Persons with Disabilities and TANF: A Promising Massachusetts Model

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In 1996, the joint federal-state cash assistance program for low-income families, previously known as Aid to Families with Dependent Children (AFDC), was abolished and replaced with a system of block grants to States. The 1996 law expires on September 30, 2002. As the United States Congress considers whether and in what form to reauthorize Temporary Assistance to Needy Families (TANF) block grants and other provisions of the 1996 law, one question is whether the TANF law can and should be strengthened to better meet the needs of TANF recipients with disabilities.

Throughout the United States, the total number of families on TANF caseloads has declined dramatically in recent years.[1] However, the families remaining on TANF caseloads face many barriers to employment, including a high incidence of adult and child disabilities.[2]

The 1996 federal welfare reform law -- the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (herein "the TANF law") -- imposed strict work requirements and time limits on TANF recipients. Recipients are required to engage in work activities for 30 hours per week and may receive federally funded TANF assistance for no more than 5 years.[3] Although the TANF law, by its terms, mandates that States

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[1]One report indicates that TANF caseloads fell by 50% between 1995 and 2000. Zoe Neuberger, Sharon Parrott, Wendell Primus, "Funding Issues in TANF Reauthorization," Center on Budget and Policy Priorities (Feb. 5, 2002). The authors of this report also note that caseloads began to increase again in late 2001. Id. n. 4.

[2]See, e.g., Heidi Goldberg, "Improving TANF Program Outcomes for Families with Barriers to Employment," Center on Budget and Policy Priorities (January 22, 2002); Eileen Sweeney, "Recent Studies Indicate that Many Parents Who Are Current or Former Welfare Recipients Have Disabilities and Other Medical Conditions," Center on Budget and Policy Priorities (February 2000).

[3]In the current reauthorization debate, President Bush is proposing to increase the weekly work requirement from 30 hours per week to 40 hours per week, and certain Democrats are apparently also proposing to increase the work requirement. "Bush's Plan on Welfare Law Increases Work Requirement," The New York Times (February 26, 2002), p. A16. Since the

operate their TANF programs in conformity with federal laws prohibiting discrimination against persons with disabilities,[4] the work participation rates that States must meet in order to draw down their full TANF block grants make virtually no explicit allowance for the barriers that families affected by adult or child disabilities may face in attempting to work full time.[5] Moreover, the five year time limit on receipt of federally funded TANF benefits authorizes States to make "hardship" exceptions for only 20% of the average annual caseload, including all victims of domestic violence, leaving States with the impression they have little room to make exceptions for families affected by disabilities.[6]

The question is therefore raised: what changes in TANF are needed to better meet the needs of families with disabilities?

Many advocates for low-income families have suggested that Congress should

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current work requirements are not feasible for many single parent families faced with the difficulties of raising children in poverty, any increase in existing work requirements would increase the urgency of providing greater protections for families with disabilities.

[4]42 U.S.C. §608(d)(2) and (3).

[5]The one express exception to work requirements for families affected by disabilities is that a two-parent family in which one parent is a person with a disability is to be treated by the State as a 1-parent, as opposed to a 2-parent family, for purposes of calculating the State's compliance with required work participation rates. 42 U.S.C. §607(b)(2)(C). Of course, States in fact have additional flexibility to take into account the needs of persons with disabilities because, under current law, "only" 50% of the current caseload must be in compliance with the federal work requirements, 42 U.S.C. §607(a)(1), and this percentage may be further reduced by a "caseload reduction credit." 42 U.S.C. §607(b)(3). However, in order to be sure of meeting the 50% participation requirement and to avoid any risk of losing block grant funds, States impose the full work requirement on a much larger percentage of the caseload, including persons whose ability to comply is compromised by the needs of disabled family members. The President and some members of Congress would greatly compound this problem by increasing to 70% the number of families who must be complying with federal work requirements and eliminating the caseload reduction credit.

[6]42 U.S.C. §608(a)(7)(C). Although the regulations promulgated by the Clinton Administration provide that States will not be subjected to financial penalties if they can prove that they exceeded the 20% limitation because of domestic violence exceptions, 45 C.F.R. §264.3(b), and although States are allowed to use state dollars to continue benefits beyond five years for as many recipients as they may choose, 45 C.F.R. §263.2(b)(1)(ii), most States are treating the 20% limit as a hard and fast limitation on the number of exemptions they will provide in their TANF programs.

amend the TANF law to allow States to exempt from the work requirements and time limits those families with disabled family members whose special needs interfere with the parent's ability to work. But others are concerned that allowing for exemptions would perpetuate discrimination against individuals with disabilities by denying them and their families access to education and training, work supports and the opportunity to lift themselves and their families out of poverty. Some take the position that only if these families are subject to time limits and work requirements -- and the concomitant risk of benefits termination -- will TANF agencies afford them equal opportunities.

