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WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

May 13, 2002

MEMO

TO: Department of Workforce Development

FROM: Patti Seger, Policy Development Coordinator, Wisconsin Coalition Against Domestic Violence (WCADV)

RE: Testimony Regarding Proposed Rule Changes to Chapters DWD 12 and 17 Wisconsin Works

I am providing comments on behalf of the Wisconsin Coalition Against Domestic Violence (WCADV). Since 1978 WCADV has been the statewide membership organization representing domestic violence programs, battered women and their children, and citizens concerned with ending domestic violence. I am pleased to be able to offer you my testimony today regarding proposed rule changes that will guide training of W2 agency employees regarding domestic violence and the implementation of comprehensive screening of all W2 recipients for domestic violence.

Thank you for the treatment you have given the issue of domestic violence in the development of these rules. I do have some minimal comments that I believe will further enhance these rules.

In Section 5. DWD 12.15 (3) and 12.16 (3)(b)6. *domestic abuse* is defined. This is a sufficiently broad definition that encompasses most of the types of abuse experienced by many victims of domestic violence. However, I suggest that you make this definition the same as that suggested in the proposed rule change to DWD 19 (child support cooperation in the food stamp program). All definitions of domestic abuse that are utilized by the Department should be consistently phrased so as to reduce any potential for confusion. In the same manner as suggested in WCADV's testimony regarding the domestic abuse section in proposed rule changes in DWD 15 and 19, I also suggest that DWD 12.15(3) (a) 1. "Physical acts that result in injury" also include acts that result in pain or illness as currently defined in Wis. Stats. 813.12(1)(a) and 968.075(1)(a)(1.). This section could read as follows: "physical acts that result in *pain*, injury or *illness*".

This same section that defines domestic abuse, also includes acts of sexual abuse or threats of sexual abuse against adults or dependent children. There is a growing body of research that indicates that adult and/or childhood sexual abuse can create significant barriers to the success and self-sufficiency of welfare recipients. WCADV is pleased to see the inclusion of sexual abuse in the definition section. However, while similar to domestic abuse, sexual abuse can and often does have different implications and impacts

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on victims...even in a familial context. We suggest that the Department consult with experts in this area to ensure that the training and screening devised as a result of this rule change adequately address those victimized by sexual abuse. The Wisconsin Coalition Against Sexual Assault may be an excellent resource for this purpose.

Finally, well over half of the women receiving welfare have experienced physical abuse by an intimate partner at some point during their adult lives, with as many as 30% of these women reporting abuse in a current relationship. A significant number of women receiving welfare also report physical and/or sexual abuse in childhood.ⁱ We know from research and experience that most battered women work or want to work *if they can do so safely*. Many use welfare and work as a way to escape an abusive relationship.ⁱⁱ

Abusive partners often sabotage women's efforts to move from welfare-to-work – they start fights before key events, such as tests or job interviews, threaten or harass partners at work or prevent them from going to work or school; destroy books and homework assignments; give their partners black eyes or other visible injuries to make them embarrassed to go on job interviews or to their job; flatten car tires, destroy bus passes; threaten to kidnap the children; and fail to provide promised child care or transportation.ⁱⁱⁱ More than half of battered women in one survey stayed with their abusive partner because they felt unable to support themselves or their children.^{iv}

We also know that child support has taken on added significance for single parents under time limited welfare, and that most battered women – over 95% in some studies – want to pursue child support *if they can do so safely*.^v

Importantly, too many battered women face multiple barriers to employment – lack of childcare, disabilities, emergency financial needs, housing instability, lack of health insurance, or lack of transportation may impede their ability to work. In addition, some of these women also face mental health or substance abuse problems.^{vi}

Only six states, *Wisconsin included*, have not adopted the Family Violence Option (FVO) included as part of the 1996 welfare reform bill or enacted similar provisions to exempt victims of violence temporarily from work requirements while they receive services and take other steps toward self-sufficiency.^{vii} For some women, these waivers have kept them from being sanctioned when an abusive partner interfered with their ability to keep appointments or attend class. For other women, waivers, accommodations, or services gave them the time, flexibility and support to address the violence or recover from its effects.^{viii}

The Department of Workforce Development can and should adopt the Family Violence Option in the administrative rules that define and guide Wisconsin Works. WCADV urges the Department to do so.

