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HHS Guidance Explains How Federal Laws Barring Discrimination Against People With Disabilities Apply in State and County TANF Programs

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While this paper was written prior to the enactment of the DRA, it describes the HHS Office of Civil Rights' guidance to states on how the Americans with Disabilities Act and Section 504 of the Rehabilitation Services Act apply to TANF programs. HHS recently reiterated that this guidance remains in effect in its TANF Interim Final Rule.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created Temporary Assistance for Needy Families and repealed the Aid to Families with Dependent Children program.¹ The 1996 law specifically provides that federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, apply to TANF programs.² Earlier this year, the Office for Civil Rights at the U.S. Department of Health and Human Services issued guidance that assists states and counties in understanding their obligations under Section 504 and the ADA in their TANF programs.³ The 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.”⁴

Section 504 prohibits discrimination on the basis of disability and covers all entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract.⁵ The ADA prohibits discrimination on the basis of disability by both public and private entities, whether or not they receive Federal financial assistance. Both Section

¹ Public Law 104-193, 42 U.S.C. §601 et seq.

² 42 U.S.C. §§608(c)(2) and (3). Section 504 of the Rehabilitation Act of 1973 appears at 29 U.S.C. §794, and the Americans with Disabilities Act of 1990 appears at 42 U.S.C. §12101 et seq. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq., and the Age Discrimination Act of 1975, 42 U.S.C. §6101 et seq., also apply to the TANF program. 42 U.S.C. §§608(c)(1) and (4).

³ *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)*, Office for Civil Rights, U.S. Department of Health and Human Services, January 2001, <http://www.hhs.gov/ocr/prohibition.html>, hereinafter cited as “OCR Guidance.”

⁴ OCR Guidance, Part A.4.

⁵ “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.” OCR Guidance, Part C.1.

504 and Title II of the ADA cover all states as well as counties and other local governments administering all or part of a TANF program and related programs.⁶

The ADA and Section 504 protect individuals with a “disability” and define that term to mean a person who has a physical or mental impairment that substantially limits one or more of the major life activities of that individual, a person who has a record of such an impairment, or a person who is being regarded as having such an impairment.⁷

The purpose of this memo is to discuss the key points of the OCR guidance. It is important to note that because this guidance includes numerous examples and suggestions, it is essential that the entire document be read.

Background

Over a period of decades, there have been major changes in the nation’s attitudes and policies with regard to people with disabilities. These changes are both reflected in the civil rights laws and a result of those laws.⁸

Under the old way of thinking, people with disabilities were considered to be “‘defective’ and in need of ‘fixing.’”⁹ Under the new approach to disability policy, reflected in Section 504 and the ADA, disability is considered as “a natural and normal part of the human experience. Rather than focusing on ‘fixing’ the individual, the ‘new paradigm’ focuses on taking effective and meaningful actions to ‘fix’ or modify the natural, constructed, cultural and social environment. In other words, the focus of the ‘new paradigm’ is on eliminating the attitudinal and institutional barriers that preclude persons with disabilities from participating fully in society’s mainstream.”¹⁰

Against the background of this attitudinal shift, the dramatic changes introduced with the 1996 welfare law — most notably the “work first” approach adopted by many states, time limits on benefits, and sanctions which often result in complete loss of cash assistance for failure to

⁶ OCR Guidance, Part A.1. In the guidance, OCR refers to each of the agencies covered by Section 504 or the ADA, whether governmental or private, as a “TANF agency.” Id. at footnote 3. This paper adopts that term throughout as well.

⁷ OCR Guidance, Part C.2.

⁸ For a detailed discussion of the changes in thinking regarding disability policy over the past few decades and the implications of the new framework for designing policy, see Robert Silverstein, *Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy*, Center for the Study and Advancement of Disability Policy, 85 Iowa L. Rev. 1691 (2000).

⁹ 85 Iowa L.Rev. at 1695.

¹⁰ Id.

comply with a program requirement — have served to focus greater attention on the many parents involved with TANF who have disabilities and other health conditions that affect their ability to meet one-size-fits-all program requirements. Similarly, greater attention is being called to the unique problems that a parent whose child is disabled may face in meeting program requirements.