The Massachusetts welfare reform statute, enacted in 1995, prior to the passage of the federal welfare reform law, provides a model for protecting families with disabilities from the potentially draconian effects of work requirements and time limits, while guaranteeing them equal access to education and training, child care benefits and work opportunities.[7]

At the same time, the Massachusetts experience highlights the need for constant vigilance in enforcing the rights of persons with disabilities and for technical assistance and increased resources to help States make appropriate modifications in their programs in order to meet the needs of persons with disabilities.

The Americans with Disabilities Act and The Rehabilitation Act

Title II of the Americans with Disabilities Act provides that "no qualified individual with a disability shall, by reason of such disability, **be excluded from participation in** or be denied **the benefits of** the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132(emphasis added). Section 504 of the Rehabilitation Act of 1973 similarly provides, with respect to entities that receive federal funding, that: "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ..."

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[7]Massachusetts continues to operate its program pursuant to its 1995 statute, largely unaffected by the requirements of the 1996 federal law, because TANF allowed States to continue to operate programs pursuant to pre-existing federal waivers. 42 U.S.C. §615. In 1995, Massachusetts received a waiver from the federal government to operate its program pursuant to the 1995 Massachusetts law. That waiver expires in 2005. In order for Massachusetts to continue to operate its existing program, it is critical that any reauthorized TANF law allow States to continue to operate under and ultimately renew existing waivers.

When Congress enacted the ADA, it declared that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals ...." 42 U.S.C. §12101(a)(8).

Nothing in these laws requires that disabled persons be subject to work requirements and time limits, which, as discussed below, often lead to termination from TANF programs before families are able to support themselves without assistance. These punitive provisions are not "benefits" of the TANF program. Exemptions from work requirements and time limits do not lead to exclusion from participation in TANF; in fact, by reducing the risks of sanctions and terminations of financially eligible families, they foster continued program participation.

As made clear by the Massachusetts experience, discussed below, exemptions from time limits and work requirements reduce the likelihood that benefits will be terminated before families can support themselves. Moreover, exemptions need not cause these families to be denied equality of opportunity or the right to full participation in the beneficial aspects of TANF programs, provided that members of families affected by disabilities (whether or not exempt) are afforded equal access to education, training, other work preparation activities, work opportunities, and state-funded work supports, such as child care services.

The Massachusetts Model

The Massachusetts welfare reform statute, St. 1995, c. 5, § 110, imposed a twenty hour per week work requirement and a 24-month time limit on non-exempt recipients of Transitional Aid to Families with Dependent Children (TAFDC) benefits.[8] Recipients who are subject to the work requirement must provide verification of their participation in required activities and of their income on a monthly basis. Failure to comply with these work-related requirements will cause the TANF agency to close their cases. In addition, work-required recipients are often asked by the TANF agency to attend appointments that conflict with their work schedules, and failure to attend can also cause their cases to close.

[8]The work requirement applies to non-exempt recipients whose youngest eligible child is age six or older. St. 1995, c. 5, §110(j). The time limit provides that a non-exempt TAFDC recipient can receive assistance for only 24 months out of every continuous 60 month period. It applies to non-exempt recipients whose youngest eligible child is at least age two. St. 1995, c. 5, §110(f). Therefore, recipients whose youngest eligible child is between ages two and six are subject to the time limit but not the work requirement.

