
CHAPTER IV: Making TANF Work for Individuals with Disabilities

Introduction

As states seek to increase engagement in welfare-to-work activities, it is important to consider the special circumstances of families that include individuals with disabilities. In some cases, recipients with disabilities (or recipients who care for family members with disabilities) can participate in the same welfare-to-work activities as other recipients, though some may need additional supportive services. In other cases, they may need different activities or may need to participate in activities for a different length of time than other recipients. Also, some TANF recipients may have disabilities that are so severe that they would be more appropriately served in the SSI (Supplemental Security Income) program.

The DRA and the interim final regulations present new challenges to states as they seek to help recipients with disabilities move toward employment. Previously, the TANF work participation rates were not difficult for states to meet, so states could engage recipients in activities that did not count toward the work rates (or allow recipients to participate for fewer hours than needed to meet the federal standards) without putting themselves at great risk of fiscal penalty. Similarly, because states had flexibility to define the various work activities, some states adopted broad definitions — to which HHS never formally objected — that allowed them to claim credit toward the work rates when individuals participated in activities designed to address issues such as disabilities and other barriers to work.

Under the DRA and associated regulations, in contrast, the work rates are difficult to meet and states can no longer define work activities broadly to include some activities tailored to the needs of individuals with disabilities and other barriers. When a state modifies the type of activity a recipient with a disability engages in, or its duration, the state generally will not get credit for the participation in its work rates. And because the work rates themselves are difficult to meet, there are potentially greater consequences for states when recipients' participation cannot be counted toward the rate calculation.

While the DRA and accompanying regulations are problematic in this respect, HHS reminds states in the preamble to the regulations that states' assistance programs must comply with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. That is, states must ensure that individuals with disabilities have access to assistance and appropriate employment-related services, and that individuals who need accommodations with respect to the work participation requirements must be given those accommodations.

In response to the interim final regulations, hundreds of organizations, state officials, analysts, and advocates submitted comments to HHS. Many of these comments discussed the need for changes to ensure that states are not penalized with respect to the work rates for meeting their ADA/Section504 obligations and engaging individuals with disabilities in appropriate activities. Unless new regulations are issued, however, the interim final regulations remain in effect. Thus, this chapter is designed to:

- explain states' ADA/Section504 obligations with respect to TANF programs;
- examine the potential benefits to states and families of using non-MOE state funds to finance assistance to some families in which the adult has a disability;
- discuss concrete ways that states can engage recipients with disabilities in activities that can help them progress toward employment;
- describe how states have improved employment services for individuals with disabilities; and
- examine how states can ensure that recipients who would be better served in SSI have access to that assistance.

In addition, the chapter will discuss one area where the interim final regulations *increase* state flexibility by allowing states to exempt from the work rates certain families in which an adult cares for a family member with a disability.

Legal Background on TANF and Federal Disability Protections

The 1996 law that created TANF specifically provides that federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973 and the ADA of 1990, apply to TANF programs.¹⁷⁷ The HHS Office for Civil Rights (OCR) has issued guidance to help states and counties understand their obligations under Section 504 and the ADA in their TANF programs.¹⁷⁸ States must ensure

¹⁷⁷ 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 TANF programs. 42 U.S.C. §§608(c)(1) and (4).

¹⁷⁸ HHS Office for Civil Rights, "Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)," 2001, <http://www.hhs.gov/ocr/prohibition.html>, hereinafter cited as "OCR guidance." In 2005, OCR posted a training video about the guidance on its website, <http://www.hhs.gov/ocr/tanf/ocrguidance.html>. OCR also issued less detailed guidance on civil rights and TANF in 1999: "Civil Rights Laws and Welfare Reform — An Overview and Technical Assistance for Caseworkers on Civil Rights Laws and Welfare Reform," <http://www.hhs.gov/ocr/tanfintro.htm>.

that individuals with disabilities have meaningful access to all services and benefits provided under TANF programs — including welfare-to-work programs and income assistance — and that reasonable accommodations are made to work-related requirements when needed because of an individual’s disability. This legal structure provides important protections for families, while giving states flexibility to determine how best to serve recipients with disabilities in their TANF and related programs.

Which Entities Are Covered?¹⁷⁹

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. The ADA prohibits discrimination on the basis of disability by both public and private entities, whether or not they receive federal financial assistance.

These laws cover all states, counties, and other local governments administering all or part of a TANF program and related programs.¹⁸⁰ Programs are covered regardless of whether they receive TANF funds, other federal funds, or state or county funds, and regardless of whether funds are used to meet the state’s MOE requirement.

Which Individuals Are Covered?

The ADA and Section 504 define an individual with a disability as a person who has a physical or mental impairment that substantially limits one or more of his or her major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment.¹⁸¹ The laws apply to both adults and children, so TANF programs need to ensure that their programs are accessible and accommodating to families in which either an adult or a child has a disability. The ADA and Section 504 have much broader definitions of disability than the one used for disability-related cash benefits provided through SSI or the Social Security Disability Insurance (SSDI) program.

