disabilities be treated on a case-by-case basis consistent with facts and objective evidence. Individuals with disabilities may not be treated on the basis of generalizations and stereotypes.⁽¹⁶⁾ Such prohibited treatment would include denying TANF beneficiaries with disabilities access to parts of the TANF agency's program based on the stereotypical view, unsupported by any individual assessment, that people with disabilities are unable to participate in anything but the most rudimentary work activities.

Moreover, individuals with disabilities must be afforded the opportunity to benefit from TANF programs that is as effective as the opportunity the TANF agency affords to individuals who do not have disabilities,⁽¹⁷⁾

and must also be afforded "meaningful access" to TANF programs.⁽¹⁸⁾

TANF agencies must provide reasonable accommodations, auxiliary aids and services, and communication and program accessibility, unless the agency can demonstrate that such provision would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. TANF agencies must also make reasonable modifications to policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the agency can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.⁽¹⁹⁾

In addition, the "methods of administration" or operating methods of a TANF agency must not have a discriminatory effect. Specifically, a public entity may not directly or through contract or other arrangement utilize criteria or methods of administration that, among other things, have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, or that have

the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities.⁽²⁰⁾

In this guidance, the Office for Civil Rights addresses three key requirements of Title II of the ADA and 504 that are relevant to the rights of TANF beneficiaries with disabilities. These requirements are: (1) to ensure equal access through the provision of appropriate services; (2) to modify policies, practices and procedures to provide such access, unless doing so would result in a fundamental alteration to the program; and (3) to adopt non-discriminatory methods of administration. The essential components of these requirements are set forth below, along with promising practices that outline steps that TANF agencies and providers can take to accommodate the needs of TANF beneficiaries with disabilities. The promising practices are illustrative and are not mandatory requirements. Thus, a TANF agency's failure to take particular steps outlined in this promising practices will not by itself result in a finding of noncompliance by OCR.

a. Ensuring Equal Access to TANF Programs Through the Provision of Appropriate Services to People with Disabilities

The TANF agency provides TANF beneficiaries who have disabilities with appropriate services. These services are designed to afford TANF beneficiaries who have disabilities with an opportunity to participate in or benefit from the TANF program that is equal to the opportunity the agency affords to non-disabled individuals.

b. Modifying Policies, Practices and Procedures to Ensure Equal Opportunity

The TANF agency modifies policies, practices and procedures when necessary to ensure equal opportunity for people with disabilities. Modifications required may affect all stages of the TANF program, from application to training, education and work stages, to ensure that people with disabilities have an equal opportunity to benefit from TANF programs. The TANF agency should undertake a comprehensive examination of its own policies, practices and procedures to determine changes necessary to ensure that TANF participants with disabilities have an equal opportunity to benefit, or otherwise ensure that necessary modifications to policies, practices and procedures are made.

c. Non-Discriminatory Methods of Administration

The TANF agency operates its program in such a way as to ensure that individuals with disabilities are not subjected to discrimination on the basis of disability. In order to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination, the TANF agency should: train its staff to provide equal access to TANF programs for individuals with disabilities; ensure that training occurs for staff of service providers who have contractual or vendor relationships with the TANF agency; establish clear written policy that incorporates modifications to policies, practices and programs made to ensure access for persons with disabilities; conduct regular oversight of TANF programs and services to ensure that people with disabilities have equal access; or otherwise ensure that its policies and practices do not subject individuals with disabilities to discrimination.

Section D of the guidance provides additional details about legal requirements and about "promising practices" that may assist TANF agencies in carrying out their legal obligations.

C. COVERAGE

1. Covered Entities ("TANF Agencies")

Title II of the ADA covers all States, as well as counties and other local governments administering all or part of a TANF program. In addition, Section 504 covers all entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract.⁽²¹⁾

Under Section 504, "covered entities" include any State or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social

service programs and activities and that (2) receives federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to State, county and local welfare agencies, programs for families, youth and children, job training and welfare to work agencies and their contractors, subcontractors and vendors, whether public or private, for-profit or nonprofit, and other providers who receive Federal financial assistance from HHS. As noted earlier, this guidance uses the term "TANF agency" to refer to covered entities under Section 504 and State and local governmental entities under Title II of the ADA.

2. Protected Individuals

Federal definitions govern who is considered an individual with a disability for purposes of compliance with the ADA and Section 504. The ADA and Section 504 define a "disability" with respect to an individual to mean a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment. See 28 C.F.R. § 35.104 (definitions section of ADA Title II regulations); See also U.S. Department of Justice, The Americans with Disabilities Act: Title II Technical Assistance Manual, at 4-9 (Nov. 1993); See also 45 C.F.R. § 84.3(j)(1)(I) (definitions section of Section 504 regulations). The definition of disability under the ADA and Section 504 is a different definition of disability than that typically used to determine eligibility in programs that provide cash assistance based upon disability, such as the Federal Supplemental Security Income and Social Security Disability Insurance programs. It may also be different than the definition of disability that some States use in determining whether an individual may be exempt from certain program rules in TANF.

D. LEGAL REQUIREMENTS AND "PROMISING PRACTICES"

1. The Legal Requirement to Ensure Equal Access to TANF Programs Through the Provision of Appropriate Services

TANF agencies must afford qualified individuals with disabilities an opportunity to participate in or benefit from TANF programs that is equal to the opportunity the agency offers to individuals without disabilities.⁽²²⁾

In order to comply with this legal requirement, TANF agencies must provide TANF beneficiaries with disabilities with services that are appropriate, and that give these beneficiaries an equal opportunity to benefit from the agency's job placement, education, skills training, employment and other TANF activities.

The TANF statute and regulations require the TANF agency to assess the "skills, prior work experience and employability" of beneficiaries.⁽²³⁾

It is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from TANF programs and the assessment process. This assessment should incorporate an individualized analysis of each person's ability to meet the program requirements, rather than on stereotypes or assumptions about the effect of a type of a disability. TANF agencies should tell applicants and beneficiaries that, although disclosure of disability is not required, individuals can alert the agency to a disability.⁽²⁴⁾

Agencies should also inform applicants and beneficiaries that any disclosure is voluntary. At a minimum, intake workers should be able to recognize potential disabilities, and to conduct an initial screening to identify possible disability for those individuals who agree to undergo screening. Such screening should be conducted only by trained staff, using screening tools that have been properly validated. If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, the TANF agency should give the individual an opportunity for a more comprehensive evaluation or assessment.⁽²⁵⁾

The appropriate services provided by the TANF agency should be based on the agency's review of its

own programs (See discussion of "diagnostic review," in Section D.2), on TANF beneficiaries' needs as identified through the agency's screening and assessment processes, or on other methods the TANF agency utilizes to ensure that appropriate services are provided. For example, an individual with a learning disability or mental retardation may need specialized instruction in reading and writing before the individual can comply with a TANF plan that requires the individual to obtain employment. A person may also need on-the-job training and mentoring. A person may need job skills training or employment opportunities in settings that are accessible for individuals with mobility impairments.

The TANF agency's obligation to ensure equal access to TANF programs for individuals with disabilities also includes the obligation to ensure that service providers have the requisite knowledge, experience, and expertise to serve beneficiaries with disabilities.⁽²⁶⁾ Without such providers, TANF beneficiaries with disabilities may be deprived of equal access to TANF programs while they wait for services, or are diverted to inappropriate services. Since the TANF statute establishes a 60-month limit on TANF benefits and allows more stringent limits at State option, a TANF agency's failure to ensure an adequate supply of knowledgeable service providers for people with disabilities may result in their being terminated from the TANF rolls without having obtained the job skills or work experience necessary to move successfully from welfare to self-sufficiency.

TANF agencies must also ensure that individuals with disabilities have access to the entire range of TANF programs and services for which they are qualified, with or without reasonable accommodation.⁽²⁷⁾ Agencies must provide TANF programs in the most integrated setting appropriate to the needs of individuals with disabilities.⁽²⁸⁾ Thus, agencies should take steps to ensure that individuals with disabilities can participate in all programs and services for TANF beneficiaries, not just those programs and services that are designed solely for individuals with disabilities.⁽²⁹⁾

TANF agencies have the obligation to ensure effective communication with individuals who have hearing, speech, or visual impairments. TANF agencies must provide such persons with auxiliary aids (including such aids as interpreters, note-takers, and materials in alternative formats) if necessary to ensure effective communication, so long as providing these aids does not cause a fundamental alteration in the TANF program or result in undue financial or administrative burdens.⁽³⁰⁾

In addition, TANF agencies may not exclude individuals with disabilities by providing TANF services in buildings that are inaccessible to people with mobility impairments. The TANF agency is not, however, required to make structural changes in existing facilities where other methods are effective in achieving equal access.⁽³¹⁾

New construction and alterations to existing facilities must be made accessible and useable by persons with disabilities except where structurally impracticable.⁽³²⁾

Finally, TANF agencies frequently use contracts and vendors in the administration of their TANF programs. Agencies should be aware that these contractual and financial relationships do not eliminate TANF agencies' responsibility to ensure that TANF beneficiaries are not subjected to disability-based discrimination, even if such discrimination is more directly the result of unlawful treatment by TANF contractors and vendors. Implementing regulations for Section 504 and Title II of the ADA state clearly that a recipient of federal funds (in the context of Section 504) or a State or local government program (in the context of the ADA), may not directly or indirectly (e.g., "through contractual or other arrangements") put into place, or allow to be into place, a system or program which has the effect of subjecting qualified individuals with disability to discrimination on the basis of disability.⁽³³⁾

Thus, TANF agencies are responsible for ensuring that the opportunities afforded TANF applicants and beneficiaries with disabilities to participate in TANF program benefits and services are equal to the opportunities afforded to applicants and beneficiaries without disabilities, even if the TANF agency carries out its program through the use of contractual or other arrangements.⁽³⁴⁾

Promising Practices in the Provision of Equal Access to TANF Programs

Examples of practices that, if effectively implemented, would assist TANF agencies in **ensuring that individuals with disabilities are provided with an assessment that affords equal opportunity to benefit from TANF programs, including the assessment process**, include:

- The TANF agency utilizes a combination of screening and assessment tools to determine whether TANF beneficiaries face a variety of obstacles, including physical, emotional, learning or behavioral disabilities.⁽³⁵⁾
- The TANF agency trains its case workers to administer a client interview guide and objective screening instruments designed to identify TANF beneficiaries who may have learning disabilities. The TANF agency then refers beneficiaries who appear to have learning disabilities for an in-depth assessment by the State vocational rehabilitation agency or by mental health or education providers.⁽³⁶⁾
- When there is an initial indication that applicants and beneficiaries may have disabilities as a result of applicant or beneficiary disclosure, an initial screening or other information, these individuals are offered the opportunity to receive a comprehensive assessment. This assessment determines: whether the individual in fact has disabilities; the nature of any disability; the extent to which the individual is capable of employment or participation in employment-related (e.g. job training or education) activities and under what conditions; the implications of the disability on securing and maintaining employment; the appropriateness of a particular work assignment or plan for employment; the need for reasonable accommodations, reasonable modifications to policies, the provision of auxiliary aids and services and communication assistance; the need for training and education prior to employment; the applicability of work participation rules and time limits, and the appropriateness of applying sanctions. To the extent the State requires the development of an individual responsibility plan, the components of the plan must be based on results of such assessments as are undertaken by the State.
- The TANF agency ensures that qualified personnel, including specialized staff, conduct comprehensive assessments.⁽³⁷⁾ Specialized staff may provide assessments and other assistance for TANF beneficiaries who are unable to complete work activities, do not remain employed and who are recommended for further assessments by a service provider.⁽³⁸⁾ The agency might also decide to adopt a team approach to assessments, including psychologists and other medical, vocational, and rehabilitation experts, who are trained in making assessments of adults with disabilities in the employment context.
- The agency ensures that any screening or assessment tools it uses are validated for the purposes for which they are intended.

