

March 9, 2006

The Honorable Michael O. Leavitt  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
202 Independence Avenue, S.W.  
Washington, D.C. 20201

**Re: Regulations Defining TANF Work Activities**

Dear Secretary Leavitt:

The undersigned organizations represent a variety of groups that work with and on behalf of individuals with physical and mental disabilities, including substance abuse problems. We also work with and on behalf of the families of these individuals, including children involved with the child welfare system because of their parents' disabilities. We are writing to request that you ensure that the Temporary Assistance for Needy Families (TANF) program regulations which your Department will issue in the coming months help empower such individuals to address the challenges they face to working and caring for their children. We believe that by developing regulations that give states the flexibility to tailor services and required activities to address these challenges, we, as a nation, can help more families move off welfare towards greater independence. We also believe that giving states the flexibility to address the range of challenges families face will help improve the outcomes their children experience.

Since the adoption of the Personal Responsibility and Work Opportunity Reconciliation Act in 1996, states have recognized that a number of families receiving TANF have a family member with a mental or physical disability, including a substance abuse problem, that poses barriers to successful employment. A number of states have used the flexibility afforded in the TANF program to provide a range of rehabilitative services that assist these individuals in obtaining and retaining employment.

If the regulations called for in the Deficit Reduction Act (DRA) define work activities too narrowly, individuals with physical and mental disabilities, including substance abuse problems, could be assigned to inappropriate work activities – activities that fail to recognize the individuals' current circumstances and make it far less likely that the individuals will be able to secure and retain employment that moves them and their families towards greater independence. Similarly, if parents or other adult family members are caring for a child or other family member with a disability, they may not be able to participate in narrowly defined work activities at the levels required by the DRA. If states sanction these families and remove them from the TANF program in order to avoid penalties for failure to meet work participation rates, we are quite concerned that many of these families will fail to get the services they need and end up in the child welfare system. It is the most disadvantaged families, those with barriers such as mental

or physical disabilities, including substance abuse problems, that are at greatest risk of making the transition from TANF into the child welfare system.

It is critical that the forthcoming TANF regulations allow states to comply with the letter and spirit of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). We commend HHS for the Guidance on TANF and the ADA that the Office for Civil Rights (OCR) issued in 2001, following up on earlier guidance issued in 1999, and for the video training tape on the Guidance produced by OCR and made available on the website this past year. However, we are concerned that if HHS issues regulations without sufficient flexibility to address the needs of those with mental or physical disabilities, including substance abuse problems, it will be signaling to states that they need not comply with the ADA and Section 504. We urge you to ensure that the regulations defining work activities reinforce the importance of these laws and facilitate state's compliance with them.

Specifically, we request that any TANF regulations issued by HHS do the following three things:

**(1) Define “work activities” to include necessary rehabilitative services.**

The regulations should define the various work activities listed in the TANF statute to specifically provide that a state will receive work activity credit for an individual's participation in rehabilitative services if the state has determined that the person has a disability and such services are needed to assist the person to move to greater independence, including work. There should be no time limit placed on the period for which participation can count as work activity — that should be determined based upon the person's disability and how long he or she will need to participate in the services in order to succeed in moving to greater independence, including work.

**(2) Define “work activities” to include caring for a disabled family member.**

The regulations should define the various work activities listed in the TANF statute to specifically provide that a state will receive work activity credit for the hours a parent or other adult family member spends caring for a child or other family member with a disability. Here too, there should be no time limit during which caring for a disabled child or other family member can count as a work activity.

**(3) Provide penalty relief for states who engage individuals with disabilities in appropriate activities.**

The regulations should allow states that fail to meet their work participation rates — and have not received work participation credit for some of the activities in which parents with disabilities have been engaged — to provide HHS with the information about those additional hours of participation and receive credit for

that participation as HHS decides both whether to impose a penalty on states for failing to meet the requirements and, if a penalty is to be assessed, the magnitude of that penalty. This is similar to how the regulations treat states that adopt the family violence option if those states fail to meet the work participation rate because of how they serve those dealing with domestic violence. Under this recommendation, if a state can show that the reason it failed to meet the participation rate — or the reason it did not come closer to meeting the participation rate — is that it was serving people with disabilities and engaging them in alternative but meaningful and appropriate activities, then HHS will provide the state with credit for those activities as well when determining penalties.