Again, thank you for the opportunity to provide testimony on this proposed rule change. Should you have further questions, do not hesitate to contact me or Mary Lauby, WCADV Executive Director, at 608/255-0539.

ⁱ Richard M. Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 *J. of Social Issues* (No. 4) 655-682, at 657. See also Lyon, E. 2000. *Welfare, Poverty, and Abused Women: New Research and Its Implications*. Policy and Practice Paper #10, Building Comprehensive Solutions to Domestic Violence. (Harrisburg, PA; National Resource Center on Domestic Violence).

ⁱⁱ Lyon, E. 2000. *Welfare, Poverty, and Abused Women: New Research and Its Implications*. Policy and Practice Paper #10, Building Comprehensive Solutions to Domestic Violence. (Harrisburg, PA; National Resource Center on Domestic Violence). See also Allard, M.A., R. Albelda, M. E. Colten, & C. Cosenza. 1997. *In harm's way? Domestic violence, AFDC receipt, and welfare reform in Massachusetts*. A report from the University of Massachusetts, Boston (McCormack Institute); Barusch, A., M. J. Taylor, & M. Derr. 1999. *Understanding Families with Multiple Barriers to Self Sufficiency*. Report submitted to Utah Department of Workforce Services, Salt Lake City, Utah; Salomon, A., S. Bassuk & M. Brooks. 1996. Patterns of welfare use among poor and homeless women. *American Journal of Orthopsychiatry* 66: 510-25; and Smith, M. 2000. *Abuse and Work Among Poor Women: Evidence from Washington State*. Washington, D.C.: The MEDSTAT Group.

ⁱⁱⁱ See Raphael, J. 2001. Domestic Violence as a Welfare-to-Work Barrier: Research and Theoretical Issues. Pp. 443-456 in Claire Renzetti, Edleson, J., and Bergen, R.K., Eds., *Sourcebook on Violence Against Women*. Thousand Oaks, CA: Sage; Raphael, J. 1999b. Keeping women poor: How domestic violence prevents women from leaving welfare and entering the world of work. Pp. 31-43 in Ruth Brandwein, Ed., *Battered women, children, and welfare reform: The ties that bind*. Thousand Oaks, CA: Sage; Riger, S., C. Ahrens, and A. Blickenstaff. 2000. Measuring interference with employment and education reported by women with abusive partners: Preliminary data. *Violence and Victims* 15: 161-172; and Lloyd, S., & N. Taluc. 1999. The effects of male violence on female employment. *Violence Against Women* 5: 370-92; and Tolman, R., & D. Rosen. 2001. Domestic violence in the lives of women receiving welfare: Mental health, substance dependence, and economic well-being. *Violence Against Women* 7: 141-158.

^{iv} Lyon, E. 1997. *Poverty, Welfare and Battered Women: What Does the Research Tell Us?* (Harrisburg, PA; National Resource Center on Domestic Violence).

^v Pearson, J., E. A. Griswold & N. Thoennes. 2001. Balancing Safety and Self-Sufficiency: Lessons from Serving Victims of Domestic Violence for Child Support and Public Assistance Agencies. *Violence Against Women* 7: 176-192; Pearson, J. & E. A. Griswold. 1997. Child support policies and domestic violence. *Public Welfare* (Winter): 26-32; Roberts, P. 1999. Pursuing Child Support for Victims of Domestic Violence. Pp. 59-78 in Ruth Brandwein, Ed., *Battered women, children, and welfare reform: The ties that bind*. Thousand Oaks, CA: Sage; Turetsky, V., & S. Notar. 1999. *Models for safe child support enforcement*. Washington, D.C.: Center for Law and Social Policy.

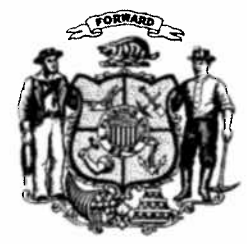
^{vi} See Meisel, J. & D. Chandler. 2000. *CalWORKS Project Six County Case Study*. Collaborative report by the California Institute for Mental Health, Children and Family Futures, and the Family Violence Prevention Fund (April); Merrill, J., Ring-Kurtz, S., Olufokunbi, D., Aversa, S., & Sherker, J. 1999. *Women on welfare: A study of the Florida WAGES population*. Philadelphia: University of Pennsylvania School of Medicine, Treatment Research Institute; Tolman, R., & D. Rosen. 2001. Domestic violence in the lives of women receiving welfare: Mental health, substance dependence, and economic well-being. *Violence Against Women* 7: 141-158.