“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.”

- 2001 HHS Guidance on TANF and ADA/504

¹⁷⁹ For more detailed discussions of the OCR guidance, see Eileen P. Sweeney, “HHS Guidance Explains How Federal Laws Barring Discrimination Against People with Disabilities Apply in State and County TANF Programs,” Center on Budget and Policy Priorities, February 2001, <http://www.cbpp.org/2-26-01wel.htm>. For more information about the ADA and Section 504 as applied to TANF, see Cary LaCheen, *Using the Americans with Disabilities Act to Protect the Rights of Individuals with Disabilities in TANF Programs: A Manual for Non-Litigation Advocacy*, Welfare Law Center, September 2004, http://www.welfarelaw.org/contents/ADA2004_manual.html.

¹⁸⁰ OCR Guidance, Part A.1.

¹⁸¹ OCR Guidance, Part C.2.

What Do the ADA and Section 504 Require?

Two key principles underlie OCR’s analysis of the legal requirements of Section 504 and the ADA in TANF: *individualized treatment* and *effective and meaningful opportunity*.

- **Individualized treatment.** According to the guidance, this “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.”¹⁸²
- **Effective and meaningful opportunity.** The guidance states 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.”¹⁸³

These principles have implications for all of the TANF agency’s (and its contractors’ and vendors’) policies and practices. OCR identifies three legal requirements that flow from these two principles. TANF agencies must:

- ensure equal access through the provision of appropriate services to people with disabilities;
- modify policies, practices, and procedures to provide such equal access unless doing so would fundamentally alter the program; and
- adopt non-discriminatory methods of administering the program.

The OCR guidance makes clear that states or counties can meet these obligations in a number of ways. While providing examples of best practices, the guidance does not imply that all states must adopt a particular policy or procedure.

What Do These Legal Requirements Mean for States?

Requirement #1: Ensure equal access through the provision of appropriate services. The guidance states that “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 individual without disabilities.” To comply with this 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.”¹⁸⁴

¹⁸² OCR Guidance, Part B; internal footnotes omitted.

¹⁸³ OCR Guidance, Part B; internal footnotes omitted.

¹⁸⁴ OCR Guidance, Part D.1.

The guidance also states that, “The programs must be provided in the most integrated setting appropriate to the needs of the individuals with disabilities.” In other words, states must 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.”¹⁸⁵ While the guidance stresses the importance of trying to integrate recipients into the work activities that are available to recipients *without* disabilities (by providing extra supports and services as needed), it also suggests that some recipients may need more specialized activities, at least for some period of time.

In addition, the guidance explains the procedures states need to have in place to determine a TANF applicant’s or recipient’s needs: “It is critical that TANF beneficiaries with disabilities receive an assessment that allows them equal opportunity to benefit from the TANF programs and the assessment process.” Also, before reaching the assessment step, TANF agencies must provide screenings by trained personnel using reliable screening tools. The guidance notes that “at a minimum,” intake workers should be able to recognize potential disabilities and to conduct an initial screening to identify possible disabilities.¹⁸⁶

The TANF agency also has the “obligation to ensure that service providers have the requisite knowledge, experience, and expertise to serve beneficiaries with disabilities.” This applies both to agency staff and to contractors that provide services to TANF recipients, such as welfare-to-work providers.¹⁸⁷

Requirement #2: Modify policies, practices, and procedures to provide equal access. As the guidance makes clear, states need to ensure that the full range of state TANF policies, practices, and procedures — including the application and eligibility review procedures, employment services provided, requirements imposed on families (such as work requirements), work-program exemption rules, and sanction policies¹⁸⁸ — promote rather than deny equal access for individuals with disabilities.¹⁸⁹ The guidance recommends that state and county agencies try to determine the extent to which various groups of people with disabilities participate in their programs and then use that information to analyze “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.”¹⁹⁰

¹⁸⁵ Ibid.

¹⁸⁶ Ibid., 42 U.S.C. §608(b)(1).

¹⁸⁷ Ibid. For a discussion about ways to structure contracts and ensure that contractors are meeting their federal civil rights obligations, see Eileen Sweeney *et al.*, “Language Matters: Designing State and County Contracts for Services Under Temporary Assistance for Needy Families,” 35 *Clearinghouse Review* 508, Jan.-Feb.2002, <http://www.welfarelaw.org/contents/privatization/LanguageMatters.pdf>.

¹⁸⁸ OCR Guidance, Parts D.2 and D.3.

¹⁸⁹ OCR Guidance, Part D.2.