Examples of practices that, if effectively implemented, would assist TANF agencies in **providing appropriate services to ensure equal access to individuals with disabilities** include:

- A TANF agency provides appropriate counseling services (e.g., mental health services, anger management counseling) to TANF beneficiaries with mental or emotional disabilities who have barriers to employment and self-sufficiency.⁽³⁹⁾ The TANF agency establishes linkages and partnerships with other public (including State education and vocational rehabilitation agencies, State community colleges), nonprofit or private agencies to fulfill these aspects of their obligations under the Title II of the ADA and Section 504.
- To evaluate and properly serve TANF beneficiaries who may be hampered by a variety of barriers to employment, the TANF agency enters into a partnership with the State vocational rehabilitation agency to provide assessment and follow-up services for long-term TANF beneficiaries. TANF beneficiaries who are eligible for vocational rehabilitation services are provided with such services. The vocational rehabilitation agency develops an "employability plan" for beneficiaries who are ineligible, and refers these beneficiaries back to the TANF agency for plan implementation.⁽⁴⁰⁾
- TANF beneficiaries identified by case workers as having learning, mental and physical

disabilities are referred to providers who have contracted with the agency to provide services for individuals with these disabilities and for other TANF beneficiaries identified by the agency as "hard to serve." The contractors help TANF beneficiaries prepare for, find and maintain jobs.⁽⁴¹⁾

- In order to ensure an adequate supply of providers, the TANF agency reimburses providers in such a way as to facilitate, rather than impede, equal opportunity for individuals with disabilities to benefit from the TANF program. Where the State establishes a system of outcome-based reimbursement (i.e., of paying service providers only when TANF beneficiaries complete a program) the TANF agency takes into consideration the additional costs of providing services to persons with disabilities so that service providers do not reject such persons, or provide them with inappropriate or inadequate services to persons with disabilities.
- When individuals with disabilities leave the TANF program, the TANF agency conducts "exit interviews" that include a discussion of whether the individuals believe that any disabilities they have were appropriately assessed, and whether the individuals' disability-related needs were addressed and accommodated. The agency utilizes this information to refer individuals with disabilities to other support services that may assist them after they are no longer TANF beneficiaries, and to evaluate the agency's own effectiveness in serving beneficiaries with disabilities (See, e.g., discussion of "diagnostic review," in Part D.2, below).

Examples of practices that, if effectively implemented, would assist TANF agencies in **affording individuals with disabilities access to all TANF programs for which they are qualified** include:

- The TANF agency enters into a partnership with a non-profit agency to provide supportive services that enable individuals with developmental disabilities to participate in the work activities of subsidized public and private employment.
- The TANF agency provides a special job training course for TANF beneficiaries with speech and hearing impairments, but it does not require these individuals to participate in the special program or refuse to permit individuals with speech and hearing impairments to participate in job training courses in which both individuals with disabilities and individuals without disabilities participate.

Examples of practices, that, if effectively implemented, would assist TANF agencies in **providing individuals with disabilities with equal access to TANF programs when TANF services are provided through contractual and other relationships** include:

- The TANF agency obtains information from contractors and vendors as part of the agency's diagnostic review process (see discussion of diagnostic review in Part D.2 below) that includes information about accessibility, reasonable accommodations and appropriate services for people with disabilities.
- The TANF agency provides training and technical assistance to contractors and vendors regarding the needs of and appropriate services for individuals with disabilities.
- The TANF agency provides training and technical assistance to contractors and vendors regarding reasonable modifications to policies, practices and procedures and reasonable accommodations and auxiliary aids for individuals with disabilities.
- The TANF agency monitors contractors and beneficiaries for compliance with Title II of the ADA and Section 504 (see additional discussion of monitoring in Part D-3, below).

2. The Legal Requirement to Modify Policies, Practices and Procedures to Ensure Equal Access to TANF Programs and Services

Program providers are required to make reasonable modifications to policies, practices, and procedures that deny equal access to individuals with disabilities unless a fundamental alteration in the program would result.⁽⁴²⁾

In order to ensure that necessary modifications are made, the TANF agency may need to conduct a diagnostic review of agency policies, practices and procedures. Based on this review, the agency would

determine changes necessary to ensure that people with disabilities have an equal opportunity to benefit from TANF programs. As part of this review, the TANF agency would conduct a thorough assessment of the prevalence of various populations of people with disabilities who participate in its TANF programs. Based on this information, the entity analyzes each step of the TANF program to determine what changes are necessary to ensure people with disabilities have an equal opportunity to access and benefit from TANF programs and related activities. Appropriate areas for modification following a diagnostic review include: (1) the application process and procedures relating to notifying beneficiaries of their rights; (2) the nature and requirements of TANF programs; and (3) policies and practices to aid individuals in sustaining TANF program participation. Programs appropriate for a diagnostic review include TANF, "welfare to work," child care, and any other forms of Federally assisted or State or local government-run programs related to TANF activities. Alternatively, the TANF agency may engage in other means to ensure that necessary modifications are made to policies, practices and procedures.

TANF agencies should also make reasonable modifications in policies and practices that govern exemptions for individuals who are unable to meet requirements and sanctions for such failure. For example, TANF agencies may exempt individuals with disabilities from work requirements or time limits when, due to their disabilities, these individuals are unable, with or without reasonable accommodation, to participate in work or other TANF program requirements.⁽⁴³⁾

In addition, rather than sanctioning TANF beneficiaries who, due to their disabilities, do not comply with work or other program requirements, TANF agencies may make reasonable modifications that facilitate compliance, or grant extensions or temporary exemptions to TANF requirements.⁽⁴⁴⁾

Promising Practices in Modifying Policies and Programs to Ensure Access for People with Disabilities

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include **undertaking a "diagnostic review"** of current programs and practices:

- In order to better understand the barriers to employment for TANF beneficiaries, the TANF agency conducts a study to determine the prevalence of specific barriers among the TANF population, including learning disabilities, mental disabilities, physical disabilities, and possible low IQ.⁽⁴⁵⁾ Based on this information, the agency develops screening mechanisms and services designed to assist TANF beneficiaries with these barriers to participate in the TANF program.⁽⁴⁶⁾
- With respect to each step of the welfare or TANF program, the TANF agency develops an "ADA/504 checklist" to ascertain accessibility for persons with various types of disabilities. See Sample Diagnostic Review Checklist at Appendix 1. The checklist covers every aspect of the entity's program, from the application stage (including checklist questions regarding assistance provided to individuals with disabilities); to the screening/assessment stage (including checklist of methods to determine the existence of disability and necessary accommodations); to the education/training and employment stage (including checklist questions used by the agency to ensure that contractors and vendors are educated about and implement appropriate accommodations).

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include **modifications in the application process and procedures relating to notifying beneficiaries of their rights:**

- A TANF agency with a complicated application process modifies its application process to ensure the process is accessible to individuals with learning disabilities or mental retardation. The agency may do this by modifying the application form itself, by obtaining the information needed to apply for benefits through a verbal interview, by providing necessary assistance for individuals with disabilities to complete the application process, or by other similar means.
- A TANF agency includes the following language in notices:

"If you have a physical or mental condition that substantially limits one or more major life activities, you may have rights under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. Physical or mental conditions include, for example, a learning disability, mental retardation, a history of drug or alcohol addiction, depression, a mobility impairment, or a hearing or vision impairment.

You can let us know if you have a disability.

If you cannot do something we ask you to do, we can help you do it or we can change what you have to do.

Here are some of the ways we can help:

We can call or visit if you are not able to come to our office.

We can tell you what this letter means.

If you are on [insert the name of the TANF program], we can help if you cannot do something in your plan.

We can help you devise an employability plan that allows you to work even though you have a disability.

We can help you appeal.

If you need some other kind of help, ask us. Call your caseworker or call..⁽⁴⁷⁾

- Where a TANF agency's notice is sent to a person the agency knows will be unable to comprehend the notice due to a mental impairment or learning disability, the TANF agency modifies its procedures to ensure other modes of communication are attempted, such as oral communication, phone calls, and home visits, before taking a negative action based upon the notice.
- Where the TANF beneficiary would like the agency to involve a family member, a legal representative, or another advocate to assist the person in understanding TANF agency rules and the consequences of not following them, and to assist the agency to understand the beneficiary's limitations, the TANF agency incorporates such persons in the process. The TANF agency would not, however, avoid its own obligations to explain policies in a meaningful manner, or to provide interpreters or other required assistance.
- When communicating with TANF beneficiaries, the TANF agency routinely includes: (1) easy to understand instructions for those with developmental or mental impairments; (2) TTY numbers for persons who are deaf/hearing impaired; and (3) location of accessible sites for people with mobility impairments. The TANF agency also posts signage alerting people with disabilities how they can obtain further assistance.

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities include **modifications in education, job training, work and other TANF programs**:

- The TANF agency provides services appropriate to address the needs of beneficiaries with disabilities as identified by the beneficiary in the screening process or assessment processes, or at some other time. For example, a person with a specific learning disability or mental retardation is provided with specialized instruction in reading and writing so that the individual can comply with a TANF plan that requires the individual to obtain employment.
- The agency modifies procedures to ensure that beneficiaries with disabilities receive on-the-job training, and/or training and supports over a longer period than typically afforded if necessary, and

time limits are suspended. For example, a TANF agency allows TANF beneficiaries who score below the ninth-grade level on a standardized adult basic education test to enroll in adult basic education classes. The TANF program's time limits and work requirements do not apply to these beneficiaries until beneficiaries either reach the ninth-grade level or complete adult basic education courses.⁽⁴⁸⁾

Similarly, an agency suspends State-imposed time limits while individuals with suspected learning disabilities are being assessed.⁽⁴⁹⁾

- The TANF agency continuously reviews the progress of TANF beneficiaries to ascertain whether a beneficiary's disability is affecting the ability to make progress toward meeting an employment goal. This responsibility includes providing follow-up contact on missed appointments or missed deadlines and referral for additional comprehensive assessments if the beneficiary is not making progress in ability to find work or in work assignments.
- A TANF agency broadly defines activities that "count" toward the State's TANF work participation rate⁽⁵⁰⁾

in order to assist TANF beneficiaries with disabilities, such as including supported work activities⁽⁵¹⁾ in the definition of subsidized private employment.⁽⁵²⁾

TANF allows States to use their discretion in defining "countable" activities.⁽⁵³⁾

- A State TANF agency establishes practices that permit TANF beneficiaries with disabilities to engage in certain "allowable" activities, such as granting work credit for TANF beneficiaries who are engaged in remedial education if those beneficiaries are also working part-time, even though such activities will not "count" for purposes of the State's TANF work participation rate.⁽⁵⁴⁾

States may establish their own work requirements, and may choose to recognize participation in other activities toward these requirements. States may use TANF funds for a wide variety of activities designed to meet the purposes of TANF, whether or not these activities are countable toward either State or federal work requirements.