^{vii} Fact sheet on FVO prepared by NOWLDEF (1/02).

^{viii} See Lein, L. S. Jacquet, C. Lewis, P. Cole, & B. Williams. 2001. With the best of intentions: Family violence option and abused women's needs. *Violence Against Women*, 7: 193-210; and Lyon, E. 2000. *Welfare, Poverty, and Abused Women: New Research and Its Implications*. Policy and Practice Paper #10, Building Comprehensive Solutions to Domestic Violence. (Harrisburg, PA; National Resource Center on Domestic Violence).



WISCONSIN STATE LEGISLATURE



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Elaine Pridgen
Office of Legal Counsel
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Re: Proposed Rules - DWD - Chapters 12 and 17

Dear Ms. Pridgen:

These comments are submitted in response to DWD's proposed rules regarding the provision of W-2 services to victims of domestic violence, the need for screening and assessments of participants, standards for extensions of the W-2 time limits and training for W-2 workers.

Recently the W-2 program has been the focus of two complaints, including one by this office, alleging failure to comply with the requirements of §504 of the Rehabilitation Act and the Americans with Disabilities Act. In addition, the Milwaukee W-2 advisory committee has made a number of recommendations regarding the need for improved screening and assessment tools to better identify and serve persons with disabilities and other barriers to employment, standards for extensions, and improved training for W-2 workers. The proposed rules should be viewed as an opportunity to address the concerns raised by the OCR complaints and the advisory committee and to ensure compliance with the provisions of federal disability law.

Based on the concerns set forth in our OCR complaint we offer the following suggestions:

Chapter 12

1. DWD 12.15 - The current rule is divided into two parts - assessment and

employability plan. The proposed rule proposes to add a requirement that each W-2 agency administer a screening tool as part of the employability plan. While recognizing the undisputed need for a screening process, the rule fails to clearly delineate the procedure that the W-2 agencies should follow.

The process of identifying disabilities and other barriers to W-2 participation and/or employment and providing appropriate services can be divided into three distinct procedures:

- (1) screening - utilizing effective tools during the application process to identify participants or family members (this includes all children and adults in the household) who are victims of domestic violence, have physical or mental disabilities (including cognitive and learning disabilities), suffer from traumatic brain injury, or have substance abuse problems;
- (2) conducting timely and comprehensive assessments in those cases in which the screening tool indicates one of the above problems; and
- (3) developing an employability plan which is based on the assessment conducted, takes into account an individual's needs and abilities and provides appropriate supports and accommodations (i.e. such as specialized transportation, in home services, a job coach etc.).

Each of these three procedures must be clearly delineated and defined. To achieve such, the suggestions made by OCR in the attached policy guidance should be reviewed and incorporated. The amended rule should:

- (a) add the term "screening" to the definition section, DWD 12.03, and define it by reference to use of a properly validated tool utilized to identify participants and family members who are victims of domestic violence, have physical or mental disabilities, suffer from a traumatic brain injury or have substance abuse problems;
- (b) amend the definition of assessment found in DWD 12.03 (2) to provide that the purpose of an assessment is to determine whether, in fact, the individual is a victim of domestic violence, has a substance abuse problem or has disabilities or a family member with disabilities; the

nature of the problem; the extent to which the individual is capable of employment or participation in W-2 activities and under what conditions; the implications of the identified barriers and/or disabilities to 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,

- (c) amend the definition of employability plan found in DWD 12.03(12) to provide that the plan must be based on the screening and assessment conducted, set forth with specificity the activities the participant is assigned to, delineate the services the W-2 agency is to provide, (including any special supports and accommodations to facilitate participation), and any modifications to policies and procedures needed (the hours assigned should be based on the assessment; not a standard prescribed number of hours);
- (d) amend DWD 12.06, application for Wisconsin Works, to include a requirement that a screening be conducted at the time of application for W-2 services and benefits; and
- (e) amend DWD 12.15 to delineate the three procedures of (1) screening, (2) assessment and (3) employability plan as separate requirements, as discussed above and in the OCR guidelines. This section should also provide that the process of case-management, (screening, assessment and plan development), is an ongoing process, not just at the time of application and/or review. Assessments may need to be re-done as a participant's situation changes, her skills improve, she has difficulty completing assigned activities, etc., and/or new supports or services may need to be added to a plan.