¹⁹⁰ Ibid. The guidance explains that states are not obligated to make “fundamental alterations” in their TANF programs to ensure equal access for individuals with disabilities, but a separate OCR letter of findings on an investigation in Massachusetts makes clear that OCR takes a narrow view of what constitutes a “fundamental alteration.” For example, regarding the Massachusetts TANF agency’s failure to properly identify and serve adult recipients with learning disabilities, OCR rejected the state’s claim that meeting the needs of these recipients would fundamentally alter the TANF program. OCR noted that a main purpose of TANF is to “end dependence of needy parents on government benefits by promoting job preparation, work and marriage”; thus, modifying a state’s welfare-to-work program to ensure that it promotes job preparation and work for those with learning disabilities would not constitute a fundamental

Requirement #3: Adopt non-discriminatory methods of administration. In explaining the requirement that TANF agencies adopt non-discriminatory methods of administration, OCR has stated that the phrase “methods of administration” applies both to “official written policies” of the TANF agency and the “actual practices” of the agency.¹⁹¹ 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 that implementation occurs are essential as well.

OCR identifies a number of steps a TANF agency should take 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 trainings occur for staff of service providers that have contractual or vendor relationships with the TANF agency;
- establish clear written policy that incorporates modifications to policies, practices, and programs to ensure equal access;
- conduct regular oversight of TANF and related assistance programs and services to ensure equal access; and
- take any additional steps to otherwise ensure that the agency’s policies and practices (or those of its contractors or vendors) do not subject individuals with disabilities to discrimination.¹⁹²

TANF Work Requirements and People with Disabilities

As noted, the DRA imposes significantly higher effective work participation requirements on states. In addition, the interim final regulations restrict states’ flexibility not only to count toward their work rates a broad range of activities that can help some individuals with disabilities move toward employment, but also to count recipients who participate in activities for fewer than the federally required number of hours due to their disabilities.

Given this, states will need to make two sets of policy and programmatic decisions. First, how will the state provide those services and supports — will it provide them to all families within TANF- and MOE-funded programs, or will it help some families through solely state-funded programs that are outside the federal TANF work rules? Second, what assessment procedures, services, and supports are needed to help recipients with disabilities move forward toward employment when possible?

alteration of the program. In addition, OCR noted that a number of other states have crafted programs that provide equal access to those with learning disabilities.

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

¹⁹² OCR Guidance, Part B.c.

These two issues are discussed below.

*Solely State-Funded Programs and Individuals with Disabilities*¹⁹³

As discussed in Chapter 1 (see page 22), some states are considering establishing solely state-funded programs for some families for whom the federal TANF work requirements are inappropriate, including families in which the adult recipient has a disability. Since families served by a solely state-funded program are not considered in the federal work rates, states have the flexibility to engage these families in a broader range of activities and/or for fewer hours than TANF recipients, or exempt them from participation altogether. States can use solely state-funded programs to meet their ADA/Section 504 obligations with respect to their income assistance programs for poor families — that is, to ensure that individuals with disabilities have access to assistance and are provided with accommodations with respect to work requirements when needed.

States can finance employment programs and other non-assistance services for families in a solely state-funded program with TANF or MOE funds.¹⁹⁴ A state can, for example, permit or require SSF recipients to participate in a TANF- or MOE-funded employment services program that includes the kinds of activities and accommodations that individuals with disabilities need. (SSF families that participate in a TANF or MOE-funded employment program would not be included in the TANF work participation rate calculations because such families are not receiving *assistance* in a program that is funded with TANF or MOE.) In fact, to ensure that such families are served in the “most integrated environment” possible and have access to all of the employment-related services available to TANF recipients, states may want to have such families participate in the same TANF- or MOE-funded employment program as TANF recipients.

Regardless of whether states finance employment-related services for SSF recipients with TANF or MOE funds, states need to ensure that individuals in SSF programs have access to the same employment-related services and supports available to those receiving assistance in TANF- and MOE-funded programs. In fact, states could run afoul of the ADA/504 requirements if they establish a solely state-funded program that restricts recipients’ access to some types of benefits or services (such as education or training) that are provided to families receiving assistance in the TANF- or MOE-funded program.

Improving Outcomes for Recipients with Disabilities

However a state chooses to finance assistance and services for individuals with disabilities, it should also improve how programs work with such families to improve outcomes. The following is a brief discussion of how states can do so:

¹⁹³ For a more detailed discussion of solely state-funded programs, see Liz Schott and Sharon Parrott, “Designing Solely State-Funded Programs: Implementation Guide for One “Win-Win” Solution for Families and States,” Center on Budget and Policy Priorities, December 2006, <http://www.cbpp.org/12-7-06tanf.htm>.

¹⁹⁴ States should not use TANF or MOE funds to finance child care or transportation assistance for solely state-funded recipients who are *not* employed. When these forms of aid are provided to non-employed recipients, they are considered “assistance” and recipients are included in the TANF work rate.

Serving TANF Parents Who Can Be Excluded from the Work Rates Because They Are Caring for Family Members with Disabilities

Under the interim final regulations, a state can exclude parents from the work participation rates if they are caring for a family member with a disability, provided that the family member with the disability resides in the home with the adult recipient and does not attend school full-time.^a This is one area where the new regulations provide new flexibility for states to modify the hours or activities for these parents without being penalized with respect to their work participation rates.