Examples of practices, that, if effectively implemented, would assist TANF agencies in modifying policies and practices to ensure access for people with disabilities include **modifications in policies and practices concerning exemptions, extensions and sanctions:**

- The TANF agency modifies work program procedures to ensure that, where a TANF beneficiary has a known disability that prevents the beneficiary from carrying out work requirements with or without reasonable accommodations, the individual is exempted from the work requirement.
- A TANF agency exempts individuals with disabilities from State-imposed time limits, or provides an extension to the 60-month limit imposed by federal law.
- A TANF agency requires a beneficiary with a disability to complete ten job contacts within one week. The beneficiary completes only six contacts, explaining that her disabilities - active cancer and a chronic mental illness - prevented her from securing ten contacts. Instead of sanctioning the beneficiary, the TANF agency takes her disability into consideration, and modifies the job search requirement to six contacts per week.
- A TANF agency grants TANF beneficiaries who have been diagnosed with learning disabilities an extension to State-imposed time limits for completing education and training programs when the failure to complete these programs in accord with time limits is the result of the beneficiaries' disability.⁽⁵⁵⁾
- A TANF beneficiary who receives mental health counseling on a regular basis during the work day requires a flexible schedule. The employer to whom the beneficiary is referred is unwilling to permit this flexibility and will hire the beneficiary only if the beneficiary agrees to keep a consistent, pre-established schedule. Rather than sanction the beneficiary for failure to obtain employment, the TANF agency either works with the employer to make the accommodation

required by the beneficiary or provides the beneficiary with an alternative referral.

Examples of promising practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to ensure access for people with disabilities also include **modifications in policies and practices that aid individuals in sustaining TANF program participation:**

- A TANF agency that utilizes individual responsibility plans addresses in the plan not only the suitability of job opportunities, but also the needs of a beneficiary with a disability for health care, benefits counseling, and disability-related services and supports. Because many persons with disabilities face multiple barriers and require interventions funded by a multiplicity of agencies and programs, the agency also provides comprehensive case management/service coordination.
- The TANF agency takes steps to ensure that the person with a disability is applying for benefits for which the person or his/her children may be eligible, including benefits available through State-operated programs such as Medicaid, Children's Health Insurance Program benefits, Food Stamps, child care, transportation assistance.
- Where a family has a child whose disability affects the parent's ability to work, the TANF agency modifies its practices to facilitate the parent's compliance with an employment plan. For example, the TANF agency grants the parent an extension of time to meet work requirements until the time that specialized child care required by her child is available, or helps identify appropriate child care so that the parent can work. Similarly, where the parent does begin to work and then is unable to work because of the repeated need to leave work to care for the child with a disability, the TANF agency establishes procedures which ensure that the parent and her family are not sanctioned for the parent's inability to retain her job.⁽⁵⁶⁾
- Where a TANF beneficiary, as a result of a disability, needs intervening assistance, training, or treatment in order to continue working, the TANF agency provides it. When there is a break in a person's work or training due to a disability, the agency does not simply determine the person is no longer eligible for supports such as child care, transportation, and training when she is able to return to work or training. Further, time limits may be extended.

3. The Legal Requirement to Adopt Non-Discriminatory Methods of Administration

TANF agencies may not utilize methods of administration that have the effect of subjecting qualified individuals with disabilities to disability-based discrimination.⁽⁵⁷⁾

This legal requirement governs both activities engaged in directly by the TANF agency, as well as activities that the agency carries out through contractual or other arrangements.⁽⁵⁸⁾

The phrase "methods of administration" refers to the "official written policies" of the TANF agency and to the "actual practices" of the agency.⁽⁵⁹⁾

TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by TANF agencies by training staff to provide equal access to TANF programs for individuals with disabilities. Effective training is one means of ensuring that there is not a gap between a TANF agency's written policies and procedures, and the actual practice of employees in the front line interacting with persons with disabilities. Effective training ensures that employees are knowledgeable and aware of policies and procedures relating to persons with disabilities and are trained to work effectively with persons with disabilities. The TANF agency should also ensure that similar training is provided to staff of TANF contractors and vendors to help these providers carry out TANF activities that comply with Title II and Section 504.

TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by developing and implementing a comprehensive written policy that incorporates modifications made to policies, practices and programs. Clear written policies that describe in detail how to respond when a TANF participant has a disability should be provided to all TANF agency and provider staff who have contact with beneficiaries with disabilities. These policies should be incorporated into any manual, handbook or directive that sets out

agency policy with respect to the State's TANF program as well any regulations promulgated by the agency.

Finally, TANF agencies may need to fulfill their obligation to ensure that the agency's policies and practices do not subject individuals to disability-based discrimination by conducting regular oversight of TANF programs and services to ensure that people with disabilities are being served. Agencies and service providers should also monitor their policies and procedures in all programs they administer regarding persons with disabilities and their implementation. For example, such monitoring should evaluate the current needs of TANF beneficiaries with disabilities, and determine whether existing screening and assessment tools and procedures are adequate, whether assistance provided is meeting the needs of such individuals, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are current and viable. Further, the TANF agency should also establish procedures to monitor periodically all aspects of compliance with Section 504 and the ADA by service providers and other entities with whom it has entered into contractual or other arrangements.

Also integral to operating a non-discriminatory system consistent with Section 504 and Title II of the ADA is the obligation to establish several types of procedural safeguards, including procedures for processing ADA/504 complaints; procedures for addressing disability-related issues in placement; and procedures for raising disability-related problems prior to any imposition of sanction.

Promising Practices in Non-Discriminatory Methods of Administration

Examples of promising practices, that, if effectively implemented, would assist TANF agencies in modifying policies and programs to employ non-discriminatory methods of administration include **appropriate training practices and the creation and implementation of written policies ensuring access for people with disabilities:**

- The TANF agency trains caseworkers and service providers to:
 - (1) look for and recognize the possibility that an applicant or beneficiary has a disability;
 - (2) treat TANF beneficiaries with disabilities as individuals, and not on the basis of disability-based stereotypes;
 - (3) understand disability issues and services (including reasonable accommodations, reasonable modifications to policies, auxiliary aids and services), and referral arrangements and in the use of screening instruments;
 - (4) work with agencies with specialized expertise in addressing the needs of persons with disabilities such as vocational rehabilitation agencies;
 - (5) become knowledgeable about State policy regarding provision of services to persons exempt from work participation requirements; and
 - (6) become knowledgeable about disability benefit programs such as SSI, SSDI, Medicaid, and Medicare, as well as other benefit programs.
- Through an interagency memorandum of understanding, a State provides cross-training for employees of its TANF and vocational rehabilitation agencies regarding the needs of TANF beneficiaries with physical and developmental disabilities, and the services provided to this population by each agency.⁽⁶⁰⁾
- Under a contract with the State Department of Education, the State TANF agency hires a "disability support specialist" to train TANF case managers to identify TANF beneficiaries with learning disabilities and arrange for reasonable accommodations for these beneficiaries in the TANF work program. The disability support specialist also trains GED instructors to identify,

modify and adapt instructional materials to meet the needs of TANF beneficiaries with learning disabilities.⁽⁶¹⁾

- A State provides training to employees of various State agencies, including the TANF and vocational rehabilitation agencies, regarding the modification of teaching instruction, materials and policies and practices for adults with learning disabilities. The State also conducts a "train-the-trainer" workshop for other States in its geographical region.⁽⁶²⁾

Examples of practices that, if effectively implemented, would assist TANF agencies in employing non-discriminatory methods of administration include **monitoring compliance with Title II of the ADA and Section 504 and establishing procedural safeguards:**

- The TANF agency monitors its staff, its contractors and its sub-contractors to ensure implementation of programs, projects and activities in a nondiscriminatory manner by analyzing data and records and conducting reviews. The agency imposes penalties on and requires corrective actions of contractors and sub-contractors for violations noted during a review. Additionally, the agency's monitoring rules include a process for reviewing policies and procedures.
- The TANF agency systematically and routinely investigates and assesses which beneficiaries are being sanctioned and why to determine whether or not beneficiaries who are sanctioned have a disability and whether the disability substantially contributed to the beneficiaries' noncompliance. The agency's ADA/Section 504 notice includes information regarding the right to have disability taken into account if disability is a basis of non-compliance.
- The TANF agency establishes and publishes procedures for resolving complaints under Section 504 and the ADA that follow the guidelines established by the Department of Labor for implementing the welfare-to-work programs and the Workforce Investment Act.⁽⁶³⁾
- Where a beneficiary tells the TANF agency that the proposed work assignment is not compatible with his or her disability, the agency has a procedure in place that permits the beneficiary's claim to be fully considered before placement can be made.

APPENDIX 1

EXAMPLE OF PROMISING PRACTICE IN MODIFYING POLICIES AND PROGRAMS TO ENSURE EQUAL ACCESS

SAMPLE DIAGNOSTIC REVIEW CHECKLIST

Application Stage:

Notice/Information Issues

1. Do staff ask applicants whether assistance will be necessary during the application process due to disability?
2. Is this inquiry accompanied by examples of such assistance (e.g., "if you have a disability that affects your ability to understand or respond to questions in the application, we can help. For example, we can assist you by reading the questions to you; recording your answers, etc. Do you need this or another kind of help to fill out the application?").
3. When communicating with beneficiaries about TANF, does the agency routinely include further instructions for people with disabilities who need extra help in responding? Are these additional instructions easy to understand for those with developmental or mental impairments? Do the instructions include (1) TTY numbers for persons who are deaf/hearing impaired and (2) the location of accessible sites for people with mobility impairments?

4. Do TANF agency offices prominently feature posters or other signage alerting people with disabilities how they can obtain further assistance?

Initial Screening for Disability and Accommodation Needs

- Do initial intake procedures used by TANF staff include a screening of applicants to ascertain potential disability and accommodation needs? Do these intake procedures allow staff to ascertain whether the person may need a more comprehensive assessment to make such a determination?
- Are intake workers trained to recognize potential disabilities? If there is an initial indication that an individual has a disability that may impact his/her ability to successfully complete or benefit from a current or proposed program assignment based on applicant or beneficiary disclosure, an initial screening or other information, does the intake worker give the individual an opportunity for a more comprehensive evaluation or assessment?
- Do TANF workers inform individuals that they can disclose a disability and/or a need for a reasonable accommodation?
- Is it made clear that disclosure of disability is voluntary?
- Are screening instruments validated for the purpose for which they are used?

Assessment of Accommodation Needs for People with Disabilities

1. Does the agency provide for an assessment after initial intake where appropriate? Does the assessment determine:

- Whether the individual has one or more disabilities;
- Nature of the disability;
- Extent to which an applicant is capable of employment or participation in employment-related activities;
- Under what conditions the individual is capable of employment;
- Implications of the disability on immediately securing employment;
- Appropriateness of a particular work assignment;
- The need for reasonable accommodations, reasonable modifications to policies, provision of auxiliary aids and services and communication assistance, and/or additional training and education; and
- Applicability of work participation rules and time limits, and the appropriateness of applying sanctions.

2. Is it clear that participating in an assessment is voluntary?

3. Are qualified personnel conducting these comprehensive assessments?

4. Where necessary to ensure equal opportunity for individuals with disabilities, does the TANF agency involve in the assessment process medical, psychological, vocational, and rehabilitation experts who are trained in making assessments of adults with disabilities related to employment?