2. DWD 12.15(3) implements the W-2 family violence option. Under the federal rule a state that elects the family violence option, as Wisconsin has now done, must have procedures to (a) screen and identify domestic violence victims, (b) refer such individuals to counseling and supportive services, and (c) provide waivers, pursuant

to a determination of good cause, of normal program requirements for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence. 45 C.F.R. §260.52 The proposed rule fails to include the third requirement and should be amended accordingly.

3. DWD 12.16(4)(c) sets standards for extension of the time limits in W-2 transition cases. This section should be amended to include a provision that all cases nearing the 24 month time limit should be reviewed to insure that appropriate screenings and assessments were conducted and that the activities assigned and supports provided were appropriate based on the assessment. If a screening and assessment, as defined in the rule, were not conducted, the activities assigned were not appropriate, and/or needed services or supports were not provided an extension should be granted. The rule should clearly state that a history of non-participation is not a bar to an extension. To simplify matters the criteria found in DWD 12.09(a), pertaining to extension of the 60-month limit, could be adopted with the above addition.

4. Miscellaneous amendments to conform with §504 of the Rehabilitation Act and ADA requirements:

- (a) DWD 12.05 W-2 agency responsibilities - a section should be added to include compliance with §504 of the Rehabilitation Act and the ADA.
- (b) DWD 12.16(2)(e) and (3)(e) related to time limits for trial jobs and community services jobs - a provision should be added to provide that an extension should be granted if the required screening, assessment and/or services were not provided.
- (c) DWD 12.16 related to the work categories. As currently described, and applied by FEPs, persons with disabilities are not placed in CSJ's and trial jobs. Nor are supports available to assist with the transition to unsubsidized employment. The rule should be amended to clarify that a individual with a disability or family member with a disability can be placed in any category and that necessary supports, services and accommodations must be provided to allow him or her to successfully participate in that category.

- (d) DWD 12.20 - related to the determination of good cause for non-participation. Similar to the extension criteria, a section should be added requiring a finding of good cause if the required screening, assessment and/or plan (with services, supports and accommodations) were not provided. The rule should make it clear that written notice of good cause (i.e. medical excuses etc.) is not required, especially when a chronic condition exists and absences can be anticipated
- (e) DWD 12.18(1)(b) and (c) and 12.21 related to sanctions and strikes. These sections should be amended to provide that no sanction or strike should be imposed unless the agency has determined that a screening and assessment has been conducted and a plan developed in accordance with state rules.

Chapter 17


1. DWD 17.02(3) - case-management should be defined to include the screening, assessment and employability plan requirements discussed above.
2. DWD 17.02 - the definition of experienced FEP should refer to the background requirements for FEPs (keeping in mind the requirements of case-management) and should delineate the training requirements to insure the knowledge and ability to serve persons with disabilities and family members with disabilities, domestic violence victims and persons with substance abuse problems.
3. DWD 17.02(8) the definition of a FEP should include a reference to case-management functions as defined in Chapter 12 (as discussed above) and required by the ADA and §504 of the Rehabilitation Act.
4. DWD 17.02(14m) - the definition of resource specialist should be amended to provide that he or she performs the screening as defined in Chapter 12.
5. DWD 17.06 and 17.07 - these sections should be amended to provide that the curriculum shall include training that allows FEP's to identify, by using properly validated tools and other methods, individuals who may have a disability, are victims of domestic violence, or who suffer from substance abuse and to have the skills to develop employability plans as defined in Chapter 12 (discussed above) and as

required by §504 of the Rehabilitation Act and the ADA. Similarly a Resource Specialist must be trained to use properly validated screening tools and be knowledgeable about the requirements of federal disability law. Comparable training should only be allowed if it conforms with these requirements.