At the same time, the statute provides that several categories of recipients are "exempt" from the work requirement and time limits. Those include:

1) recipients who are disabled, as defined by regulations of the department;[9] and

2) recipients who must care for a disabled child or spouse. St. 1995, c. 5, §110(e)(1) and (2).[10]

The Massachusetts law also provides for a range of employment preparation activities for all TAFDC recipients, including education, job training, the full employment program, community service, and job search programs. Importantly, access to these programs is not limited to persons who are either subject to the work requirement or time limit. Indeed, the statute expressly provides that "[a]ll recipients may participate" in such programs and that "[v]olunteers shall be given first priority for participation in all such program components." St. 1995, c. 5, §110(h). In addition, the Massachusetts statute was amended in 1997 to ensure that DTA pays for child care for recipient parents who need child care either to work or to participate in any of the education, training or other job preparation activities available under the statute.[11]

In recognition that some exempt recipients are able and will choose to work, although perhaps not the number of hours required of non-exempt recipients, the Massachusetts law provides to exempt recipients who choose to work an earnings disregard of $30 plus one-third of the remainder of their earnings to prevent a small amount of earnings rendering them financially ineligible to cash assistance. St. 1995, c. 5,

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[9]Recipients qualify as "disabled" if they have an "incapacity" that is expected to last for 30 days or more and either are in receipt of Supplemental Security Income (SSI) or Social Security for disability (SSDI), meet or equal certain medical standards, or otherwise have a substantially reduced ability to support themselves and their families. 106 CMR 203.530(A).

[10]The exemption for caretakers of a disabled child or spouse has been administratively interpreted also to cover caretakers of a disabled sibling or half-sibling, the child's other parent and the parent(s) or grandparent(s) of: the recipient, the recipient's spouse, or the recipient's other parent. 106 CMR 203.100(A)(1)(b).

[11]"The department shall make payments for child care services to families in which a parent or parents or other grantee relative is working and needs child care services in order to work or needs child care in order to participate in any of the education, training or community service activities" available under the statute. St. 1995, c. 5, §110(j), as most recently amended by St. 1997, c. 43, §156.

§110(g).[12]

Finally, Massachusetts law provides that no recipient shall be sanctioned for failing to comply with any requirement of the law, where such noncompliance is "due to illness or disability."[13]

Therefore, under the Massachusetts statute, TAFDC recipients whose own disabilities or whose children's disabilities impede their ability to support their families through work alone may become exempt from work requirements and time limits and are protected from sanction or termination where "illness or disability" impairs their ability to comply with program rules. At the same time, however, these families are to be afforded an equal right to access employment preparation and child care services.[14]

The Massachusetts Experience

The Massachusetts welfare reform statute, as written, is a model both for protecting families affected by disabilities from premature termination of cash assistance benefits and affording them equal access to all the opportunities of the TANF program. In terms of preserving access to subsistence benefits, the importance of being exempt from work requirements and time limits is clear. According to a 1999 report by the Massachusetts TANF agency, the Department of Transitional Assistance (DTA), almost 40% of all case closings occur because of a failure to comply with procedural rules, most of which are related to work requirements.[15] A 1997 report of the United States General

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[12]Non-exempt recipients are subject to a reduction in their cash assistance grants of 2.75% but a larger earnings disregard of $30 plus one-half of the remainder of their earnings to provide them an added incentive to work. St. 1995, c. 5, §110(d) and (g).

[13]Mass. Gen. Laws c. 118, §3.

[14]Notwithstanding the Massachusetts exemption provisions, the Massachusetts TAFDC case load has declined dramatically from approximately 102,000 families in 1995, when the Massachusetts statute was enacted, to approximately 45,000 families in 2001.

[15]"How Are They Doing? A Longitudinal Study of Households Leaving Welfare Under Massachusetts Reform," Department of Transitional Assistance (April 1999)(hereafter "How Are They Doing?), p. 7 and Figure 7. See also "A Policy Brief: Massachusetts (T)AFDC Case Closings, October 1993-August 1997," The John W. McCormack Institute of Public Affairs (May 15, 1988)(hereafter "Policy Brief"), p. 9 ("In the post-reform period, 40% of the cases were closed either because of a procedural or behavioral sanction. Sanctions include anything from failure to complete a monthly income verification report to failure to participate in work

Accounting Office shows that 80% of all sanctions resulting in case closings in Massachusetts were due to an alleged failure to comply with work requirements.[16]

In December 1996, the month that the Massachusetts 24-month time limit began to run for non-exempt families, there were 79,386 families on the Massachusetts TAFDC caseload, of which 37,313 or 47% were exempt. As of July 2001, six months after the first wave of families began being terminated from TAFDC due to the time limit,[17] there were only a total of 42,011 families on the caseload, of which 31,677 or 75% were exempt. The relatively constant total number (but consistent increase in the percentage) of exempt cases remaining on the caseload tends to show that exemptions protect exempt families from premature loss of cash assistance.[18]

In terms of actually providing equal access to other opportunities, the record is more mixed. Indeed, the administration of the statute by the Massachusetts Department of Transitional Assistance (DTA) highlights the need for vigilance to ensure that the statutory promise of equal opportunity for persons with disabilities is made a reality.