There is substantial evidence that many parents whose families receive TANF cash assistance and supportive services have disabilities and other health conditions that affect their ability to work. Studies indicate that roughly one-fourth to one-third of current TANF recipients have a serious mental health problem, while approximately one-fifth of those who have left TANF and are not working also have mental impairments. Common mental impairments these parents face include major or clinical depression, post-traumatic stress disorder, and general anxiety disorder. In addition, upwards of one-fifth of current recipients have physical impairments that limit their ability to work. Somewhere between one-fifth to one-third (or higher) of current recipients have learning disabilities, and about one-fifth to one-quarter of current recipients have low intelligence. The estimates of the number of parents with substance abuse problems varies greatly, depending on the question asked, but could range from two to twenty percent.¹¹

Some studies suggest that many parents who are penalized by sanctions for failure to comply with welfare program rules do not understand what is required of them nor the consequences of failing to comply and that there is a high incidence of parents with disabilities among families who have been sanctioned.¹² There also have been suggestions that some states and counties are not fully and accurately assessing the limitations of parents with multiple barriers to working, including disabilities and other health conditions.¹³ Other studies indicate that there

¹¹ For a discussion of many of the studies, see Eileen 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, www.cbpp.org/www.cbpp.org/2-29-00wel.htm.

¹² Heidi Goldberg, Liz Schott, *A Compliance-oriented Approach to Sanctions in State and County TANF Programs*, Center on Budget and Policy Priorities, October 2000, www.cbpp.org/10-1-00sliip.htm. This paper includes a discussion of studies from Delaware, Utah, and Minnesota that identify parents with disabilities among those being sanctioned. For example, the Utah study found that health or medical problems were the most common barriers to employment among sanctioned families. Over a third of the families in the study had physical health problems, while one-fifth of the families identified a mental health problem as a reason for nonparticipation. Michelle K. Derr, *The Impact of Grant Sanctioning on Utah's TANF Families*, University of Utah, October 1998.

¹³ Sandra Danziger, Mary Corcoran, Sheldon Danziger, et al., *Barriers to the Employment of Welfare Recipients*, Poverty Research and Training Center, University of Michigan, February 2000, <http://www.ssw.umich.edu/poverty/wesappam.pdf>; Mary Clare Lennon, Juliana Blowe, Kevin English, *Depression and Low-Income Women: Challenges for TANF and Welfare-to-Work Policies and Programs*, Research Forum on Children, Families and the New Federalism, National Center on Children in Poverty, Columbia University, 2001. OCR states in the new guidance that, “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

(continued...)

are children with disabilities and other health conditions whose conditions make it difficult or impossible for the parent to work.¹⁴

In August 1999, the Office for Civil Rights addressed the applicability of Section 504 and the ADA to TANF programs as part of its guidance spelling out the applicability of a number of civil rights laws to TANF.¹⁵ The second OCR guidance builds on that first guidance and comes as increasing numbers of states and counties are acknowledging that significant numbers of their current and former TANF clients have disabilities and are looking for and designing strategies to address the additional supports and services these parents need if they are going to succeed in securing and retaining employment. The guidance provides states and counties, as well as the service providers and vendors that contract with states and counties, with a valuable road map for ensuring that their programs are in compliance with Section 504 and the ADA. And, it provides individuals with disabilities and their representatives with guidance as to what OCR will consider when determining whether a state's or county's TANF policies and practices are in compliance with these two laws.

The OCR Guidance

*The inclusion of these civil rights protections [ADA and Section 504] 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.*¹⁶

Despite the statutory requirement that the ADA and Section 504 apply to TANF, early implementation of the 1996 welfare law adhered to “work first” policies that generally did not take into account the nature of the barriers to work that a parent might face. Over time, as states and counties have begun to look more closely at the parents continuing to receive cash assistance

¹³ (...continued)

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.” OCR Guidance, Part. A.3.

¹⁴ Barbara W. LeRoy, Sharonlyn Harrison, Donna Johnson, *Welfare Reform and Families Whose Children Have Disabilities*, Skillman Center for Children, Wayne State University, Occasional Paper 1999-1, 1999. See also, Danziger et al, cited in footnote 13.

¹⁵ *Civil Rights Laws and Welfare Reform – An Overview and Technical Assistance for Caseworkers on Civil Rights Laws and Welfare Reform*, Office for Civil Rights, HHS, August 1999, <http://www.hhs.gov/ocr/tanfintro.htm>.

¹⁶ OCR Guidance, Part A.1.

as well as the parents who have been unable to sustain employment after they leave TANF, they are developing a greater understanding of the importance of properly assessing the needs of parents and children with disabilities and addressing those needs.