The HHS work verification plan guidance asked states to define three terms for purposes of determining who would be excluded from the definition of “work-eligible individual” and thus from the work participation rates: “disabled,” “family member,” and “attending school full-time.” States adopted a variety of approaches in the first set of work verification plan submissions, with some states adopting very narrow definitions of these terms.

The following are some issues to consider with respect to defining these terms:

- **“Disabled.”** States should consider adopting a broad definition (such as that used in the ADA) that does not unduly limit their ability to exclude individuals caring for family members who need that care for a substantial number of hours during the workday, whether on a temporary or permanent basis.
- **“Family member.”** States need not limit the definition of family member to something as specific as a degree of relationship. They could include in their plan not only individuals related by blood, marriage, adoption, or guardianship arrangement, but also individuals who may not have these formal relationships but function as if those relationships were in place.
- **“Attending school full-time.”** Some states defined all children who are enrolled in school full-time as “attending school full-time,” thereby limiting the extent to which parents caring for children with disabilities could be excluded from the work rates when the child is *enrolled* full-time but is unable to *attend* full-time on a regular basis. Other states, by contrast, proposed to include only those children who attended school on a full-time basis, without frequent absences. (If an individual has a disability as defined by the ADA and is attending school full time, the state must make appropriate accommodations — for example in required hours of participation — if a family member is needed to care for the individual before, after, or during school hours.)

Ensuring that Parents Caring for Family Members with Disabilities Have Access to Employment Services

Some parents who care for family members with disabilities will want to participate in education, training, or other activities designed to help them move toward employment. While these parents may be unavailable for the level of participation required to count toward the work participation rates, they may be available for part-time participation and may want to try to increase their skills so they can secure a job in the future or to work part-time to augment the family’s income. For example, a parent may be able to attend education or training classes in the evening, when other family members can care for the individual with a disability.

States should ensure that these parents have access to these education, training, and employment opportunities, which can help the family make ends meet and/or increase their future employability. States should note that it could be a violation of the ADA to deny a parent access to training opportunities that fit into her caregiving schedule if those (or similar) opportunities are available to other recipients who are not caring for a family member with a disability.

^a 45 C.F.R. §261.2(n)(2)(i).

- **Improving screening and assessments.** As previously noted, states must provide assessments in any case in which there is any suspicion that the person has a disability. (For a detailed discussion of screening and assessment, see pages 59-62 in Chapter II.)
- **Developing supportive services to help individuals with disabilities succeed in welfare-to-work activities.** Individuals with disabilities may be able to succeed in a broad array of welfare-to-work programs (vocational training, work experience, job search, etc.) if they receive additional supports. These supports may include intensive case management, assessments to determine whether a learning disability or other condition is impeding the person’s ability to understand and follow instructions, interventions designed to help the individual overcome the impediments posed by the learning disability, and help in solving transportation difficulties.
- **Developing work activities tailored to the needs of individuals with certain types of disabilities.** For some individuals, such as those with untreated (or inadequately treated) mental health problems or serious substance abuse problems, tailored interventions may be necessary before they can participate in standard work activities. For other individuals, established employment services targeted to individuals with disabilities may be effective. The key is for states to have as broad a set of activities in their “tool box” as possible and then use screenings and assessments to match recipients to appropriate activities. Also, the agency may want to develop new work activities aimed at individuals with disabilities, such as supported work programs that provide meaningful workplace experience and training coupled with intensive case management and other supports that can help individuals move toward employment.¹⁹⁵ HHS explicitly states in the regulatory preamble that supported work programs may be counted toward the work participation rate as subsidized employment.
- **Partnering with state and county agencies that specialize in assisting individuals with disabilities.** While developing effective employment programs for individuals with disabilities has not been a primary focus of many state TANF programs, other government agencies and non-profits have been working on this issue for many years. These organizations can provide employment services for TANF recipients with disabilities or advise TANF agencies about how best to do so. They may be able to develop effective programs on a shorter timeframe than other providers of employment-related services.

For example, in a special project to identify TANF recipients with serious barriers to employment and provide employment-related services to them, the Ramsey County, Minnesota, TANF agency partnered with psychologists and service providers from other government and nonprofit agencies with expertise working with individuals with disabilities (see page 106 for more information). A Mathematica report found that these partnerships proved valuable both in helping diagnose individuals’ disabilities and in developing workable employment plans for them. The TANF agency

¹⁹⁵ For a discussion of lessons from the work in the disability community over the past couple of decades in helping people with disabilities to secure and retain employment, see “Employing Welfare Recipients with Significant Barriers to Work: Lessons from the Disability Field,” The Lewin Group for the Annie E. Casey Foundation, October 2000, <http://www.aecf.org/publications/welfareanddisabilities.pdf>.

“[B]y hiring staff that had worked in employment-related programs for seriously mentally ill individuals, Ramsey County [MN] was able to link its TANF program with a broad range of programs to address the broad range of personal and family challenges recipients faced.”

- Mathematica Policy Research, Inc., March 2006

noted that its partners in this project had a different perspective on the barriers and strengths of TANF recipients and knew about other available resources in the community to assist clients.¹⁹⁶

What Have States Done to Help Recipients with Disabilities Move Toward Employment?