Job Training/Education Stage

1. Where a TANF program features training or educational opportunities, are these opportunities accessible for beneficiaries with disabilities? Specifically, are they accessible for people with mobility impairments? People with impairments affecting communication? People with developmental impairments? People with mental or emotional impairments?

2. To the extent these job training and education programs are operated by other agencies or entities, are TANF agency staff trained in how to get beneficiaries with disabilities enrolled in these programs?

3. To the extent these programs are operated by other agencies or entities, has the State or primary TANF agency made the other entities aware of their obligations under the ADA and Section 504 to modify policies and procedures to ensure that people with disabilities have an equal opportunity to benefit?

4. How does the TANF agency monitor how individuals with disabilities function in training programs? Is there a method in place to ensure close tracking of whether an individual's accommodation needs are being met?

Work Program Stage

1. Was there a determination of whether modifications or accommodations to job opportunities are necessary due to disability?

2. Is the TANF agency working with employers to ensure that employers are aware of ADA obligations regarding reasonable accommodations for individuals with disabilities?

3. Is the agency working with employers to ensure that beneficiaries with disabilities are not steered to dead-end jobs?

4. How does the TANF agency monitor how individuals with disabilities function in job placements? Is there a method in place to ensure close tracking of whether an individual's accommodation needs are being met?

5. Is the agency ensuring that potential obstacles to sustaining employment for people with disabilities are being addressed?

1. "*Civil Rights Laws and Welfare Reform--Overview*" and "*Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform*," Office for Civil Rights, U.S. Department of Health and Human Services, August 1999, <http://www.hhs.gov/ocr/tanfintro.htm>.

2. 64 FR 17793 (April 12, 1999).

3. For ease of reference and readability, in this guidance we use the term "TANF agency" to mean both "covered entities" as defined by Section 504 (including any State or local agency, private institution or organization, or any public or private entity that (1) operates, provides or engages in health or social service programs and activities and that (2) receives federal financial assistance from HHS directly or through another recipient/covered entity), and State and local governmental entities covered by Title II of the ADA.

4. P.L. 104-193. This legislation is codified at 42 U.S.C. §601 et seq. Regulations implementing the legislation may be found in 45 C.F.R. Parts 260-265.

5. Section 401 of TANF (42 U.S.C. §601); 45 C.F.R. §260.20. While this guidance focuses largely on the first and second purposes of TANF, the information in the guidance also applies to the third and fourth purposes.

6. 64 FR 17722 (April 12, 1999).

7. Section 408(d) of TANF, 42 U.S.C. §608(d); 45 C.F.R. § 260.35.

8. Presidential Task Force on Employment of Adults with Disabilities, "*Re-charting the Course: First Report of the Presidential Task Force on Employment of Adults with Disabilities*" at Appendix-17 (November 15, 1998), <http://www.dol.gov/sec/public/programs/ptfead/1998rpt/1998rpt.txt>, (hereafter "*Re-charting the Course*"). The Task Force was established pursuant to Executive Order 13078 (March 13, 1998). Other statutory requirements affecting the civil rights of beneficiaries with disabilities in the

context of welfare to work may also apply. See, e.g., Section 188 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. § 2938, and its implementing regulations at 29 C.F.R. Part 37. These provisions bar discrimination on various grounds, including disability, in programs and activities that are operated by One-Stop partners and are part of the One-Stop Center delivery system established by the WIA, even if the programs are not physically located within a One-Stop Center. See 29 C.F.R. §§ 37.2(a)(2), 37.4 (definition of "recipient"). If States opt to include their TANF programs as part of their One-Stop systems, their programs may be subject to the jurisdiction of the Department of Labor's Civil Rights Center.

9. Id.

10. Eileen P. Sweeney, *Recent Studies Indicate that Many Parents Who are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions*, Center on Budget and Policy Priorities, February 2000, <http://www.cbpp.org/2-29-00wel.htm>. Of course, not every person with such disorders or conditions is covered by the ADA or Section 504. Individuals are protected by these statutes when their physical or mental condition substantially interferes with a major life activity. See discussion of legal definition of disability in Part C, infra.

11. "Re-charting the Course" at page 5; Presidential Task Force on Adults with Disabilities, *Re-charting the Course: If Not Now, When? The Second Report of the Presidential Task Force on Adults with Disabilities*, at 1, (Nov. 15, 1999), <http://www.dol.gov/dol/sec/public/programs/ptfead/ifnotnow.htm>. Other barriers include the lack of adequate care for a child with a disability and inaccessible or non-existent transportation. See, e.g., Timmons, Jaimie Ciulla, Susan Foley, Jean Whitney-Thompson and Joseph Green, *Negotiating the Landscape: The Path to Employment for Individuals with Disabilities in the TANF System*, Institute for Community Inclusion/UAP Research and Training Center on Promoting Employment, Children's Hospital, at 27-28 (March 1999), <http://www.childrenshospital.org/ici/publications/text/tanftext.html>.

12. See, e.g., "Civil Rights Laws and Welfare Reform-- An Overview" and "Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform," Office for Civil Rights, U.S. Department of Health and Human Services, August 1999, <http://www.hhs.gov/ocr/tanfinintro.htm> (stating that although individuals with disabilities may be eligible under some State programs for exemptions from work requirements and time limits, program providers may not refuse to allow a person with a disability to participate in training programs or be employed because the person has a disability).

13. Id.

14. 28 C.F.R. Part 35.

15. 45 C.F.R. Part 84.

16. See 28 C.F.R. Part 35, Appendix A, § 35.130(b), at 466 (Department of Justice commentary to ADA Title II regulations, identifying regulatory provisions as "intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do."). See also School Board of Nassau County, Fla. v. Arline, 480 U.S. 273, 284 (1987) (Supreme Court decision stating that Section 504's "basic purpose" is "to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others.")

17. See 28 C.F.R. § 35.130(b)(1)(ii), (iii), (iv), (vii) (ADA regulations); 45 C.F.R. § 84.4(b)(1)(ii), (iii) (Section 504 regulation). See also Alexander v. Choate, 469 U.S. 287, 304-06 (1985) (Supreme Court decision, discussing proper interpretation of HHS' Section 504 regulations requiring that individuals with disabilities be provided with health and human services that offer an equal opportunity to benefit from such programs and thus, are "as effective" as services provided to individuals without disabilities).

18. See Choate at 301-07 (discussing proper interpretation of Section 504 requirement that individuals with disabilities have meaningful access to federally assisted benefits).
19. See 28 C.F.R. § 35.130(b)(7), 28 C.F.R. § 35.149-151; 28 C.F.R. § 160-164. See also Choate at 301 (eligibility for federally assisted benefits "cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made.")
20. 28 C.F.R. §35.130(b)(3); 45 C.F.R. §84.4(b)(4).
21. See 42 U.S.C. § 2000d-4a (defining "program or activity" with respect to the applicability of Section 504 in federally-assisted programs).
22. See 28 C.F.R. § 35.130(b)(1)(ii),(iii) (ADA regulation); 45 C.F.R. § 84.4(b)(1)(ii),(iii) (Section 504 regulation).
23. See 42 U.S.C. § 608(b)(1); 45 C.F.R. § 261.11.
24. We recognize that TANF agencies may benefit from further technical assistance concerning certain issues related to screening and assessment, including appropriate agency decisions regarding which beneficiaries should be offered screening or assessment, the point at which screening or assessments should be offered to beneficiaries, agencies' obligations if a beneficiary refuses to disclose a disability or refuses an accommodation that is offered after screening or assessment, and how TANF agencies can appropriately implement screening or assessment practices.
25. TANF agencies should also protect the confidentiality and privacy of information regarding the existence of disability. Employers are subject to specific requirements with respect to obtaining information about the disabilities of employees and job applicants. See 42 U.S.C. § 12112(d); 29 C.F.R. §1630.14 (ADA statutory and regulatory provisions governing disability-related inquiries in the employment context); See also U.S. Equal Employment Opportunity Commission, "Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act," (July 27, 2000), <http://www.eeoc.gov/docs/guidance-inquiries.html>, and other information available on the EEOC website, <http://www.eeoc.gov>.
26. The ADA and Section 504 prohibit TANF agencies from utilizing "methods of administration" that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. See 28 C.F.R. § 35.130(b)(3)(I) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations). Commentary to ADA regulations makes clear that the "methods of administration" covered by these ADA includes agencies' "official written policies" and "actual practices." See 28 C.F.R. Part 35, Appendix A § 35.130, at 467 (1996).
27. Regulations promulgated under the ADA and Section 504 prohibit the provision of "different or separate aid, benefits or services" to people with disabilities "unless such action is necessary to provide [these individuals] with aid, benefits or services that are as effective as those provided to others." See 28 C.F.R. § 35.130(b)(1)(iv) (ADA regulations); 45 C.F.R. § 84.4(b)(1)(iv) (Section 504 regulations).
28. 28 C.F.R. § 35.130(d).
29. 28 C.F.R. § 35.130(b)(1)(iv); 28 C.F.R. § 35.130(b)(2) (ADA regulations); 45 C.F.R. § 84.52(a)(5) (Section 504 regulations). For example, a TANF agency should establish an explicit practice of allowing qualified individuals with disabilities access to all services and programs that are a part of the State's TANF program.
30. See 28 C.F.R. § 35.160(b) (ADA regulations); 45 C.F.R. § 85.52(d) (Section 504 regulations). For example, if a TANF agency generally provides printed information about job training programs, it must, where necessary and not a fundamental alteration, provide this information in Braille or on audiotape for

individuals with vision impairments. Similarly, a TANF agency must ensure that vendors providing adult basic education programs utilize sign language interpreters for TANF beneficiaries enrolled in the program who have hearing impairments, when interpreters are necessary to ensure effective communication for these beneficiaries and do not constitute a fundamental alteration.

31. For example, a TANF agency located on the second floor of a building with no elevator could conduct intake interviews in an accessible ground floor office for TANF applicants who have mobility impairments. However, when the ground-floor office is unavailable for evening job counseling sessions involving both TANF beneficiaries with disabilities and beneficiaries without disabilities, the agency should host the session in an alternate, accessible location.

32. See, e.g. 28 C.F.R. § 35.150(a)(3) (Title II ADA regulations requiring procedural safeguards in cases in which requested structural modifications will not be made).

33. ³³ See 28 C.F.R. § 35.130(b)(8) (ADA regulations); 45 C.F.R. § 84.4(b)(1) (Section 504 regulations).

34. We recognize that TANF agencies may benefit from further technical assistance concerning specific ways to ensure that individuals with disabilities have an equal opportunity to benefit from TANF programs run by contractors and vendors.

35. This approach is being utilized by the States of Washington and Utah. See Thompson, Terri S., and Kelly S. Mikelson, Screening and Assessment in TANF/WtW: Ten Important Questions TANF Agencies and Their Partners Should Consider, Office of the Assistant Secretary for Planning and Evaluation/Office of Planning, Research and Evaluation, U.S. Department of Health and Human Services, Forthcoming (February 2001), at 29, 42 & Appendix A at A-3 (hereafter "Ten Important Questions"). See also id., at Appendix B, at A-18 (describing separate screening tool specifically for learning disabilities utilized by Washington and eight other States). As noted previously in this guidance, staff should, of course, be trained to administer such documents.