The OCR guidance provides states and counties with help in understanding what Section 504 and the ADA require and provides direction on what OCR will consider legal, non-discriminatory behavior. OCR addresses a variety of circumstances within the social services context. It specifically states that the guidance does not address the obligations of employers under either of the laws.

To provide states and counties with a better sense of the steps OCR believes are needed to comply with Section 504 and the ADA in TANF programs, OCR provides examples of “promising practices.” While these practices do not provide exhaustive lists — and OCR specifically says states are not precluded from developing alternative approaches to meeting the legal requirements — they do suggest ways a state or county can meet its obligations under Section 504 and the ADA.¹⁷ Of great significance, recognizing that states and counties are only now seriously addressing the issues that parents and children with disabilities face in their TANF programs, OCR specifically states that “[t]his 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.”¹⁸

The guidance focuses on the first two of the four purposes for which TANF funds can be used — to “provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives” and to “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.”¹⁹ However, OCR states that the principles are equally applicable under programs funded under the third or fourth purposes of TANF.²⁰

¹⁷ However, “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.” OCR Guidance, Part B.

¹⁸ OCR Guidance, Part A.4.

¹⁹ 42 U.S.C. §601(a)(1) and (2).

²⁰ OCR Guidance, Part A.1 and footnote 5. The third and fourth purposes are: “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 “encourage the formation and maintenance of two-parent families.” 42 U.S.C. §601(a)(3) and (4).

1. **Overarching Framework for OCR’s Analysis**

OCR articulates two principles that underlie its analysis of what Section 504 and the ADA mean in TANF: individualized treatment, and 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.” For example, it is not legal to deny TANF recipients with disabilities access to part of the TANF 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.”

“Effective and meaningful opportunity” means that “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, and must also be afforded ‘meaningful access’ to TANF programs.”²¹

The remainder of the guidance discusses the three key legal requirements contained in both laws, applying the principles spelled out above to various scenarios and factual patterns and offering examples of promising practices. These three core legal requirements are: to ensure equal access through the provision of appropriate services; to 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 in the program.

2. **Legal Requirement #1: Ensure Equal Access Through the Provision of Appropriate Services to People with Disabilities**

“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.” 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.”²²

Screening and Assessment

TANF agencies “must...ensure that individuals with disabilities have access to the entire range of TANF programs and services for which they are qualified, with or without accommodation.” The programs must be provided in the “most integrated setting appropriate to

²¹ OCR Guidance, Part B; internal footnotes omitted.

²² OCR Guidance, Part D.1.

the needs of individuals with disabilities.” This means ensuring 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.”²³

Noting that the TANF statute and regulations require the TANF agency to assess the skills, prior work experience, and employability of beneficiaries, OCR states that “[i]t is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from TANF programs and the assessment process.” And, before reaching the assessment step, TANF agencies must provide screenings by trained personnel using reliable screening tools. “At a minimum,” intake workers should be able to recognize potential disabilities and to conduct an initial screening to identify possible disabilities for those who agree to undergo a screening.²⁴ The TANF agency must then use the information learned in the assessment in developing the person’s individual responsibility plan.²⁵

Among the promising practices related to assessments, OCR mentions: utilizing a “combination of screening and assessment tools to determine whether TANF beneficiaries face a variety of obstacles, including physical, emotional, learning or behavioral disabilities”; based upon an initial screening by a trained caseworker, referring beneficiaries who appear to have learning disabilities for an in-depth assessment by the state vocational rehabilitation agency, or by a mental health or education provider; adopting a team approach to assessments, including a psychologist and other medical, vocational, and rehabilitation experts who are trained in making assessments of adults with disabilities in the employment context; and ensuring that any screening or assessment tools the TANF agency uses are validated for the purposes for which they will be used.²⁶

²³ Id.

²⁴ Id.; 42 U.S.C. §608(b)(1).

²⁵ “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.” OCR Guidance, Part D.1. While screening is generally thought of as the initial step in discerning barriers and assessment refers to the more in-depth evaluation of the person by an expert to determine the existence and extent of the disability, one author has suggested that, in the TANF context, depending on the state’s practices, the steps are often blurred and it is more helpful to think of both steps as part of the same continuum. “The terms screening and assessment are often loosely applied, somewhat overlapping, and mean different things to different treatment communities...Screening aims to identify the *potential* presence of a limitation as distinguished from no limitation, or individuals at risk of a condition, and generally necessitates further assessment or definitive diagnosis by an expert on that condition. If there is a suspicion of a disability, programs are obligated to determine if there is one. Assessment is the process of establishing the extent and severity of a limitation and, potentially, what alternative services or accommodations in jobs or work assignments might permit the recipient to engage in work, either immediately or after some other intervention.” Fredrica D. Kramer, *Screening and Assessment for Physical and Mental Health Issues that Impact TANF Recipients’ Ability to Work*, Welfare Information Network, February 2001, <http://www.welfareinfo.org/physicalandmentallissuenote.htm>.