States have taken a variety of approaches to make their TANF programs accessible and effective for families that include members with disabilities. Some brief examples are given below.¹⁹⁷

Comprehensive Policy and Procedure Review

Virginia conducted a comprehensive review of its policies and procedures to determine whether there were areas that either did not comply with the ADA and Section 504 or could be made more accessible to applicants and recipients with disabilities. On the basis of this review, the Department of Social Services made numerous changes throughout its TANF and welfare-to-work program rules. For example, a revised manual for state employees spells out accommodations that must be made in the application process, stating that people with disabilities are entitled to help in completing the application and collecting the needed documents.¹⁹⁸ If a disability prevents an applicant from attending an intake interview at the welfare agency, the agency must provide a home visit or telephone interview or must interview the applicant’s authorized representative.¹⁹⁹ Also, to the extent possible, employability assessments must be scheduled at a time that does not conflict with the applicant’s medical, mental health, or other appointments for treatment.²⁰⁰

¹⁹⁶ LaDonna A. Pavetti and Jacqueline Kauff, “When Five Years is Not Enough: Identifying and Addressing the Needs of Families Nearing the Time Limit in Ramsey County, Minnesota,” Mathematica Policy Research, March 2006, http://www.mathematica-mpr.com/publications/redirect_pubsdb.asp?strSite=pdfs/timelimitramsey.pdf.

¹⁹⁷ The OCR guidance itself includes a discussion of many “best practices” in areas ranging from quality of notices to sanction and time limit policies. A number of other publications also provide helpful examples of steps that states and counties can take (and have taken). See, for example, Gretchen Kirby and Jacquelyn Anderson, “Addressing Substance Abuse Problems Among TANF Recipients: A Guide for Program Administrators,” Mathematica Policy Research, July 2000, <http://www.mathematica-mpr.com/publications/PDFs/addresssubstance.pdf>; Michelle K. Derr, Heather Hill, and LaDonna Pavetti, “Addressing Mental Health Problems Among TANF Recipients: A Guide for Program Administrators,” Mathematica Policy Research, July 2000, <http://www.mathematica-mpr.com/publications/PDFs/addressmental.pdf>; Amy Brown, “Beyond Work First: How to Help Hard-to-Employ Individuals Get Jobs and Succeed in the Workforce,” MDRC, 2001, <http://www.mdrc.org/publications/15/full.pdf>.

¹⁹⁸ The manual provisions appear at <http://www.dss.virginia.gov/benefit/tanf/manual.cgi>. The notice of manual changes related to the ADA and Section 504 (and Virginia’s Human Rights law) appears in Transmittal #27, issued November 18, 2004, see <http://www.dss.virginia.gov/files/division/bp/tanf/policy/transmittals/27.pdf>. The portions cited in text appear at sections 305.10.1.C, 401.1.D, 401.2.A.10, and 401.2.B.1.

¹⁹⁹ *Ibid.*, Section 401.2.A.

²⁰⁰ *Ibid.*, Chapter 1000.4.A.4.

The Virginia policy manual also explains the types of changes to the state's standard work requirements that should be made for an individual when needed because of a disability. These changes include:

- a waiver of the requirement that the person engage in a second work activity if needed to bring the total number of work hours up to the federal standard;
- a reduction in the number of required job contacts during job search;
- an allowance to remain in work activities for longer than typically permitted;
- exemption from activities in environments that could prove harmful given the person's disability (for example, someone with asthma would not be assigned to a worksite that is very dusty);
- assignments to work activities that are consistent with the person's limitations; and
- additional notice of program appointments and additional explanations of program rules.²⁰¹

Recognizing that disabilities are often the reason for non-compliance with TANF program rules, the manual states that individuals should not be sanctioned or disqualified from other aspects of the TANF program if their failure to comply is the result of a disability.²⁰²

The manual made clear to staff what the rules are, how they are to be implemented, and who is responsible for various tasks, such as deciding on the accommodations needed by a particular recipient.

Helping Recipients with Disabilities Succeed in Work Programs

Some states have designed programs or policies that give people with disabilities the extra help they need to succeed in welfare-to-work programs. For example, Tennessee created the Family Services Counseling (FSC) program to identify and assist families with barriers to employment, including mental health or substance abuse problems, domestic violence, learning disabilities, or children's health/behavioral health problems.²⁰³

²⁰¹ Ibid., Chapters 901.1.2.C, 1000.7.C and pages 43, 45; Chapter 1000.7.A.3; Chapters 1000.4.B.3.0 and 1000.5.A.7.

²⁰² Ibid., Section 901.6.B; Chapter 1000.12.A.2.