DWD has, through the advisory committee, expressed a desire to improve services to W-2 applicants and participants and their families. It is well aware of the deficiencies in the current system. The proposed rule amendments should be broadened to ensure that DWD's commitment to improvement is clearly stated and becomes a reality.

Your consideration of these comments is appreciated.

Very truly yours,



Patricia DeLessio
Attorney at Law

PDL/eca

cc: Jennifer Reinert, Secretary, DWD
Howard Bernstein, Office of Legal Counsel





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MEMO

DATE: May 15, 2001
TO: Elaine Pridgen, Office of Legal Counsel, Department of Workforce Development
FROM: Kitty Kocol, Executive Director, Office of Crime Victim Services, Wisconsin Department of Justice
RE: **Proposed rules for domestic abuse screening and training in the W-2 program**

Improving responses to adult and child victims of family violence is an important part of the work of Wisconsin's Office of Crime Victim Services within the Department of Justice. OCVS regularly:

- produces the Wisconsin Domestic Abuse Report of all incidents of domestic violence reported to law enforcement and prosecutors;
- funds nearly 100 grants to victim service programs in Wisconsin in which about one-third of all persons served are domestic abuse victims;
- produces model domestic violence and sexual assault guidelines for law enforcement and prosecutors; and
- collaborates with state agencies and victim advocacy coalitions on education, training and public policy development on behalf of adult and child victims of domestic violence.

It is vital to the safety of family violence victims that W-2 staff who have direct contact with program participants receive effective training in family violence and sexual assault issues. Consequently, we strongly support the spirit of these rules and many of the concepts contained within them, but would also like to provide the following comments that we believe to be essential to sound and successful policy in this area.

A. The rules should include several important resources for victims that are currently missing from the draft.

1. Law enforcement must be included as a resource for family violence victims.

Domestic violence is a crime; in fact it is the most frequently reported crime of all crimes. Law enforcement provides an immediate, primary protective response to which all victims are entitled. Officers and sheriffs save lives when they are dispatched to scenes.

They are also a victim's only method of enforcing a civil order of protection. Domestic violence advocates have worked for years to assist law enforcement in understanding and improving responses to family violence and believe strongly in offender accountability that primarily comes through the involvement of law enforcement and the criminal justice system. Training for DWD staff must include information about law enforcement responses to domestic abuse and W-2 personnel must include law enforcement as a resource for victim assistance. (Include in the text on page two and in the list of resources on page nine.)

2. **The rules should reference Crime Victim Compensation as a resource for victims who have no other source of insurance coverage or whose coverage may fall short of their needs.** It can be especially important for low-income victims whose providers will not accept Medicaid as complete payment, or providers who will not accept Medicaid at all. In some circumstances, Compensation will also cover lost wages for victims. (Include in listings on pages two and nine.)
3. **The rules should prioritize a safety plan as first** among the services victims may want to seek from family violence service providers.
4. **The rules should include civil orders of protection** (temporary restraining orders and domestic abuse, harassment and child abuse injunctions) **as a resource.**
5. **The rules should list legal service providers** such as the local legal services corporation affiliate for those victims who need assistance with legal assistance with custody or divorce issues.

B. The rules appear to contradict Wisconsin law as they relate to child victims of crime and seem not to include children in any meaningful way. On page two, the proposed rules state that "The W-2 agency will use the screening instrument to assess the potential that the individual *or the individual's dependent child is or has been a victim of domestic abuse or is at risk of further domestic abuse.*" (Emphasis added.) The rules make a similar reference on page seven under the definition of domestic abuse and on page eight under the description of screening. There are two key concerns with the rules as drafted.

1. **Domestic abuse is statutorily distinct from child abuse, with different responses and obligations under the law.**

Children who are physically or mentally abused in the context of a family environment are, by statute, victims of child abuse rather than domestic abuse. (The definition of domestic abuse as cited in

Wisconsin Statute 813.12(1)(a) is the act of an adult against another adult.) If a victim of domestic violence reports that an abusive partner has physically or sexually abused her/his child, *the W-2 worker is a mandated reporter to child protective services or to law enforcement.* As drafted, these rules make no distinction between domestic abuse and child abuse, nor do they address of the intersection between these two crimes. As drafted, the rules make no reference to the policy that should be followed in cases of child abuse which occur within the context of a violent household **These rules seem to contradict and confuse employees on the critical subject of child safety.** This is a major deficiency because the co-occurrence of family violence and child abuse presents particularly difficult cases, and co-occurrence is fairly significant.