36. This approach is being utilized by the State of Kansas. See Ten Important Questions, at 31 & Appendix A at A-19.

37. This approach is being utilized by the States of Kentucky (in eight designated counties) and Tennessee. See Ten Important Questions, at 42-43.

38. This approach is being utilized by the State of Tennessee. See Ten Important Questions, at 43.

39. The TANF agency can appropriately pay for these counseling services with Federal TANF funds. See U.S. Department of Health and Human Services, Administration for Children and Families, Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families Through the TANF Program, at 14 (Dec. 21, 1999) (providing examples for the appropriate use of funds) (hereafter TANF Funding Guide), <http://www.acf.dhhs.gov/programs/ofa/funds2.htm>. TANF funds cannot, however, be used for medical services (with the exception of pre-pregnancy family planning services). See 42 U.S.C. § 608(a)(6).

40. This approach is being utilized in the State of Georgia, through an agreement between the Georgia Department of Family and Children's Services (the TANF agency) and the Division of Rehabilitation Services (the vocational rehabilitation agency). See Georgia TANF Project Overview: The Assessment of TANF Recipients.

41. This approach is utilized by the State of Maine. Among the strategies used by contractors are assessing disabilities and other barriers, coordinating with TANF agency staff to develop a service plan for TANF beneficiaries, helping beneficiaries access needed services and providing job search assistance. See Thompson, Terri S., Pamela A. Holcomb, Pamela Loprest and Kathleen Brennan, State Welfare-to-Work Policies for People with Disabilities: Changes Since Welfare Reform, Office of the Assistant Secretary for Planning and Evaluation/Office of Planning, Research and Evaluation, U.S.

Department of Health and Human Services, at 19-20 (Oct. 1998) (hereafter "Changes Since Welfare Reform"), http://www.urban.org/welfare/wel2work_es.html; Holcomb, Pamela A. and Terri S. Thompson, State Welfare-to-Work Policies for People with Disabilities: Implementation Challenges and Considerations, Office of the Assistant Secretary for Planning and Evaluation/Office of Planning, Research and Evaluation, U.S. Department of Health and Human Services at 33 (August 2000) (describing this approach as in use specifically in Portland, Maine), <http://www.urban.org/welfare/wel-wrk-2k.html>. Similarly, in a pilot program in one county in New Jersey, a TANF agency has entered into partnerships with mental health providers to create teams in which providers work with TANF agency staff to identify TANF beneficiaries with mental illness, assess these beneficiaries' clinical needs, and link these beneficiaries to mental health services and supported employment. See Ten Important Questions, at 32.

42. See 28 C.F.R. § 35.130(b)(7) (ADA regulation); See also Alexander v. Choate, 469 U.S. at 301 (Supreme Court decision concerning Section 504, stating that "reasonable accommodations in the grantee's program or benefit may have to be made" in order to ensure meaningful access to the program or benefit.)

43. As set out in OCR's August 1999 welfare reform guidance, although TANF agencies may exempt individuals with disabilities, agencies may not prohibit a qualified individual with a disability from participating in work and other TANF programs because the person has a disability. Eligibility for participation in any benefit, service or program must be based on an individual assessment of each person's ability to meet the eligibility requirements rather than on stereotypes or assumptions about the effects of a type of disability. See "Civil Rights Laws and Welfare Reform--An Overview," at 4. Where reasonable accommodations and reasonable program modifications would allow a TANF beneficiary with a disability to work, the agency should provide the accommodations and modifications unless doing so would fundamentally alter the TANF program. Similarly, if the TANF agency allows individuals who are exempt to volunteer to participate in TANF programs, the TANF agency should allow individuals with disabilities who are exempt to participate, and should ensure that these individuals receive the necessary accommodations to facilitate their participation, unless ensuring the participation of these individuals would constitute a fundamental alteration of the TANF program.

44. Referral to determine eligibility for Supplemental Social Security Income (SSI) and continued receipt of cash assistance pending determination is another acceptable course of action.

45. This approach is being utilized by the State of Kansas. See Kansas Department of Social and Rehabilitation Services, State of Kansas - Kansasworks: Comprehensive Screening and Assessment (April 24, 2000). Through reviewing a variety of data, the State of Kansas determined that 30% of TANF beneficiaries screened "positive" for learning disabilities, 16% of beneficiaries appeared to have either a mental or musculoskeletal impairment, and 26% of beneficiaries scored below 80 on an IQ test. Id.

46. Id. In response to a survey from the American Public Human Services Association (APHSA), many States indicated that aggregate client assessment data was "very important" for the planning and development of programs to meet service needs. See American Public Human Services Association Research Notes, TANF Client Assessments: Program Philosophies and Goals, Sequencing of Process, Uses of Information and State Changes or Modifications, Promising Practices and Lessons Learned, at 7 (Sept. 2000), <http://www.aphsa.org/opd/research/researchnotes0900.html>.

47. Of course, if such notice is provided, the TANF agency should in fact be ready, willing and able to assist the person receiving the notice.

48. This approach is being utilized in Tennessee. See National Governors' Association Reports Online, Serving Welfare Recipients with Learning Disabilities in a Work First Environment, at 6 (July 28, 1998) (hereafter "Serving Welfare Recipients"), <http://www.nga.org/Pubs/IssueBriefs/1998/980728Learning.asp>; National Governors' Association Center for Best Practices, Online document, Learning Disabilities: Tennessee Learning Disabilities Initiative (undated), <http://www.nga.org/welfare/barriers/TNLearningDisabilities.asp>.

49. This approach is being used in Arkansas, and was implemented as a result of a legislative amendment. See Ten Important Questions, at 17.

50. Section 407(d) of PRWORA sets out the 12 work, training and education activities in which TANF beneficiaries may participate in order to be "engaged in work" for the purpose of counting toward the State's work participation rate requirements. Among these activities are education directly related to employment, satisfactory attendance in secondary school or a GED program for individuals without a secondary school diploma or GED certificate and job skills training directly related to employment. 42 U.S.C. § 607(d); See also TANF regulations at 45 C.F.R. §§ 261.30-261.36 (outlining the federal work activities and how they count for purposes of the work participation rate).

51. Individuals with disabilities who receive supported employment might, for example, have the services of a "job coach" to work alongside the person with a disability and assist the person with job duties.

52. The Department of Health and Human Services' Administration for Children and Families has indicated that States may appropriately use Federal TANF or State "maintenance of effort" funds for this purpose. See TANF Funding Guide, at 12-13.

53. The preamble to the TANF regulations makes clear that HHS intended States to have discretion and flexibility in defining "countable" work activities, so long as States' definitions are consistent with Congress' intent in drafting PRWORA. See Department of Human Services, Administration for Children and Families, Temporary Assistance for Needy Families, Final Rule, 45 C.F.R. Part 260, et al., Preamble, Section VI, 64 Fed. Reg. 17720 at 17776 (April 12, 1999).

54. This approach is being utilized in Minnesota. See Ten Important Questions, at 21. A State can also allow TANF beneficiaries to participate in such activities as disability screening, assessment and treatment, even though these activities may not "count" for purposes of the State's work participation rate. Id., at 20-21.

55. This approach is being utilized in New Hampshire. See Ten Important Questions, at 20.

56. These modifications would be consistent with the first purpose of the TANF program: to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives." See 42 U.S.C. § 601(1).

57. See 28 C.F.R. § 35.130(b)(3) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations).

58. See 28 C.F.R. § 35.130(b)(3) (ADA regulations); 45 C.F.R. § 84.4(b)(4) (Section 504 regulations).

59. See 28 C.F.R. Part 35, Appendix A, § 35.130, at 467 (1996) (commentary to Title II ADA regulations).

60. This approach is being utilized in four districts in the State of Vermont. This project is supported by U.S. Department of Labor Welfare-to-Work (WtW) formula grant funds. See National Governors' Association Center for Best Practices, Online document, Physical and Developmental Disabilities: Vermont Welfare-to-Work/Vocational Rehabilitation Collaboration (undated), www.nga.org/Welfare/barriers/VTWelfareToWork/asp.

61. This approach is being utilized in New Hampshire. See Serving Welfare Recipients, at 4.

62. This approach is being utilized in Arkansas. See National Governors' Association Center for Best Practices, Online document, Learning Disabilities: Arkansas Learning Disabilities Training and Dissemination Project (undated), <http://www.nga.org/Welfare/barriers/ARLearningDisabilities.asp>.

63. See 29 C.F.R. § 37.70-37.80 (WIA nondiscrimination regulations setting forth complaint processing

Application of the ADA and Title VI to Persons Facing the TANF Time Limit in Pennsylvania

I. Introduction

Welfare reform was designed to be implemented in a temporal and sequential fashion, under both the federal Temporary Assistance to Needy Families (“TANF”) program¹ and Act 35,² the state welfare reform law. Generally speaking (particularly for persons without work exemptions), a new cash assistance recipient in Pennsylvania (or an existing cash assistance recipient at the implementation of TANF on March 3, 1997) begins with an eight-week job search, to determine whether he or she is employable at the outset. If the job search fails, the recipient is expected to engage in one of a broad set of work activities, which can include education and training. At the two year mark, non-exempt TANF recipients are required to work at least 20 hours per week. Under TANF, most persons are not permitted to receive TANF assistance beyond five years. Thus, welfare reform was designed to move people towards self-sufficiency through employment and training, over a five-year period.

However, many persons with disabilities, persons caring for disabled family members, and persons with limited English proficiency have been among the populations that have not been able to leave the cash assistance caseload thus far. In large part, this is because they have not received adequate accommodations to allow them to participate effectively and meaningfully in the welfare reform program, especially employment and training. Additionally, these populations have employment barriers that even with accommodation may have required more time to move towards self-sufficiency than TANF recipients without these barriers. For people in these populations, five years of cash assistance simply will not be sufficient.

Two important sets of federal civil rights laws apply to these vulnerable populations facing the TANF time limit in Pennsylvania, requiring that their barriers to self-sufficiency be affirmatively addressed by the Pa. Department of Public Welfare (“DPW”). People with disabilities and care-givers for family members with disabilities are protected by Title II of the Americans with Disabilities Act (“the ADA”),³ as well as Section 504 of the Rehabilitation Act (“Section 504”).⁴ Heads of

¹ 42 U.S.C. § 601 *et seq.*

² See provisions beginning at 62 P.S. § 401.

³ 42 U.S.C. §§ 12131-12165.

⁴ 29 U.S.C. § 794. Section 504 places a mandate upon the state as a recipient of federal funds that is practically identical to Title II of the ADA. The two laws are to be administered consistently and in a coordinated fashion. 42 U.S.C. § 12134(b). Therefore, this paper will focus primarily on the ADA for simplification of discussion, even though Section 504 also applies.

households with limited English proficiency are protected by Title VI of the Civil Rights Act (“Title VI”),⁵ which prohibits discrimination on the basis of national origin. Both the ADA and Title VI have been construed to require adjustments to programs to meet the needs of these populations.

In planning to implement the upcoming TANF five-year time limit, DPW has designed some program features with people with disabilities in mind. However, these program features do not adequately remedy all ADA violations previously suffered by TANF recipients approaching their time limit, thus requiring an extension of the time limit for some disabled persons. Moreover, DPW must build flexibility into the time limit program features being designed, so that people with disabilities can fully participate in them, particularly “time-out” policies. As to persons with limited English proficiency, DPW has announced no accommodation whatsoever for their barriers in light of the approaching deadline.