²⁶ OCR Guidance, Part D.1.

Services and Supports

The TANF agency also has the “obligation to ensure that service providers have the requisite knowledge, experience, and expertise to serve beneficiaries with disabilities.” If TANF agencies use contractors or vendors in their programs, it is the “TANF agencies’ responsibility to ensure that TANF beneficiaries are not subjected to disability-based discrimination.”²⁷

OCR also offers some examples of promising practices in the areas of services. The practices include providing appropriate counseling services to TANF beneficiaries with mental or emotional disabilities who have barriers to employment; contracting with the state vocational rehabilitation agency to provide assessment and follow-up services for long-term TANF beneficiaries; reimbursing providers based on payment rules that encourage them to work with TANF beneficiaries with disabilities and design their programs to meet their needs; and providing a special job training course for TANF beneficiaries with speech and hearing impairments (but not limiting their ability to participate in other programs designed for all beneficiaries). The practices also include conducting “exit interviews” with persons with disabilities who are leaving TANF to determine if their needs have been met, to determine if additional support is needed, and to whether program modifications would better meet the needs of people with disabilities.

3. Legal Requirement #2: Modify Policies, Practices and Procedures to Provide Such Equal Access Unless Doing So Would Result in a Fundamental Alteration to the Program

“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.”²⁸

Comprehensive Review of Policies, Practices and Procedures

Based upon a comprehensive examination of its own policies, the TANF agency may find that modifications that are required “may affect all stages of the TANF program, from application to training, education and work stages.”²⁹ The key here is that state and county TANF agencies “may need to conduct a diagnostic review of agency policies, practices and procedures.” OCR includes, as Appendix 1, a list of questions that provide a basis for a diagnostic review. In conducting the review, the TANF agency should be looking not only at TANF, but also at Welfare-to-Work, child care, transportation programs, Workforce Investment Act programs, and any other source of federally-funded assistance or state and local government-run programs that can or could affect the TANF program and its ability to serve people with disabilities.

²⁷ *Id.*

²⁸ OCR Guidance, Part D.2.

²⁹ OCR Guidance, Part D.1.

The review should include “a thorough assessment of the prevalence of various populations of people with disabilities who participate in TANF programs.” Once that information has been collected, it can then be used “to evaluate each step of the TANF program to determine what changes are required to ensure equal opportunity to access and benefit from TANF programs and related activities.” OCR identifies “appropriate areas” for modification following a diagnostic review to include the application process and procedures related to notifying people about their rights; the nature and requirements of TANF programs; and policies and practices to aid individuals in sustaining TANF program participation, including sanction and exemption policies.

Application Process

A TANF agency that has a complicated application process will need to modify its process to ensure that 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.”³⁰

Notice of Rights under Section 504 and the ADA

One promising practice sets forth specific language that OCR suggests that the TANF agency include in its notices. It informs the person that if she has a physical or mental condition that substantially limits one or more major life activities, “you may have rights under Section 504...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.” The notice goes on to say that the person can let the agency know about the disability and that the state can help. Among the ways listed that the state can help: “We can call or visit if you are not able to come into the office. We can tell you what this letter means. If you are on [TANF], 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...” OCR also suggests that the TANF agency post signs alerting people with disabilities how they can obtain further assistance.³¹

Modifications in Education, Job Training, Work Requirements, and Time Limits

The OCR examples of promising practices cover a range of very important issues related to program requirements that many parents with disabilities face when dealing with their TANF

³⁰ OCR Guidance, Part D.2.

³¹ Id.

agencies. The first promising practice suggests that, based upon identification of disabilities in the screening or assessment processes, the state can provide appropriate services to address the needs of the beneficiary. “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.” In the second example, the TANF agency modifies its 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.” “Similarly, an agency suspends State-imposed time limits while individuals with suspected learning disabilities are being assessed.”³²

OCR also notes the importance of ongoing contact with the individual with disabilities: “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.”³³ Both this promising practice and the earlier one regarding providing services appropriate to address the needs of the beneficiary make clear that OCR does not expect that a TANF agency will limit itself to those impairments suspected or identified during the screening or assessment processes. Should an individual be determined to have an impairment “at some other time” possibly as the result of inability to complete an assigned task, the TANF agency must address that disability at that time.