There are several ways that HHS could design regulations that give states work participation credit when individuals with physical or mental disabilities, including substance abuse problems, engage in rehabilitative services and when individuals provide care to a child or other family member with a disability. For example, HHS could simply count caring for a family member with a disability as work. Participation in many rehabilitative services could be considered “community service” (as could caring for a child or other family member with a disability). Activities that help individuals address their disabilities, including substance abuse problems, can help them become more able to work and also to engage in their children’s schools, faith based organizations, and other community institutions. Some activities that help individuals develop work skills could also be counted as “vocational education training.” Many activities that will help individuals address mental or physical disabilities, including substance abuse problems, could also be considered “job readiness” activities. However, the statutory time limit on counting vocational education training and job readiness activities means that these should not be the only categories under which rehabilitative services can be counted as work activities. To allow states to tailor the services to address the specific challenges individuals face, they need to be able to count a broad range of rehabilitative services for the time it takes to address individual needs.

For the same reason, states also need to be able to count participation in rehabilitative services as work activities for all the hours individuals participate. Some disabilities may preclude an individual from participating in activities other than rehabilitative services. Similarly, an individual caring for a child or other family member with a disability may not be able to participate in other work activities. Thus, while some rehabilitative services, such as job coaching, could be considered “job skills training directly related to employment” or “education directly related to employment,” these categories cannot be the only categories under which rehabilitative services count as work activities, since hours in these activities count only after a person has engaged in certain other work activities for at least 20 hours.

We want to ensure that individuals with physical and mental disabilities, including substance abuse problems, receive access to the services they need to work and to succeed. We believe it is critical to give states work participation credit when individuals participate in these services (our first two recommendations). We do not

believe simply providing states penalty relief (our third recommendation) will adequately facilitate state efforts to provide the needed services. Quite reasonably, states do not want to be identified as having “failed” to meet a federal standard. They are likely to design their programs to meet the program requirements, not just avoid penalties. The fact that states may be able to get penalty relief for serving people with mental or physical disabilities, including substance abuse problems, while useful, may not make states feel comfortable designing programs that offer people rehabilitative services upfront, if they know they cannot receive work participation credit for those activities. We think the penalty relief provision is important, but as an addition to, not in place of, our other recommendations that work activities be defined broadly enough to encompass participation in critical rehabilitative services.

We believe that including these three provisions in the TANF regulations will give states the ability to comply with TANF, as well the ADA and Section 504. These provisions will also provide states the flexibility to empower individuals with mental or physical disabilities, including substance abuse problems, to move towards work and greater independence. Having access to critical rehabilitative services will also help prevent vulnerable families from ending up in the child welfare system. We appreciate your attention to this matter.

Sincerely,

Addiction Treatment Providers of New Jersey

Alcoholism and Substance Abuse Providers of New York State

American Association for the Treatment of Opioid Dependence (AATOD)

American Association of People with Disabilities

American Association on Mental Retardation

American Federation of State, County & Municipal Employees (AFSCME)

American Humane Association

American Society of Addiction Medicine

Arizona Council of Human Service Providers

Arkansas Assets Coalition

Arkansas Association of Substance Abuse Treatment Programs

Association of Substance Abuse Programs of Texas

Behavioral Health Services Association of South Carolina

Blount County Children’s Home

Brain Injury Association of America

California Association of Addiction Recovery Resources  
California Association of Alcohol and Drug Program Executives, Inc.  
California Partnership  
Capital Area Center for Independent Living  
Center for Civil Justice  
Center for Law and Social Policy (CLASP)  
Center for Public Policy Priorities  
Central New York Citizens in Action  
Child Care Law Center  
Chicago Jobs Council  
Child Welfare League of America  
Children's Defense Fund  
Children's Healthcare is a Legal Duty  
Coalition of California Welfare Rights Organizations, Inc.  
Colorado Association of Alcohol & Drug Service Providers, Inc.  
Connecticut Association of Substance Abuse Agencies  
Connecticut Legal Services, Inc.  
Council for Exceptional Children  
County Alcohol and Drug Program Administrators' Association of California  
(CADPAAC)  
Delaware Association of Rehabilitation Facilities  
Disability Rights Center of Maine  
Division for Early Childhood of the Council for Exceptional Children (DEC)  
Drug & Alcohol Service Providers Organization of Pennsylvania  
Drug & Alcohol Treatment Association of Rhode Island  
Faces and Voices of Recovery  
Federation of Protestant Welfare Agencies  
First Star  
Florida Alcohol and Drug Abuse Association  
Fremont Public Association  
Georgia Council on Substance Abuse