²⁰³ "The services offered in this work component [Family Services Counseling] include comprehensive screening and assessment, short-term counseling services, intensive case management, referral, and advocacy for eligible Families First [TANF] participants and their families who have been identified as having barriers which appear to be interfering with their ability to become self-sufficient. Masters level mental health professionals have been contracted to provide these services to Families First participants throughout the state. Services are community based in locations convenient to Families First clients, such as county DHS offices, other service provider locations, and in contract agencies. Family Services Counseling is not intended to duplicate services funded by TennCare (the state's Medicaid waiver program) or replace existing resources in the community." *Families First Contractor Manual, Fiscal Year 2005-2006*, Tennessee Department of Human Services, <http://tennessee.gov/humanserv/contractor-manual.pdf>. For a detailed discussion of FSC, see pages 42 through 59 of this document. See also Shawn Caster and Russ Overby, "Reaching TANF Recipients with the Greatest Barriers to Work: Tennessee's Family Services Counseling Program," Tennessee Justice Center, September 2006, http://www.tnjustice.org/pdfs/Reaching_TANF_%20recipients_September_2006.pdf.

In FSC, families that appear to be facing difficulties are referred to a social worker at a private nonprofit agency that is under contract with the state's TANF agency. These social workers help identify barriers faced by the families and provide case management and other supports (such as mental health counseling or substance abuse treatment) to help families address those barriers so they can participate successfully in work programs. While just 14 percent of families are working when they begin FSC, 49 percent are working by the time they successfully leave the program. (Families leave the program when the case manager determines that the barrier has been resolved or the family no longer needs FSC services.)

It is important to understand that such families' path to success is not necessarily linear. One-fifth of families that successfully leave FSC have a subsequent referral to the program and need additional help.²⁰⁴ Further, among those who are successful, the state and its staff worked with the families for significant periods of time, averaging 110 days but ranging from two days up to 330 days.²⁰⁵

Another example of a successful state program to serve families with barriers is Iowa's Family Development and Self-Sufficiency (FaDSS) program.²⁰⁶ The Department of Human Services contracts with the Division of Community Action Agencies within the Department of Human Rights to administer FaDSS; that agency then subcontracts with 18 organizations across the state to provide FaDSS services.²⁰⁷ As FaDSS explains:

The foundation of FaDSS is regular home visits with families, using a strength-based approach. Core services include support, goal setting, and assessment. Support is given in many ways such as referrals, group activities, linking families to communities and advocacy. Assessment aids the family to identify strengths that they possess that may be used to eliminate barriers to self-sufficiency. Goal setting helps families break down goals that seem out of reach into small steps that will lead to success.²⁰⁸

²⁰⁴ Deborah Godwin Perkins and Karen Homer, "2002 Family Services Counseling Evaluation Report," University of Tennessee College of Social Work, Office of Research and Public Service, June 2003, Appendix E.

²⁰⁵ Ibid. The median time was 101 days. Some 6 percent were served in less than 30 days, 38 percent in 30 to 90 days, 40 percent in 91 to 180 days, 15 percent in 181 to 270 days, and 1 percent in over 270 days.

²⁰⁶ According to the Iowa state plan, FaDSS "provides intensive family development services to families receiving FIP (Family Investment Program, the state's TANF program) and identified as having multiple or severe barriers to self-sufficiency. FaDSS participants leaving FIP for reasons other than a sanction can continue to receive services for a limited period after leaving the program. Former cash recipients receiving FaDSS services continue to receive monthly home visits during the limited period to help enable them to progress toward permanent self-sufficiency. Former cash recipients receiving FaDSS services are not required to complete any type of application form or to meet any income or resource eligibility criteria. The program is available statewide and services are provided by contracted agencies." See "State of Iowa State Plan for Temporary Assistance for Needy Families (TANF), Effective October 2004," http://www.dhs.state.ia.us/dhs2005/dhs_homepage/docs/TANF_STATE_PLAN_AMENDMENT_10-01_FINAL.doc.

²⁰⁷ See the FaDSS website, <http://iowafadss.org>. For an excellent description of the program, see the "big book" on the website. Section 2.1 (http://www.iowafadss.org/big_book/bigbook_docs/2.1-2.3_conceptpaper.doc) describes the FaDSS concept in greater detail. See also the FaDSS annual report, <http://www.iowafadss.org/outcomes/FY03-r-annual%20report.pdf>.

²⁰⁸ Ibid.

Many FaDSS participants have mental health problems, and the program has helped a large share of those with identified mental health issues to secure treatment.²⁰⁹

In addition, FaDSS provides a 90-day transition component for those leaving welfare. During this period the program keeps in touch with these individuals, helping them address any obstacles that may arise and otherwise supporting their move into employment. More than 73 percent of families who received transition services were still off welfare a year later.²¹⁰

Partnering with the State Vocational Rehabilitation Agency

Some states, like Vermont, have partnered with the vocational rehabilitation (VR) agency to provide services to people with disabilities on TANF, often using TANF funds to expand the VR agency's capacity to provide vocational services to TANF recipients with disabilities.²¹¹ In Vermont, counselors from the Division of Vocational Rehabilitation who are specifically identified to work with TANF recipients collaborated with TANF case managers to develop a mechanism for identifying recipients with disabilities and other barriers to work and creating employment plans for them.²¹²

Since its inception in 2001, the Vermont program has helped more than 250 welfare recipients with disabilities become successfully employed. Over that same period, a similar number of recipients have become successfully employed through the state's regular VR program, which provides less-intensive services than those provided by the VR-TANF program. On average, though, participants in the VR-TANF program needed significantly less time (15 months, on average) to become successfully employed.²¹³

Helping TANF Recipients with Disabilities Apply for SSI

The vast majority of people in TANF with barriers to employment do not have disabilities severe enough to qualify for SSI. However, some people now receiving TANF have disabilities that do meet the rigorous SSI standard of disability.