OCR suggests that the TANF agency “broadly defines activities that ‘count’ toward the State’s TANF work participation rate in order to assist TANF beneficiaries with disabilities, such as including supported work activities in the definition of subsidized private employment” and that states “use their discretion in defining ‘countable’ activities.” It highlights a promising practice in which the state TANF agency counts as “allowable” activities being engaged in remedial education if those beneficiaries are also working part-time, even though the activities will not count in the state’s TANF work participation rate.³⁴

OCR encourages the use of exemptions from work requirements where appropriate. It lists as one promising practice when 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.” However, in a footnote, OCR reminds TANF agencies that they may not prohibit a qualified individual with a disability from participating in work and other TANF programs because the person has a disability. And, if the TANF agency allows individuals who are exempt to volunteer to participate in TANF programs, “the TANF agency

³² OCR Guidance, Part D.2.

³³ Id.

³⁴ Id.

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.”³⁵

Under the third legal requirement — to have methods of administration that are non-discriminatory, discussed below — OCR states that one example of a practice that would assist the TANF agency in monitoring whether its rules are being applied properly would be that “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.”³⁶

Along the same lines, exemptions from and extensions of time limits are appropriate promising practices in some circumstances: “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.”

Sanction Policies

The 1996 welfare law provides that a state is subject to a penalty if it does not properly impose sanctions on individuals who refuse to participate in work. In the preamble to the final TANF regulations, HHS noted that this penalty applies both to a state’s failure to sanction when it should and to its imposition of a sanction when one should not be imposed.³⁷ In the opening summary to the guidance, OCR indicates that the guidance will help TANF agencies to understand when it would be inappropriate to sanction certain families.

In the section on methods of administration, OCR states that one of the procedural safeguards that is “integral” to operating a non-discriminatory system is having in place a procedure for raising disability-related problems *prior to* any imposition of a sanction.³⁸ “[R]ather 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.”³⁹ Among the possible modifications a TANF agency could make to its sanction policies, OCR includes:

³⁵ OCR Guidance, Part D.2. and footnote 43.

³⁶ OCR Guidance, Part D.3, emphasis added.

³⁷ 64 Fed. Reg. 17720, 17793 (April 12, 1999).

³⁸ OCR Guidance, Part D.3.

³⁹ OCR Guidance, Part D.2.

“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.”

“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.”⁴⁰

Case Management/Service Coordination

OCR also recognizes the key role that other work supports, such as health care and Food Stamps, serve in helping parents with disabilities to support their families. Included among the promising practices that aid individuals in sustaining TANF program participation, OCR notes the importance of comprehensive case management and service coordination.

“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.”

In another promising practice, if a TANF beneficiary needs intervening assistance, training or treatment in order to continue working, as a result of a disability, the 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.”⁴¹

⁴⁰ Id.

⁴¹ OCR Guidance, Part D.2.

4. Legal Requirement #3: Adopt Non-discriminatory Methods of Administration in the Program

“...[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 the individual with disabilities.”

Citing the commentary to the federal ADA regulations, OCR makes clear that the term “methods of administration” applies both to “official written policies” of the TANF agency and to the “actual practices” of the agency.⁴² In other words, having good policies on paper is only part of the agency’s responsibility — training staff to implement the policies and providing the resources to ensure implementation occurs also are important.

OCR identifies steps a TANF agency should take in order to ensure that its policies and practices are not discriminatory:

- train staff to provide equal access to TANF programs for individuals with disabilities and 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 equal access;
- conduct regular oversight of TANF programs and services to ensure equal access;
- otherwise ensure that policies and practices do not subject individuals with disabilities to discrimination.⁴³

Clear and Comprehensive Written Policy

To fulfill this third legal requirement for non-discriminatory administration, OCR indicates that TANF agencies may need to develop and implement “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

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

⁴³ OCR Guidance, Part B.c.

or directive that sets out agency policy with respect to the State’s TANF program as well as any regulations promulgated by the agency.”⁴⁴

Monitoring and Oversight of Actual Practice

Monitoring and oversight of agency staff and providers is key to meeting this third legal requirement. “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.”