Holy Family Home and Shelter, Inc.  
Hunger Action Network of New York State  
IDEA Infant Toddler Coordinators Association (ITCA)  
Illinois Alcoholism & Drug Dependence Association  
Iowa Substance Abuse Program Directors' Association  
Kentucky Task Force on Hunger  
Learning Disabilities Association of America  
Legal Action Center  
Legal Momentum  
Legal Services of Southern Piedmont  
Maine Association of Interdependent Neighborhoods  
Maine Association of Substance Abuse Programs  
Maine Equal Justice Partners  
MANNA  
Maryland Addictions Director's Council  
Massachusetts Law Reform Institute  
Mental Health and Substance Abuse Corporations of Massachusetts  
Michigan Association of Centers for Independent Living  
Michigan Association of Licensed Substance Abuse Organizations  
Minnesota Association of Resources for Recovery & Chemical Health  
Missouri Association of Alcohol & Drug Abuse Programs  
Montana Addiction Service Providers  
NAADAC- The Association for Addiction Professionals  
National Alliance to End Homelessness  
National Association for Children's Behavioral Health  
National Association of Counsel for Children  
National Coalition for the Homeless  
National Council of Churches USA  
National Council on Alcoholism and Drug Dependence, Inc. (NCADD)  
National Law Center on Homelessness and Poverty  
National Network for Youth

Nebraska Association of Behavioral Health Organizations  
NETWORK, A National Catholic Social Justice Lobby  
Nevada Alliance for Addictive Disorders Advocacy, Prevention and Treatment Services  
New Hampshire Alcohol and Other Drug Service Providers Association  
National Alliance of Children's Trust and Prevention Funds  
National Association of Social Workers - Rhode Island Chapter  
National Mental Health Association  
National Partnership for Women & Families  
New York State Coalition Against Domestic Violence  
North Carolina Association for Behavioral Health Care  
North Dakota Addiction Treatment Providers Coalition  
Ohio Council of Behavioral Healthcare Providers  
Oklahoma Substance Abuse Services Alliance  
Oregon Center for Public Policy  
Oregon Law Center  
Oregon Prevention, Recovery, and Education Association  
Partnership for the Homeless  
Project IRENE  
Public Justice Center  
Rebecca Project for Human Rights  
Sargent Shriver National Center on Poverty Law  
South Dakota Council of Substance Abuse Providers  
South Dakota Peace & Justice Center  
Southern Good Faith Fund  
State Associations of Addiction Services  
Substance Abuse Directors Association of Alaska, Inc.  
Tennessee Association of Alcohol and Drug Abuse Services  
Tennessee Conference on Social Welfare  
Tennessee Health Care Campaign  
The Arc of the United States  
The Poverty Institute at Rhode Island College

Therapeutic Communities of America  
United Cerebral Palsy  
United States Conference of Mayors  
Utah Behavioral Healthcare Network, Inc.  
Vermont Association of Drug & Alcohol Programs  
Virginia Association of Drug and Alcohol Programs  
Virginia Poverty Law Center  
Washington Association of Alcoholism & Addiction Programs  
Washington Legal Clinic for the Homeless  
Welfare Law Center  
Welfare Rights Initiative  
Welfare Rights Organizing Coalition  
Western Center on Law and Poverty  
Women's City Club of New York

cc: Dr. Margaret Giannini, Office on Disability  
Mr. Charlie Curie, Substance Abuse and Mental Health Services Administration  
Dr. Wade Horn, Administration for Children and Families  
Dr. Patricia A. Morrissey, Administration on Developmental Disabilities  
Dr. Susan Orr, Children's Bureau  
Ms. Sidonie Squier, Office of Family Assistance  
Mr. Winston Wilkinson, Office for Civil Rights  
Mr. Charlie Curie, Substance Abuse and Mental Health Services Administration