Helping individuals with disabilities this severe to transfer from TANF to SSI can benefit both the state and the individual. For the state, an adult who receives SSI is no longer included in the state's work participation rates unless they are participating in countable activities for the required number of hours to count, and TANF funds are no longer spent for the parent (although they generally continue at a lower level for the children in the family). For the individual, monthly SSI benefits

²⁰⁹ Ibid.

²¹⁰ Outcomes, fiscal year 2004, <http://www.iowafadss.org/outcomes/FaDSSSummaryFY04.doc>.

²¹¹ For a discussion of TANF and VR agreements and work arrangements, see Jean Radtke and Sue Scholfield, "Report from the Study Group on TANF and Vocational Rehabilitation: Partnering for Employment Success," 28th Institute on Rehabilitation Issues, Washington, DC, May 2003, available at http://www.rlr.uwstout.edu/pdf/iri/28th_IRI_Final.pdf.

²¹² Johnette T. Hartnett, "Vermont's Response to Welfare Reform for People with Disabilities: An Evaluation of Vermont's Vocational Rehabilitation (VR) and PATH Partnership," University of Vermont, Fall 2002.

²¹³ Email correspondence with Michael Collins, Vermont Department of Vocational Rehabilitation, DAIL, March and April 2006.

generally are substantially more than the individual's portion of the TANF grant. (In 2006, the federal SSI benefit was \$603 per month for an individual.) And, to the extent that the person may be able to attempt to work in the future, SSI provides significant work incentives and supports.

Background on SSI

SSI provides needs-based assistance to people with disabilities and those who are elderly (aged 65 and older). Since its creation in 1974, it has become a key source of support for people with disabilities.²¹⁴ About 5.1 million people with disabilities receive SSI, some 2.8 million of whom have severe mental impairments such as schizophrenia, severe depression, or mental retardation. SSI also provides benefits to children with severe disabilities living in low-income families.

Individuals with disabilities who are poor enough to qualify for TANF almost always meet SSI's income and asset eligibility criteria, which are often more generous than state TANF eligibility rules.

The SSI eligibility criteria for disability are stringent. SSI's definition of "disability" is the same as the one used in SSDI: a person must have a physical or mental impairment that will last at least 12 months or is expected to end in death and must prove that he or she is not able to engage in "any substantial gainful activity" as a result of the impairment (or combination of impairments). The definition of disability for children is somewhat different but equally stringent; children must show that they have "marked and severe functional limitations."²¹⁵

States Can Be Reimbursed for Assisting Individuals Awaiting SSI Eligibility Determination

Because SSI approval generally takes many months and is retroactive to application, a successful applicant can receive retroactive benefits. This money often can provide a family with a small reserve fund or cushion to meet its needs.

Under HHS rules, a state can provide MOE-funded "interim assistance" to a family in which an individual is awaiting an SSI determination and then, if the individual is found eligible for SSI, be reimbursed out of that individual's back SSI benefits. (Applicants would first have to sign an interim assistance agreement with the state.) The funds reimbursed to the state become income to the state's TANF program and can be spent in a TANF program or in a separate MOE-funded program, though they cannot be claimed toward the state's MOE requirement.²¹⁶ Thus, states can help TANF recipients with serious disabilities gain access to SSI and use the reimbursement for interim

²¹⁴ For a more extensive discussion of the accomplishments of the SSI program, see Eileen P. Sweeney and Shawn Fremstad, "Supplemental Security Income: Supporting People with Disabilities and the Elderly Poor," Center on Budget and Policy Priorities, August 17, 2005, <http://www.cbpp.org/7-19-05imm.pdf>.

²¹⁵ Section 1614(a)(3)(A) of the Social Security Act, 42 U.S.C. §1382c(a)(3)(A) (adults); section 1614(a)(3)(C) of the Social Security Act, 42 U.S.C. §1382c(a)(3)(C) (children).

²¹⁶ Section 1631(g) of the Social Security Act, 42 U.S.C. §1383(g). Interim assistance "means assistance financed from State or local funds and furnished for meeting basic needs" during the period that begins with the month after the SSI application is filed to the month in which SSI benefits are provided. It also can cover a period during which an appeal for resumption of terminated SSI benefits is pending. Reimbursement is available "upon written authorization of the individual." The state must have an interim assistance agreement in effect with SSA. Sections 1631(g)(1), (3) and (4), 42 U.S.C. §§1383(g)(1),(3), and (4). Information on how reimbursement can be sought for benefits funded with MOE funds was received via email communication with HHS.

assistance to partially finance TANF benefits and assistance for individuals applying for SSI (discussed below) provided during the SSI application period.