2. The resources and procedures within the rules do not acknowledge the distinct needs of child victims living in violent households.

Research has shown that children who witness domestic violence often experience substantially negative effects from that exposure. Their needs can only be effectively addressed when there is a clear understanding on the part of non-offending parents that their children may be experiencing emotional trauma as a result of exposure to family violence. Parents should be given objective information about the impact that witnessing family violence may have on their children, as well as information about services and strategies to address the problem. This puts non-offending parents in the best position to decide the best course of action for their children. Consequently, a meaningful resource list should contain programs and services that are specific to the needs of children. W-2 workers need information and training in this critically important area. W-2 workers need information and training in this critically important area.

C. In the current draft of the administrative rules, screening and assistance to W-2 applicants does not appear to include information, support and services for adults molested as children. Research has shown that as many as one-third of adult women participating in welfare-to-work programs were childhood victims of sexual abuse *and that victimization that has resulted in serious mental health problems affecting their ability to seek and retain employment.* If the purpose of these rules is to ensure that crime victimization is appropriately recognized and addressed by W-2 service providers, and if the ultimate goal is ensure safe and successful participation in the program, strong consideration should be given to providing resources and support to applicants for this issue.





Wisconsin Coalition Against Sexual Assault, Inc.
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To: DWD
From: WCASA
Date: May 15, 2002

Re: Proposed rule changes to Chapters DWD 12 & 17 Wis. Works

I am providing comments on behalf of the Wisconsin Coalition Against Sexual Assault, Inc. WCASA is a statewide membership organization representing over 200 individual organizations and sexual assault service providers throughout the State of Wisconsin. WCASA has been in operation since 1987. I am happy to have the opportunity offer our testimony on the proposed rule changes to chapters DWD 13 & 17 Wisconsin Works.

We are pleased that there will be additional training for W-2 agency employees who work with W2 applicants. We are also pleased that the Department has recognized that many women and children in this process have issues surrounding sexual assault and abuse that may not be recognized by caseworkers within W-2. Research has proven that adult or childhood sexual assault can pose significant barriers to the success and self-sufficiency of welfare recipients.

We would therefore like to see the definition of sexual abuse expanded in Sec. 5 of DWD 12.5(3) and 12.16(3)(b) b to include all sexual assaults. Currently, that section limits the definition of sexual abuse to certain limited situations. While sexual assault and abuse can and does occur within domestic violence situations as defined here, it also applies to familial situations that fall outside the typical definition of domestic violence such as visiting uncles, cousins, grandfathers and/or friends. Abused children are more likely to have problems that lead them into poverty and subsequently into W2 as adults. Sexually abused girls are more likely to become teenage parents and teenage parents have a higher high school drop out rate. This in turn lowers their job prospects. Once in the W2 system, those whose abuse has contributed to other common problems such as addiction, depression or relationships with violent men have a more difficult time leaving the system. Over the last ten years there have been several studies dealing with sexual assault and women on welfare. The results of those studies reveal that 26 – 42 percent of the respondents reported having been sexually abused as children.

WCASA would also like to stress the importance of providing services to all survivors of sexual assault and abuse including survivors of one-time assaults. These assaults can also have lingering long-term effects on survivors. In order to ensure that all sexual assault is addressed, services must also be provided to survivors of sexual assault and abuse that occurred family setting. For example, if an assault occurred in a work setting, returning to a similar setting may be very difficult for a W2 applicant. Finally sexual harassment is extremely pervasive and may pose additional and obvious barriers to successful employment. Current and former survivors of workplace sexual harassment should receive information about appropriate and pertinent services.

While it is encouraging that DWD is including sexual assault in its definition of domestic abuse, sexual assault has very different aspects, impacts, and implications. WCASA would like to see DWD treat sexual assault and abuse as a distinct and important barrier for women and children in the welfare system. We would like to see training to specifically address sexual abuse in this manner. Victims of sexual assault and abuse may not disclose during the screening process if there is no training dealing specifically with this issue. Training specifically on sexual abuse would reduce the barriers faced by victims of sexual abuse and allow these survivors to become successful members of society.