This paper discusses the extent of persons who are disabled or who have limited English proficiency in the TANF caseload. It then looks at the applicable legal principles and how they will be violated if these populations are cut off cash assistance at their five-year mark. Finally, it examines the current lack of adequate plans to accommodate these populations especially with regard to the time limit. Time limit extensions for persons with disabilities, persons caring for disabled family members, and persons with limited English proficiency will be a necessary remedy under the ADA and Title VI.

II. Disabled TANF Recipients Approaching the Time Limit

A. Disabilities Among the TANF Population

In a review last year of studies of incidence of disabilities among current and former TANF recipients, the Center on Budget and Policy Priorities (“CBPP”) found that roughly one-fourth to one-third of TANF recipients have a serious mental health problem, as do about one-fifth of those who left TANF and are not working. About one-fifth of current TANF recipients have physical disabilities that limit their ability to work. Additionally, studies in three states found learning disabilities in between one-fifth and one-half of their current TANF populations. Many of these parents have more than one impairment, as well as other barriers to employment.⁶

The most in-depth study of disability among Pennsylvania TANF recipients was the special DPW “TANF Exemption Review,” which looked at people with disability exemptions in February, 2000. This review found that 20% (approximately 1,700) had permanent disabilities, and 80%

⁵ 42 U.S.C. § 2000d.

⁶ Eileen P. Sweeney, *Recent Studies Make Clear that Many Parents Who Are Current or Former Welfare Recipients Have Disabilities and Other Medical Conditions* (Center on Budget and Policy Priorities, Feb. 29, 2000). It is available at <http://www.cbpp.org/2-29-00wel.htm>.

(approximately 6,700) had temporary disabilities.⁷ As to type of disability, the TANF Exemption Review found that 59% had a physical disability; 22%, a mental disability; 1%, a substance addiction disorder; and 18%, a combination of impairments. Depression and back injuries were the most common disabilities. *As to work history, not surprisingly, 70% of persons with disability exemptions had no or sporadic work history; only 18% had more than 6 months of work experience during the last three years.*

DPW's findings that physical disabilities outnumber mental impairments among its exempt TANF population are not consistent with the national studies summarized by CBPP. That research suggests that DPW's findings may understate the challenges facing this population, and that many persons currently exempt from the TANF work requirements in Pennsylvania may have undiagnosed mental impairments or at least be reluctant to reveal their impairments. Moreover, to our knowledge, DPW has made no effort to screen for learning disabilities or cognitive disorders that may impede TANF recipients in obtaining and sustaining employment.

B. ADA Requirements and Violations

Title II of the ADA provides, "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. In a recent policy guidance, the Office for Civil Rights ("OCR") of the U.S. Department of Health and Human Services ("HHS") discussed the application of this rule to administration of the TANF program.⁸

The OCR ADA guidance identified two central concepts of the ADA applicable in the administration of TANF programs: individualized treatment, and effective and meaningful opportunity to participate.⁹ It also set forth three core legal requirements. First, equal access to the TANF

⁷ We suspect that these numbers are not reliable, as many physicians are reluctant to pronounce a person permanently disabled and unemployable, but instead re-certify the person's disability every six months or even more frequently, often timing the expiration of the period to coincide with their next office visit. In light of this common practice, the actual number of people with long-term disabilities is much higher.

⁸ *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)*, Office for Civil Rights, U.S. Department of Health and Human Services, January, 2001 ("the OCR ADA guidance"). It can be found at <http://www.hhs.gov/ocr/prohibition.html>.

⁹ *Id.* at Part B.

program must be ensured through the provision of appropriate services.¹⁰ Second, policies, practices and procedures must be modified to provide equal access to the TANF program and services by people with disabilities.¹¹ Third, the TANF program must adopt non-discriminatory methods of administration.¹² The OCR guidance leaves no doubt that so-called neutral criteria in state TANF programs which hinder the effective participation of qualified individuals with disabilities are prohibited and must be modified.¹³

Applying these principles, there have been several violations of the ADA with respect to Pennsylvania's TANF recipients since the state's TANF plan went into effect on March 3, 1997.

- (1) *DPW did not offer screening or assessment for disabilities.* In fact, DPW often said that it complied with the assessment requirement of TANF¹⁴ by sending an individual on the initial eight-week job search established by Act 35, the state's welfare reform law.¹⁵ Aside from allowing TANF recipients to apply for disability exemptions from the job search or work requirements, DPW made no effort either to conduct a brief initial screening to identify likely disabilities or to offer in-depth disability assessment to those who would have wanted one. As a result, people with disabilities could not be provided with services that would permit them to equally participate in the TANF program, nor were program requirements subject to modification in their cases. This is particularly true where the TANF recipient does not know

¹⁰ Id. at Part D.1. The ADA and Rehabilitation Act regulations provide that a public entity may not provide a qualified individual with a disability with a service or benefit that is not as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as others. 28 C.F.R. § 35.130(b)(1)(iii); 45 C.F.R. § 84.4(b)(2).

¹¹ OCR ADA guidance at Part D.2. According to the ADA regulations, where necessary to avoid disability discrimination, a public entity is required to make reasonable modifications in policies, practices, or procedures, unless these changes would fundamentally alter the nature of the program. 28 C.F.R. § 35.130(b)(7).

¹² OCR ADA guidance at Part D.3. See, for instance, 28 C.F.R. § 35.130-(b)(3)(ii) (prohibiting the use of criteria or methods of administration that have the effect of substantially impairing the objectives of the program for qualified individuals with a disability).

¹³ See also 28 C.F.R. § 35.130(b)(8) (prohibiting the application of eligibility criteria which tend to screen out qualified persons with disabilities from fully and equally enjoying any service or program, unless necessary for the provision of the program).

¹⁴ 42 U.S.C. § 608(b).

¹⁵ ⁶²~~43~~ P.S. § 405.1(a.2)(3)(mandating the job search step).

or appreciate the nature or extent of a disability, such as a mental or learning disability.¹⁶

- (2) *DPW has not provided appropriate services to allow persons with disabilities to ensure equal access to self-sufficiency.* The OCR ADA guidance suggests that promising practices fulfilling this legal requirement include counseling services to persons with mental disabilities, partnerships with vocational rehabilitation agencies, and exit interviews of TANF leavers to determine whether they have disabilities that were not adequately assessed and accommodated.¹⁷ While some of these services may be addressed in the Maximizing Participation Project — a development that is very welcome — more than four years have elapsed under TANF without these services being available. Moreover, DPW has not provided appropriate literacy and training services to TANF recipients with learning disabilities, in part because these disabilities were not identified.¹⁸
- (3) *DPW has not modified employment and training program rules sufficiently to permit participation of persons with disabilities.* Initially, DPW did not permit persons with disability exemptions to participate in and get work supports as “exempt volunteers” in employment and training programs. This policy was changed in 1999,¹⁹ but two years had passed during which this opportunity was not available. Even after exempt volunteers were permitted, DPW insisted that volunteers with disabilities were not entitled to any modification of program rules that might allow them to participate. In particular, Community Legal Services (“CLS”) had numerous discussions with the DPW Office of Legal Counsel about the need to modify the numbers of hours of work/training per week to allow disabled persons who could not attend full time to participate,²⁰ but DPW was not willing to permit such a modification.

¹⁶ The OCR ADA guidance notes that the assessment of TANF recipients with disabilities is “critical” and lays out a variety of promising practices for the assessment process. OCR ADA guidance, Part D.1.

¹⁷ OCR ADA guidance at Part D.1.

¹⁸ See Ramos v. McIntire, Civ. Action No. 98-2154-E (Mass. Superior Court, Suffolk Co.)(challenging lack of educational services for learning disabled). In an administrative complaint filed on behalf of the same complaining parties, the Region I office of OCR issued findings on January 17, 2001, concluding that the Massachusetts TANF agency had denied the learning disabled recipients equal opportunity under the ADA and Section 504 by not providing special education services allowing them to move from welfare to work.

¹⁹ E.g., Policy Clarifications 360135 and 323135.

²⁰ Under Title I of the ADA, governing employment, the regulations specifically recognize that a reduced or modified work schedule can be a reasonable accommodation. 29 U.S.C. § 12111(9)(b); 29 C.F.R. § 1630.2(o)(2)(ii).

- (4) *DPW has not made adequate efforts to refer TANF recipients to the SSI program.* Some TANF recipients with permanent disabilities are not going to replace cash welfare benefits with earned income, because they simply cannot work at a job in the private labor economy. These particularly vulnerable individuals should be referred to the Supplemental Security Income (“SSI”) program, which provides cash assistance to those with permanent disabilities.²¹ While DPW’s Disability Advocacy Program (“the DAP program”) does make referrals to the SSI program, it largely focuses on General Assistance (“GA”) recipients. Failure to properly assess TANF recipients has also resulted in fewer SSI referrals than should have been made.²² Moreover, our understanding is that DPW has set up its Community Connections Initiative (“CCI”), an outreach program to assist families who are having difficulties meeting the work requirement, in such a way that contractors will not be reimbursed for SSI referrals, thus exacerbating this failure.
- (5) *DPW has not “stopped the clock” nor provided extensions of education or training time for persons with disabilities.* The OCR ADA guidance notes that an appropriate accommodation of learning disabilities is to suspend the work requirements and time limits until a person either reaches a ninth-grade educational level or completes adult basic education, an approach adopted in Tennessee.²³ New Hampshire also permits time limit extension for education and training if a learning disability impeded progress in a program.²⁴ Arkansas even suspends its time limits while a person with suspected learning disabilities is being assessed.²⁵ Pennsylvania has not adopted any such approach to give a person with disabilities time to “catch up” on education or training.
- (6) *DPW has not adequately modified its practices to fully permit care-givers of disabled family members to make progress toward self-sufficiency.* The ADA protects not only persons with disabilities themselves, but also persons who have a known relationship or association with

²¹ The OCR ADA guidance notes that SSI referrals and continued cash assistance pending determination “is another acceptable course of action.” OCR ADA guidance at Part D.2, n. 44.

²² The guidance also suggests that TANF caseworkers should be trained to be knowledgeable about the SSI program. OCR ADA guidance at Part D.3.

²³ OCR ADA guidance at Part D.2 & n. 48. See also the HHS regulation governing postsecondary vocational education programs, which indicates that modifications to academic requirements may include “changes to the length of time permitted for the completion of degree requirements.” 45 C.F.R. § 84.44(a).

²⁴ Id. at Part D.2 & n. 55.