For instance, although the Massachusetts statute says that "[a]ll recipients" may participate in DTA-funded work preparation activities, such as education and training, DTA historically has done little to ensure that the education and training programs that it operates provide equal access to persons with learning disabilities and other cognitive impairments. As a result, in January 2001, the Office for Civil Rights of the United States Department of Health and Human Services issued a ruling that DTA had violated the ADA and Section 504 rights of two individual recipients with learning disabilities and

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requirements").

[16]"Welfare Reform: States' Early Experiences with Benefit Terminations," United States General Accounting Office (May 1997), Appendix VII.

[17]The first families reached the end of their two-year time limit in December 1998, but the first cases were not actually closed due to the time limit until January 1999.

[18]One might assume that a substantial percentage of non-exempt families leave the caseload because of increased earnings that render their families financially ineligible for assistance. In fact, however, studies show that in Massachusetts only a very small percentage of families leaving the caseload leave because of earned income that renders them ineligible and that this percentage actually declined after implementation of welfare reform. "A Policy Brief," supra, p. 7 and Figure 4 (only 19% of cases closed because of earnings as of 1997); "How Are They Doing?," p. 7 and Figure 4 (only 26.9% of post-time limit cases closed because of earnings).

"fails generally to provide for the needs of learning disabled individuals in the TAFDC program ...." Letter to DTA Commissioner from OCR Region I Administrator Caroline Chang, dated January 19, 2002 (hereafter "OCR Ruling"), p. 1. More specifically, OCR determined that DTA violates the federal anti-discrimination laws by failing to assess whether a recipient may have a disability that significantly impairs her ability to work or benefit from DTA's programs, failing to ensure that DTA staff and education and training vendor staff are trained in how to recognize and meet the needs of persons with disabilities, and by failing to create a system that affords reasonable modifications to its programs and requirements for persons with disabilities. OCR Ruling, pp. 7-18.

Notably, one of the two individual recipients at issue in these findings was subject to the time limit and the other became exempt from the time limit during the course of the litigation because of the extent of her disabilities.[19] The special needs of neither recipient were appropriately addressed by DTA in its education and training programs. This suggests that subjecting recipients with disabilities to time limits does not ensure that they will receive appropriate services from TANF agencies, but also highlights the need for enforcement activities and technical assistance from the federal government if persons with disabilities are to be afforded equal opportunity.[20] While each of these recipients was frustrated by DTA's failure to make its employment preparation services fully accessible to persons with disabilities, one was at least protected from termination of her family's benefits due to the time limit, while the other had to face the anxiety of facing termination of all cash assistance.[21]

Since the January 2001 ruling, DTA has entered into discussions with OCR about steps it will take to improve access to its programs for persons with disabilities. As a first

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[19]Under its regulations, DTA is required to assist recipients in applying for disability exemptions. 106 CMR 203.530(C). However, in practice, this rarely happens. Additional flaws in the administration of the disability determination process, including confusing notices, led a Massachusetts court in 1998 to require DTA to reconsider numerous disability exemption requests which had been denied on procedural grounds. Thibeault v. Department of Transitional Assistance. Superior Court Civil Action No. 97-047600 (December 28, 1998).

[20]On January 19, 2001, the same day the OCR Ruling was issued, the Office for Civil Rights also issued a Policy Guidance entitled "Prohibition of Discrimination on the Basis of Disability in the Administration of TANF (Temporary Asssistance for Needy Families)" to assist state and local TANF agencies in complying with federal laws against discrimination on the basis of disability.

[21]The time-limited recipient ultimately was granted a temporary extension of her TAFDC benefits, but only after termination of her benefits was threatened.

step, in the fall of 2001, DTA sponsored a training for DTA workers and staff in the employment preparation programs it funds about how to recognize potential learning disabilities.