Helping Individuals Navigate the SSI Application Process

Over the past few decades, some states have undertaken initiatives to help recipients of state assistance who have severe disabilities to apply for SSI, either by contracting with legal services organizations or private attorneys to represent individuals when they apply for SSI or by assigning in-house state human service agency staff to help them apply for SSI. Originally, states set up these arrangements to help general assistance recipients with serious health conditions. Over time, some states expanded their programs to include children with severe disabilities in the foster care system and, most recently, some TANF parents and children with severe disabilities.

It is important to recognize that because SSI's definition of disability is restrictive, few TANF recipients will be eligible for SSI. Nevertheless, it is clear that there are parents and children on TANF with serious health conditions that would make them eligible for SSI. Helping such individuals to gather the necessary medical evidence to support an SSI application can make a significant difference in whether their application is approved. It also can help individuals provide the necessary information earlier in the application process, reducing processing delays and the likelihood that an application will be denied only to be approved on appeal.

Some states are now considering providing income assistance to individuals who are applying for SSI in a solely state-funded program instead of a TANF (or MOE) program. By definition, adults who are applying for SSI benefits are stating that they are unable to engage in "any substantial gainful activity." These individuals are thus highly unlikely to participate enough to be counted toward the participation rate. By serving such families with non-MOE state funds, states may remove them from the participation rate calculation. States that take this approach should consider providing SSI application assistance help as part of the solely state-funded program.

The following are examples of state-funded SSI application assistance efforts undertaken prior to the DRA's enactment:

- **Wisconsin.** The Wisconsin Department of Workforce Development recently entered into a three-year contract with three organizations in Milwaukee County (United Migrant Opportunity Services, La Causa, Inc., and Legal Action of Wisconsin, Inc.) to provide SSI application assistance to TANF recipients in the county who appear eligible for SSI.²¹⁷
- **Maryland.** The Disability Entitlement Advocacy Program (DEAP), run by the Maryland Department of Human Resources, helps people file for SSI and SSDI benefits. To be eligible for DEAP, individuals must be receiving some form of state-administered cash assistance (TANF or Adult Public Assistance), and their treating physician must certify that their disability will last at least 12 months.

²¹⁷ "DWD Selects W-2 Agencies for 2006-09 Contract Period," Wisconsin Department of Workforce Development News Release, September 9, 2005, http://dwd.wisconsin.gov/dwd/newsreleases/2005/070905_w2_contract_selection.htm.

Local social services departments refer such individuals to the DEAP office. People whose condition has lasted at least 12 months are required to participate in DEAP; those whose conditions are expected to last 12 months but have not yet reached that benchmark can volunteer for the program. DEAP staff help individuals complete the application for SSI (and SSDI) and assist with appeals at the Social Security Administration (SSA), including providing legal representation.²¹⁸

Families that are required to apply for SSI and are eligible for TANF assistance (as opposed to other state aid programs) are placed in a separate state MOE-funded program. This ensures that the state can be reimbursed for the interim assistance it provides the individual before SSI benefits are paid.²¹⁹ Following the DRA's enactment, Maryland began considering whether to provide assistance to these families in a solely state-funded program.

- **Minnesota.** As part of an initiative to get a better sense of the barriers facing families about to hit the TANF time limit, Ramsey County, Minnesota, contracted with Southern Minnesota Regional Legal Services and a private attorney to help TANF recipients who had serious health problems apply for SSI. Individuals received help filing applications and obtaining medical and psychological evidence, transportation to appointments, legal counsel at meetings related to the application, and links to community resources while they awaited the SSI decision.²²⁰ The project also included health and in-depth psychological assessments and home visits by professional clinical staff who served as project consultants. The information gleaned from these exams and visits not only helped the county agency design strategies to assist particular families, but also provided important reports that were submitted to SSA. Unfortunately, many of the services provided under the program were cut back due to budget constraints, but the county continued the part of the program that helps individuals through the SSI application process.
- **Vermont.** As part of its larger contract with the Vermont TANF agency (described above), the Vermont Division of Vocational Rehabilitation helps TANF recipients with severe disabilities apply for SSI. The VR agency reports that some long-time TANF recipients have serious disabilities that were never properly diagnosed and that these individuals should have been referred to SSA to apply for SSI many years earlier.²²¹

²¹⁸ <http://63.236.98.116/how/srvadult/deap.htm> and <http://63.236.98.116/fia/deap.htm>.

²¹⁹ "Temporary Assistance to Needy Families State Plan, October 2005 Revision," State of Maryland, <http://www.dhr.state.md.us/fia/doc/newtanfplan.pdf>.

²²⁰ Pavetti and Kauff.

²²¹ Email correspondence with Michael Collins, Vermont Division of Vocational Rehabilitation, April 2006.