²⁵ Id. at Part D.2 & n. 49.

someone who does have a disability.²⁶ OCR's ADA guidance indicates that were a parent is impeded in working because of a child's disability, the TANF agency must modify its practices to facilitate the parent's compliance with an employment plan.²⁷ DPW has made very few accommodations of care-givers of disabled family members, aside from some exemptions from the work requirements, and in November of 2000, administrative modification of the subsidized child care rules to permit people who regularly work 25 hours per week to qualify for subsidy for weeks in which they work fewer hours because of responsibilities to a disabled family member.²⁸

These ADA shortcomings by DPW and lack of assistance to the recipients with disabilities in its TANF caseload have allowed more than four of the five TANF years to elapse without significant progress toward leaving cash assistance by recipients with disabilities. It is too late for DPW to fully remedy these violations before the fifth year arrives. Since these ADA violations contributed to their continuation of recipients with disabilities on TANF, applying the five year time limit to them would compound the discrimination.²⁹

Additionally, in its ADA guidance, OCR has instructed the states that an extension to the five-year time limit imposed by federal law is a reasonable accommodation under the ADA.³⁰ While there is little caselaw interpreting the necessity of extension of a time limit as a Title II accommodation, there is support for this proposition. In Howard v. Dept. of Social Welfare, 655 A.2d 1102 (Vt. 1994), the Court held that an AFDC rule limiting benefits to 18-year-olds who were still in school and would graduate before age 19 should be extended to 18-year-olds who would not graduate before age 19 because of learning disabilities. The Court ruled that this was a policy modification required under 28 C.F.R. § 35.130(b)(7). Id. at 1109-10. Similarly, the ADA requires a policy modification to extend the TANF time limit for persons with disabilities who are unable to attain self-sufficiency within five years.

²⁶ 42 U.S.C. §12___; 28 C.F.R. § 130(g).

²⁷ OCR ADA guidance at Part D.2. Among the examples given of appropriate policy modifications are: giving a parent of a disabled child additional time to locate specialized child care; helping to identify proper child care; and not sanctioning someone who stops working because of the repeated need to care for a disabled child. Id.

²⁸ For instance, the same ADA principles leading DPW to approve temporary departures from the 25-hour per week rule for child care subsidies should also permit permanent work schedules of fewer than 25 hours where required by care-giving responsibilities.

²⁹ See 28 C.F.R. §§ 35.130(b)(1)(ii); 35.130(b)(8).

³⁰ OCR ADA guidance at Part D.2.

In sum, DPW's blanket application of the five-year time limit to persons with disabilities would both continue the present effects of past ADA violations and refuse a reasonable accommodation for persons not able to leave cash assistance at the end of five years. Under both theories, the ADA would be violated.

C. Legal Insufficiency of DPW's Plans for TANF Recipients with Disabilities or with Disabled Family Members

DPW's announced plans for the upcoming TANF time limit contain the following features of importance to recipients with disabilities:

(1) Persons with temporary physical or mental disabilities will be permitted to have off-the-clock time for up to 12 months in a lifetime if they participate in the Maximizing Participation Project ("MPP")³¹ and maintain compliance with their service plan. In theory, the MPP is a sound concept, but virtually nothing is known about the design of the program, much less its implementation. Moreover, the adequacy of a maximum 12-month off-the-clock period is questionable.

(2) DPW has said that some recipients with disabilities will qualify for the GA program. However, a more detailed commitment on its views on this issue is necessary. CLS's position is that transfer of people with disabilities and care-givers for disabled family members from the TANF program to the GA program is required by the General Assistance statute³² and could be a reasonable accommodation to extend the time limit required under the ADA.

Moreover, DPW will be required to affirmatively screen its 5-year cohort for persons who should be transferred to the GA program. This obligation follows from the same due process and ADA principles accepted by Judge Shapiro in granting a temporary restraining order in Lind v. Snider (stipulation of settlement approved by Judge Shapiro, U.S.D.J., E.D. Pa., Sept. 21, 1994). Lind required the orderly shift of recipients from one category of assistance to another, where DPW had information that recipients qualified, or probably qualified, in a new category of assistance.³³

³¹ MPP is a program in which persons with temporary disability exemptions can obtain an assessment and services from an interdisciplinary team that includes the Office of Vocational Rehabilitation and behavioral health agencies, with the goal of improving their employability.

³² 62 P.S. § 432(3)(i)(C).

³³ The three ADA claims pressed in the Lind litigation are equally applicable in the context of the screening of TANF recipients at their time limit. They are that:

1) Affirmative steps must be taken by DPW to insure that the information is communicated in a manner that is understood by disabled persons. See, e.g., 28 C.F.R. §§ 35.160(a) and (b)(1).

2) Reasonable modifications to the program must be made that would not fundamentally alter its nature. See, e.g., 28 C.F.R. § 35.130(b).

As in the Lind litigation, some of the most vulnerable persons hitting the TANF time limit in March, 2002 or shortly thereafter will have received mental health or mental retardation services, been in substance abuse treatment, or have pending SSI applications. Unless DPW assists in the evaluation of GA eligibility of TANF recipients, people with disabilities such as these will be unable to qualify for GA because they cannot take the necessary steps.³⁴

(3) Persons who are working 30 hours per week or engaging in a combination of 20 hours per week of work and 10 hours per week of training will be permitted to be off-the-clock for up to 12 months in a lifetime. For the reasons previously discussed, these high hours requirements must be modified to allow persons with disabilities and care-givers for family members with disabilities to participate in work-related time-outs, even though they cannot work 30 hours a week outside the home.

Even if these flaws were to be remedied, DPW is required by the ADA to bring a more comprehensive approach to the unique problems faced by TANF recipients with disabilities. DPW's strategy should include SSI referrals, extended time for education and training, a work program, and other approaches that help persons with disabilities replace their TANF safety net.

III. TANF Recipients with Limited English Proficiency Approaching the Time Limit

A. Limited English Proficiency Among the TANF Population

Pennsylvania is a state in which many languages are spoken. Based on 1995-97 data, Pennsylvania's foreign-born population was 411,000, of whom approximately 215,000 were non-

3) The ADA prohibits the Department from "utiliz[ing] criteria or methods of administration ... [t]hat have the effect of substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities," i.e., that have a disparate impact on disabled persons. 28 C.F.R. § 35.130(b)(3)(ii).

³⁴ In March, 1999, when DPW implemented its Work Requirement Review ("WRR"), it agreed to apply the Lind principles. It did not call in persons who were known to be exempt, who had SSI applications pending, or who were in the DAP program. Before a person who failed to appear for a WRR session was considered for sanction, caseworkers were to check whether that person was on a list of individuals who had received mental health/mental retardation services, drug and alcohol services, or prescription anti-psychotic drugs during the previous 24 months, as well as check with local homelessness agencies on whether that person may have lacked a permanent residence. Operations Memorandum 99-2-8. A similar screening effort will be required regarding potential transfer from the TANF program to GA program.

citizens.³⁵ Approximately 55,000 of these non-citizens live in poverty. In addition, the state is home to hundreds of thousands of persons of Puerto Rican origin, many of whom are limited in their English proficiency. In 1990, more than seven percent of Pennsylvania's residents spoke a primary language other than English³⁶ While 2000 Census figures have not yet been released in full, early reports suggest dramatic increases in the numbers of Pennsylvanians with limited English proficiency. For example, the Commonwealth's Latino population grew by 70 percent between 1990 and 2000. The Asian population grew by 62 percent.³⁷ According to the 1990 Census, approximately 42% of Pennsylvanians whose home language is Spanish and 54% of Pennsylvanians whose home language is an Asian language do not speak English very well.³⁸

In Philadelphia, the numbers of immigrants, many of whom are limited in English proficiency, is particularly notable. For example, community organizations estimate that Philadelphia is home to approximately 45,000 Russians, 30,000 Vietnamese, 25,000 ethnic Chinese, 20,000 Cambodians, 7,000 Laotians, and 5,000 Ethiopians. The 2000 Census estimates that approximately 129,000 Latinos reside in the City.³⁹

We do not know the percentage of persons with limited English proficiency among the TANF population in Pennsylvania. As far as we are aware, DPW has not made this data publically available. In any case, there is strong reason to believe that any data DPW has on this population is inaccurate, since DPW routinely fails to identify and code limited English persons as such.⁴⁰ There is every reason to believe that families headed by limited English adults comprise a disproportionately high proportion of TANF families.

B. Title VI Requirements and Violations

Title VI of the Civil Rights Act prohibits discrimination, including the denial of benefits, on the basis of national origin in any program receiving federal financial assistance. 42 U.S.C. § 2000d.

³⁵ Urban Institute tabulations using the Current Population Survey of the Bureau of the Census, using a three-year average from 1995-1997.

³⁶ Pennsylvania State Data Center, "Spanish is the Leading Non-English Language Spoken at Home" (undated research brief citing 1990 census data).

³⁷ Thomas Ginsberg, "Philadelphia Becomes a Majority Minority," Philadelphia Inquirer, March 9, 2001.

³⁸ Census Bureau, "Language Spoken at Home (Pennsylvania)," (1990).

³⁹ Ginsberg, *supra* note 33.

⁴⁰ See the Refugee Communities Coalition of Philadelphia's Civil Rights Complaint against the Department of Public Welfare, January 10, 2000, p.7.

Extensive case law and federal regulations make clear that Title VI's prohibition against national origin discrimination encompasses language discrimination, given the close link between language and national origin.⁴¹ HHS' regulations implementing Title VI prohibit recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin." 45 C.F.R. § 80.3(b)(2). Methods of administration which fail to provide language assistance so to assure the meaningful access and effective participation of limited English persons have a discriminatory effect which stands in violation of Title VI.⁴² Not only are affirmative actions permitted to overcome the effects of conditions that limit program participation by persons of a particular national origin, 45 C.F.R. § 80.3(b)(6)(ii); ***affirmative actions must be undertaken to overcome the effects of prior discrimination.*** 45 C.F.R. § 80.3(b)(6)(i)

During the year 2000, CLS filed ten Title VI OCR complaints on behalf of clients with limited English proficiency.⁴³ On January 10, 2001, CLS filed an omnibus Title VI OCR complaint on behalf of the Refugee Communities Coalition of Philadelphia ("RCCP"), a coalition of seven refugee services agencies asserting the rights of its limited English constituents. This 33-page complaint alleged myriad facts establishing Title VI violations. Overall, there are two themes to the complaint:

- (1) DPW has seriously failed, and continues to fail, to provide meaningful access to individuals with limited English proficiency at local welfare offices; and
- (2) DPW has seriously failed, and continues to fail, to provide meaningful access to persons with

⁴¹ See *Title VI Prohibition Against National Origin Discrimination — Persons with Limited English Proficiency*, Office for Civil Rights, U.S. Department of Health and Human Services, January 29, 1998 ("the OCR Title VI Guidance"). Section B3 of the Guidance summarizes the case law establishing language discrimination as a prohibited form of national origin discrimination. The Guidance can be found at <http://www.hhs.gov/progorg/ocr/lepfinal.html>.

⁴² Id.

⁴³ Copies of these complaints have been sent to DPW's Office of Legal Counsel. The complainants represent diverse cultures and languages, including Spanish, Serbo-Croatian, Russian, Khmer, Arabic, and Vietnamese. Their common experiences of discrimination in different welfare offices demonstrate the pervasiveness of the problem.. The complaints have been incorporated into an OCR review of DPW's practices. While most of the review is still pending, OCR issued a March 9, 2001 letter of finding on one of the complaints which dealt with the DPW Bureau of Hearings and Appeals ("BHA"). OCR found several deficiencies and asked BHA to take several steps to remedy the problems revealed through the investigation. BHA entered into an extensive voluntary compliance agreement, the implementation of which will be monitored by OCR.

limited English proficiency in its administration of welfare-to-work programs.