As WCADV states in its testimony, WCASA also hopes that Wisconsin will consider incorporating the Family Violence Option (FVO) into its W-2 statutes, rules and regulations. As ongoing domestic and sexual violence directly affects the ability of survivors to participate in the workplace, it is imperative that Wisconsin recognizes this problem and finds ways to support these individuals rather than penalize them for being the victims of domestic and sexual violence.

If you have any questions regarding our testimony, please contact Linda Morrison, Executive Director or Lisa Macaulay, Policy Specialist.





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A MEMBER OF THE NATIONAL ASSOCIATION OF CHILD ADVOCATES

May 15, 2002

Elaine Pridgen
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Re: Proposed rules relating to Wisconsin Works
Chapters 12 and 17, Wis. Adm. Code

Dear Ms. Pridgen

This letter constitutes my comments to proposed rules relating to Wisconsin Works.

DWD 12.09(2)(n) The Department should change this rule so as not to count as a month of participation, a month in which no monthly W-2 benefit is paid, due to a sanction or otherwise. In some cases, families are in total sanction status for several months. Although the Department has indicated an intent to require review of such cases, it is unfair to keep counting such cases for purposes of the 60-month time limit. Whether or not a family loses potential eligibility for a month of assistance should not depend upon whether the family head is sophisticated enough to ask to be taken off the program once notified of a total sanction month.

It is not clear to me that a statutory change is necessary to effect this change, but if it is, the Department should propose such a change in the next legislative session.

DWD 12.15(2) Requiring screening of each applicant and participant for a variety of employment barriers is a good thing. However, it should be made clear that this initial screening process is, in some cases intended to determine whether more formal assessments are necessary. As stated in the proposed rule, there is no indication that further assessments must take place, as I understand the Department intends – especially for those in the W-2T category. That should be made explicit in the rule.

DWD 12.15(3)(b) I would suggest that an additional point of administering the domestic abuse screening be at any point when the participant requests it. It may be that an initial screening is refused, or that events have occurred since the initial screening that puts the participant at risk. A subsequent screening should not have to await the agency worker's recognition of a possible domestic abuse situation.

DWD 12.16(4)(c) The standard for extension of a W-2T case should be expanded to the range of circumstances listed in DWD 12.09(2)(n). In addition, the same range of circumstances should be added to DWD 12.16(3)(e), to cover those in Community Service Jobs. These are similar to the standards that the Department has adopted in the W-2 Manual, at 2.3.5, for extensions of the 2-year, work-program limits as well as the 60-month, lifetime limit. And, the factors listed at 12.09(2)(n) are appropriate considerations anytime an extension is being considered, either for a work program placement or for the lifetime limit.

This might be done simply by referring to the DWD 12.09(2)(n) section in 12.16(4)(c), and also in 12.16(3)(e).

DWD 17.06(3) The Resource Specialist training provisions should include a section, similar to that provided for FEPs, prohibiting independent decisions prior to completing training in the areas of initial assessments of potential applicant's needs, making referrals to service providers, and evaluating an individual's need for W-2. The decisions of Resource Specialists have a profound effect on whether applicants are properly served. Many applicants are discouraged from continuing with applications at this point. It is absolutely essential that these workers be completely trained prior to making these important determinations on their own.

DWD 17.07 This section providing for continuing training for FEPs should be expanded to include Resource Specialists, as well. It is just as important that those persons deciding a person's "need" for W-2 be kept up-to-date regarding W-2 policies and procedures as it for those determining eligibility.