Periodic monitoring by state and county TANF agencies of all aspects of compliance with Section 504 and the ADA by service providers and other contractors also is important.

OCR also identifies other procedural safeguards that are “integral to operating a non-discriminatory system consistent with Section 504 and Title II of the ADA.” They include: “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.” Among the promising practices listed, OCR suggests that the TANF agency can establish and publish 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.”⁴⁵ As states and counties move to streamline their procedures between programs such as TANF and WIA, including parallel procedures in both programs would help to reduce confusion and ensure compliance.

5. Children with Disabilities Who Receive TANF and Their Families Are Protected by Section 504 and the ADA

As mentioned earlier, there is evidence that many children with disabilities have parents who receive TANF for the family and who, because of their child’s disability, find it very difficult or impossible to meet the TANF program’s work requirements. In a promising practices paragraph, OCR describes the situation where “a family has a child whose disability affects the parent’s ability to work” and the TANF agency “modifies its practices to facilitate the parent’s compliance with an employment plan.” It notes that the state could grant the parent an extension

⁴⁴ OCR Guidance, Part D.3.

⁴⁵ See *State Guidance for Developing Methods of Administration (MOA) Required by Regulations Implementing Section 188 of the Workforce Investment Act of 1998 (WIA)*, 65 Fed. Reg. 51984 (August 25, 2000); the WIA regulations appear at 29 C.F.R. Part 37. See also, Robert Silverstein, *Provisions in the Workforce Investment Act Related to Nondiscrimination on the Basis of Disability and the Development by the Government of a Written Methods of Administration*, Center for the Study and Advancement of Disability Policy, March 2000, http://www.comop.org/rtrc/rtrc/Indivdocs/Pat WIA_Prov_1.pdf

of time to meet work requirements until the time that the specialized child care required by her child is available, or the state could help the parent identify appropriate child care. “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.”⁴⁶

Conclusion

For states and counties that have already turned their attention to addressing the needs of parents with multiple barriers to employment, including people with disabilities, the OCR Guidance provides a very helpful framework for ensuring that the steps being taken also comply with Section 504 and the ADA. For other states and counties that are at more preliminary stages of considering the needs of this population, the OCR Guidance provides a road map to how best to think about addressing the needs of people with disabilities and ensuring compliance with both of the non-discrimination laws.⁴⁷ And, as states and counties undertake the comprehensive diagnostic analysis contemplated by the guidance, it will be important that they focus attention not only on parents with disabilities but also children with disabilities whose families receive TANF assistance or services.

⁴⁶ OCR Guidance, Part D.2.

⁴⁷ The guidance cites a number of publications in support of the promising practices listed. Additional resources include: Michele K. Derr, Heather Hill, LaDonna Pavetti, *Addressing Mental Health Problems Among TANF Recipients: A Guide for Program Administrators*, Mathematica Policy Research, Inc., July 2000, available at <http://www.mathematica-mpr.com>; Fredrica D. Kramer, *Screening and Assessment for Physical and Mental Health Issues that Impact TANF Recipients’ Ability to Work*, Welfare Information Network, February 2001, <http://www.welfareinfo.org/physicalandmentalissuenote.htm>; Liz Schott, *Ways That States Can Serve Families That Reach Welfare Time Limits*, Center on Budget and Policy Priorities, June 2000, <http://www.cbpp.org/6-21-00wel.pdf>; M. Robin Dion, Michelle K. Derr, Jacquelyn Anderson, LaDonna Pavetti, *Reaching All Job-Seekers: Employment Programs for Hard-to-Employ Populations*, Mathematica Policy Research, Inc., October 1999, available at <http://www.mathematica-mpr.com>; Rebecca Brown, Evelyn Ganzglass, *Serving Welfare Recipients with Learning Disabilities in a Work First Environment*, National Governors’ Association, July 1998, <http://www.nga.org/Pubs/IssueBriefs/1998/980728Learning.asp>; *Building Bridges: States Respond to Substance Abuse and Welfare Reform*, National Center on Addiction and Substance Abuse, Columbia University, and American Public Human Services Association, August 1999, <http://www.aphsa.org/publicat/casa.htm>; Mary Clare Lennon, Juliana Blowe, Kevin English, *Depression and Low-Income Women: Challenges for TANF and Welfare-to-Work Policies and Programs*, Research Forum on Children, Families and the New Federalism, National Center on Children in Poverty, Columbia University, 2001.