The complaint lists numerous ways in which DPW has failed its TANF recipients who lack English proficiency. Some of the more notable examples include the following:

- forcing clients with limited or no English skills to try to communicate in English at welfare offices by refusing to provide interpreting assistance;
- requiring clients to bring their own interpreters or to use their minor children to interpret;
- failing to inform limited English clients about welfare reform, welfare-to-work requirements, and services available from the welfare department to assist clients in obtaining self-sufficiency;
- failing to offer applications for benefits such as cash assistance, food stamps, medical assistance, and child care subsidies, in languages other than English and (in limited circumstances) Spanish;
- sending out written appointment notices and other important correspondence in English to clients known not to understand English;
- failing to offer welfare-to-work programs, such as job-readiness services and vocational training courses, in languages other than English and (in limited circumstances) Spanish; and
- requiring clients who do not speak English to attend English-only welfare-to-work programs.

The cumulative impact of these failures to ensure meaningful participation is that TANF recipients with limited English proficiency have generally not received the assistance necessary to move towards self-sufficiency. Their language barriers, standing alone, would have made their ability to move off the caseload as quickly as English-speakers unlikely. But DPW's failure to ensure their meaningful access to supportive services at welfare offices and job readiness and training services in contracted programs has placed limited English persons at a severe disadvantage under welfare reform. The unfortunate truth is that many persons with limited English proficiency will be unprepared to leave the TANF caseload in five years, because of DPW's failings.

Even under the best of circumstances, in which a welfare program takes comprehensive measures to assure meaningful access by providing language assistance at welfare offices and offering a full array of language appropriate job-readiness and vocational training programs, there is a strong argument under Title VI that persons with language barriers to employment not be subject to the five year TANF time-limit in a manner identical to English speaking persons. Just as the ADA may be read to require adjustments to the time-limit so as not to unfairly penalize disabled persons who require more time to overcome their disabilities, Title VI may be read to require such adjustments for

persons with limited English proficiency. A uniform method of administration which imposes identical time limits on persons irrespective of English proficiency has the effect of disadvantaging persons who require more time to overcome their language barrier to employment.

We understand that DPW is currently assessing its policies and practices towards persons with limited English proficiency, and we are hopeful that improvements will be made resulting in comprehensive measures to assure meaningful access to this population. However, DPW's past and still ongoing practices have had a disadvantageous effect on limited English persons. ***Therefore, Title VI prohibits DPW from cutting off persons with limited English proficiency at the 5 year time-limit.***

On the question of "affirmative action," HHS' Title VI regulations provide as follows:

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

45 C.F.R. § 80.3(6). The regulations further elucidate these principle with the following "illustrative application:"

(i) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, ***it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subjected to discrimination....*** 45 C.F.R. § 80.5(i) (emphasis added).

In light of DPW's repeated pattern of inadequate provision of language-appropriate services to persons with limited English proficiency, there can be no doubt that these TANF recipients are suffering the current consequences of past discrimination, as well as ongoing Title VI violations, as they approach the five-year deadline. They are legally required to be continued past the 60 months of TANF.

C. Legal Insufficiency of DPW's Plans for TANF Recipients with Limited English Proficiency

DPW has announced no plan whatsoever to provide more than 60 months of cash assistance to persons with limited English proficiency. Title VI requires such a plan, given the circumstances described above. DPW should:

- (1) Take people who lack English proficiency “off-the-clock” and provide them with opportunities to enroll in programs which enhance their self-sufficiency and assist them in overcoming language barriers to employment, such as English as a Second Language, job readiness and vocational training programs.
- (2) Provide them with 20% hardship extensions or otherwise extend their time using state funded programs;
- (3) Rectify the problems enumerated in the Title VI complaint, by providing language-appropriate services and information in the local welfare offices and by creating employment and training programs targeted at people with limited English skills.

The RCCP complaint identifies a comprehensive array of remedies for the Title VI violations that we have identified. But given that these violations have greatly exacerbated the inherent disadvantage that persons with limited English proficiency face in become self-sufficient in the five year structure created by TANF, time-limit adjustment is an absolutely essential component of any set of appropriate Title VI remedies.

IV. Conclusion

In sum, persons with disabilities, care-givers for family members with disabilities, and persons with limited English proficiency will reach the five-year TANF deadline unprepared to leave cash assistance. For the reasons explained herein, the ADA and Title VI require that they not be terminated after sixty months of cash assistance.

**BEFORE THE INDEPENDENT
REGULATORY REVIEW COMMISSION**

**COMMENTS REGARDING DPW' S TANF
PROGRAM**

31 Pa. Bull. 5875 (October 20, 2001)
IRRC Number
2224
14-472

2001 OCT -5 PM 9:10

REGULATORY REVIEW COMMISSION

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November 2, 2001

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EXHIBITS

IRRC

From: IRRC
Sent: Monday, November 05, 2001 9:34 AM
To: 'RWeishaupt@clsphila.org'
Subject: RE: Comments on DPW proposed regulations 14-472

Yes, we could open this attachment. Thank you.

-----Original Message-----

From: Richard Weishaupt [mailto:RWeishaupt@clsphila.org]
Sent: Monday, November 05, 2001 8:56 AM
To: IRRC
Subject: Comments on DPW proposed regulations 14-472

Here are our cooments saved in Word, instead of Word perfect. Please let me know if you can open these. Hard copy with attachments was sent by regular mail.

Richard P. Weishaupt
Community Legal Services, Inc.
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Phone:215.981.3773
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RECEIVED
NOV 05 2001
10 48 AM
COMMUNITY LEGAL SERVICES, INC.
1424 CHESTNUT STREET
PHILADELPHIA, PA 19102

ORIGINAL: 2224

Edward J. Zogby, Director, Bureau of Policy
Department of Public Welfare
Room 431, Health and Welfare Building
Harrisburg, PA 17120

2001 NOV -5 AM 9:50

REVIEW COMMISSION

Independent Regulatory Review Commission
333 Market St.
Harrisburg, PA 17120

Re: DPW Proposed Regulations
Implementation of TANF/Act 35

Dear Mr. Zogby and Members of the IRRC:

I am writing to urge changes to DPW's proposed regulations implementing TANF and Act 35, which were published in the Pennsylvania Bulletin on October 20, 2001. The proposed regulations' five-year time limit without any exceptions jeopardizes the income and well-being of the nearly 12,000 families that will be reaching the time limit beginning on March 3, 2002. These regulations as written would also harm TANF recipients trying to move into the workforce and battered women. These harmful changes are being considered at the very time when Pennsylvania's unemployment rate and TANF caseload are rising. We urge you to make changes to the proposed regulations to protect these vulnerable families.

Here are some of the most important problems:

- **The regulations don't provide *any exceptions at all* to the 60 month TANF time limit. DPW should consider all of its time limit policies together rather than piecemeal.**
The federal law gives states many options to extend the time limit beyond 60 months: Pennsylvania may exempt 20% of its TANF caseload as well as battered women from the time limit using federal funds, and may extend the time limit to additional families using its own funds. DPW has announced that it intends to use all of these options, through its "overtime" and "time out" policies. The "time out" program is already in effect, and DPW has said that it will be issuing "overtime" rules shortly. These proposed regulations, however, would not permit either of these programs, and could result in thousands of families losing their only source of income in a matter of months. Although DPW officials have said they intend to modify the time limit rule in this set of regulations soon, they should not ask the public to "trust them" that they will fix this flawed regulation in the coming months. Instead, the Department should consider all of its time limit policies, including "overtime," together in the later set of regulations. The time limit regulation should be removed from this package of regulations altogether.
- **The protections to prevent inappropriate sanctions have been gutted.** Important protections have been in place to ensure that families don't lose their benefits when they are trying to comply with work requirements, or when they have been unable to comply because of

illness, child care problems, or misunderstanding. The regulations eliminate these protections. As a result, families could lose their benefits even though they are trying their best to comply with work requirements. The regulations should restore existing protections requiring conciliation sessions to work out problems a family may be facing, and reminding sanctioned individuals that they may start receiving benefits again.

- **The regulations don't include the compromise modifications to DPW's work program that DPW adopted to avoid legislation that would have allowed more education and training.** When House Bill 1266 was pending, DPW agreed to exercise its discretionary authority to make important changes in its work requirements to allow greater access to education and training. These changes, which are consistent with Act 35, should be included in the regulations.

- **The regulations don't properly protect survivors of domestic violence.** Waivers of TANF child support cooperation requirements are crucial to protect victims of domestic violence from danger that arises when support papers inform a batterer where the woman lives, provoke retaliatory violence, and place the woman in direct contact with batterer in court. DPW's proposed regulations fail to provide adequate procedures to make waivers a true option for victims of domestic violence by not requiring full notification about the waiver possibility, by permitting arbitrary waiver deadlines instead of allowing the waiver to continue for so long as necessary, and by imposing documentary requirements for waivers that unnecessarily burden both domestic violence victims and domestic violence service providers.

- **The regulations attempt to impose more work obligations than the General Assembly required, and lessen parents' ability to design their own path off welfare.** Pennsylvania's welfare reform law provides for DPW and parents to develop mutually-agreed-upon plans for the parent to move toward self-sufficiency, assuming the parent is meeting the law's work requirements. These proposed regulations, however, would allow DPW to impose more obligations on parents than the law envisions, without the parent's involvement.

Thank you for considering these comments. I hope that you will make sure these problems are fixed before approving final regulations.

Sincerely,



cc: Secretary Feather Houstoun
Department of Public Welfare
Room 431, Health and Welfare Building
Harrisburg, PA 17120



Emma T. Lucas, Ph.D., LSW
President

Original: 2224

Rebecca S. Myers, LSW
Executive Director
exec@nasw-pa.org

October 30, 2001

Edward J. Zogby, Director, Bureau of Policy
Department of Public Welfare
Room 431, Health and Welfare Building
Harrisburg, PA 17120

Independent Regulatory Review Commission
333 Market St.
Harrisburg, PA 17120

Re: DPW Proposed Regulations
Implementation of TANF/Act 35

Dear Mr. Zogby and Members of the IRRC:

I am writing on behalf of the 6400 members of the Pennsylvania Chapter, NASW to urge changes to DPW's proposed regulations implementing TANF and Act 35, which were published in the Pennsylvania Bulletin on October 20, 2001. The proposed regulations' five-year time limit without any exceptions jeopardizes the income and well-being of the nearly 12,000 families that will be reaching the time limit beginning on March 3, 2002. These regulations as written would also harm TANF recipients trying to move into the workforce and battered women. These harmful changes are being considered at the very time when Pennsylvania's unemployment rate and TANF caseload are rising. We urge you to make changes to the proposed regulations to protect these vulnerable families.

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PENNSYLVANIA CHAPTER

National Association of Social Workers

1337 North Front Street • Harrisburg, PA 17102-2629 • (717) 232-4125 • (800) 272-6279 • FAX (717) 232-4140
www.nasw-pa.org

should be removed from this package of regulations altogether.

- **The protections to prevent inappropriate sanctions have been gutted.** Important
- protections have been in place to ensure that families don't lose their benefits when they are trying to comply with work requirements, or when they have been unable to comply because of illness, child care problems, or misunderstanding. The regulations eliminate these protections. As a result, families could lose their benefits even though they are trying their best to comply with work requirements. The regulations should restore existing protections requiring conciliation sessions to work out problems a family may be facing, and reminding sanctioned individuals that they may start receiving benefits again.
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Thank you for considering these comments. I hope that you will make sure these problems are fixed before approving final regulations.

Sincerely,



Rebecca S. Myers, LSW
Executive Director

cc: Secretary Feather Houstoun
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