Respectfully submitted,

Carol W. Medaris
Project Attorney



June 4, 2002

MEMORANDUM

TO: Elaine Pridgen, Administrative Rules Coordinator, Department of Workforce Development

FROM: Mary R. Lauby, Executive Director, Wisconsin Coalition Against Domestic Violence

I am writing in response to a memorandum from the Wisconsin Department of Justice (DOJ) regarding the proposed changes to DWD 12 and 17, Domestic Violence Screening and Training. The Wisconsin Coalition Against Domestic Violence (WCADV) works frequently with the staff at DOJ, including Ms. Kitty Kocol, the author of the memo. We appreciate that she took the time to review the proposed rule and to offer comments. We value her opinions greatly, and in the case, appreciated that she was able to offer some ideas that we had missed! While I agree with most of the issues raised, there are some areas of concern. I would like to address each of the points using the same numerical format that Ms. Kocol used. This should hopefully make our comments easy to follow as they pertain to Ms. Kocol's comments.

A. RESOURCES FOR VICTIMS

1. Inclusion of Law Enforcement

WCADV agrees that this should be added to the lists of potential referral sources listed on both pages 2 and 9 of the proposed rule change. Law enforcement can and does play a critical role in responding to some instances of domestic violence. However, I also believe that the training component should also include a piece on the roll of law enforcement in intervention.

Wisconsin has a Mandatory Arrest law for domestic violence. This law is sometimes mistaken as a *mandatory reporting* law. W2 workers should be educated about the difference.

2. Reference to Crime Victim Compensation (CVC) as a Resource

While we agree that CVC can be a good resource for victims of domestic abuse, the availability of this resource is restricted to victims who have filed police reports and who are cooperating with arrest/prosecution. This may be a training issue for workers so that they understand the resource.

3. Safety Plans

We like the concept of giving victims a safety plan. However, we don't see that this fits into the list or resources. The resource list refers victims to specific programs or services. Creating a safety plan is an activity that a victim can develop with the assistance of an advocate or on her own. There are many versions of safety plans available and many local domestic abuse programs have developed plans that are unique to their communities. We suggest that DWD may want to develop a general plan for all W2 offices to distribute or that the W2 offices work with their local programs to obtain localized versions. This is another issue on which workers should receive training. WCADV would be happy to assist the training program in finding a safety plan that is suitable.



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4. Civil Orders for Protection

Similar to safety plans, orders for protection (restraining orders) are a resource but don't fit into the referral list of community-based resources. It is a very good idea to be certain that W2 workers understand restraining orders. Inclusion of this concept is another training issue. Workers should refer victims to local domestic violence programs for assistance in obtaining an order rather than trying to assist victims themselves.

5. Legal Service Providers

We believe this is covered already in the list. We suggest that as each W2 agency develops a list of resources that are unique to each community, that they be certain to include whatever Legal Services Corporation service is available (i.e. Legal Action of Wisconsin or Wisconsin Judicaire).

B. Child Abuse vs. Domestic Abuse

Ms. Kocol is correct in noting that child abuse is generally considered a separate issue. As we were all working off the federal definition, we at WCADV simply missed this point.

1. Statutory Distinction

We encourage you to consider Ms. Kocol's comments regarding this issue. We concur with her on this point.

2. Child Witnesses to Domestic Abuse

This is an area on which we disagree with Ms. Kocol in terms of approach. We all agree that witnessing domestic abuse has serious ramifications for the children in the household. However, mothers who are battered already feel terribly about what is happening in their home and feel a certain amount of guilt about the fact that their children may have witnessed violence against them. Many mothers stay with their abusive partner because they literally have no other option. W2 will never provide the same kind of safety net for victims as did AFDC, unless Wisconsin adopts the Family Violence Option. Therefore, many victims rely upon their abuser to provide child care or transportation while they are working towards meeting their W2 requirements. This issue is complicated. We discourage the practice of providing mothers with information about the impact of witnessing violence on their children simply because there may be no way to do it without making the mothers feel worse than they already do. They also may begin to fear that the W2 worker may take their children because they are "failing to protect them."

C. Adult Survivors of Sexual Abuse

We agree with Ms. Kocol on this point and believe that it is possible to include this issue in the screening and training. Many adult survivors of sexual abuse are also adult victims of domestic violence. The co-occurrence of these two issues is highly prevalent. Several states that have adopted the Family Violence Option include sexual assault and childhood sexual abuse as barriers to self-sufficiency. We would encourage DWD to consider doing so for screening/training purposes as well.

Thank you for the opportunity to respond to the comments submitted by DOJ. If we can be of further assistance to you, please let me know.





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/ptflead/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/tanfext.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/tanfintro.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