DTA has also restricted access of caretakers of disabled family members to its education and training programs. The problem arises because DTA allows such caretakers to obtain an exemption from the time limit and work requirements only if, due to their caretaking responsibilities, they must be in the home "full time," even though this standard is nowhere authorized by the statute.[22] DTA then takes the position that, because such caretakers must be at home "full time," they have no time to attend an education or training program. However, DTA hearing officers have ruled that DTA is not authorized to deny referrals to education and training programs to recipients with caretaker exemptions, thus preserving the intent of the statute. See, e.g., In re Christine Huynh, DTA Appeal No. 274207 (August 22, 2000). And, in February 2001, DTA issued guidance to its workers emphasizing that exempt TAFDC recipients may volunteer to participate in work preparation activities and that these volunteers should not be sanctioned if they are unable fully to comply with participation requirements. DTA Field Operations Memorandum 2001-9 (February 20, 2001).

Another way that DTA has impeded equal access to work preparation and work support services for certain parents or caretakers with disabilities by contending that those who receive Supplemental Security Income (SSI) for themselves, but who also receive TAFDC for their children, are not eligible "recipients" within the meaning of the Massachusetts statute. However, on at least three different occasions, DTA hearing officers have overruled this DTA interpretation and ordered DTA to provide child care services to parents who receive SSI for themselves but receive TAFDC on behalf of their children. A challenge to DTA's practice of denying work preparation and work supports to these families (based on state law, the ADA and Section 504) is pending before the Massachusetts Superior Court, has been argued, and is awaiting decision. See Casella v. McIntire, Civil Action No. 01-2301B (argued on January 24, 2002).

Another problem in the administration of the Massachusetts statute has been DTA's failure to assess for and take into account the special needs of children with disabilities. One example involves a mother of two children who worked 25 hours per

[22]DTA previously allowed caretakers of disabled family members to qualify for the statutory exemption only if the family member with a disability was receiving Supplemental Security Income (SSI) benefits. The Massachusetts Superior Court declared this restrictive interpretation invalid in 2000 in the case of Minnefield v. McIntire, Civil Action No. 99-3349 (February 14, 2000).

week, while her children were in school. As she approached the time limit, DTA demanded that she attend a job search program in addition to her 25 hours per week of work, so as to find a full-time job. The job search program met during after-school hours. The mother did not attend job search because her son has a learning disability and she needs to be home with him after school to keep him focused so that he can complete his homework. This mother was denied an extension of her time-limited benefits for failing to attend job search. In denying her extension request, DTA failed to take into account the son's special needs, in part because it never asked questions to elicit this information. On appeal, the mother argued that she had good cause for not attending job search because she did not have suitable child care for her son, given that no available after-school programs were able to provide him with the kind of environment and supervision he needed to do his homework, given his learning disability. The extension denial was reversed on appeal when the hearing officer ruled that the mother had good cause for not attending job search under these circumstances. In re Karla Wilson, DTA Appeal No. 278726 (Nov. 15, 2001).

TANF Proposals

Working from the Massachusetts model, a four-pronged TANF proposal to protect families including persons with disabilities is recommended: (1) express authorization of exemptions or exceptions from work participation requirements and the five year time limit for families in which the adults cannot work full time because of the needs of family members with disabilities; (2) an explicit requirement that States provide persons with disabilities and persons caring for family members with disabilities equal access to opportunities and support services; (3) a clarified requirement that States provide assessments to determine whether members of recipient families have disabilities; and (4) increased funding to enable States to provide equal and adequate services to all TANF recipients, including individuals with disabilities.[23]

Several TANF reauthorization proposals have already been filed in Congress. Some propose to amend the law to allow participation in various additional activities, such as domestic violence counseling, physical rehabilitation or mental health counseling, the provision of care to a child with a serious disability or health issue, or educational activities designed to address a mental health problem or disability, to count toward the

[23]The ADA and Section 504 already require modifications of policies, including time limits and work requirements, to address the needs of persons with disabilities, OCR Policy Guidance, note 20 supra, and require that TANF agencies assess for disabilities, OCR Ruling, supra, but explicit requirements within TANF are needed to ensure compliance by TANF agencies.

work requirement for limited periods of time.[24] These proposals represent very positive steps in the right direction; however, the approach they take would still subject families with serious disabilities to a work requirement, and, thus, sanctions and premature termination of assistance if, because of their disabilities, they are unable fully to comply.[25]

A preferable proposal is, first of all, to exclude from the calculation of the work-participation rate families in which the disabilities of family members interfere with the parents' ability to work full time and except such families from the sanction requirements otherwise imposed by the law, while, at the same time, explicitly requiring that States provide these families with equal access to all opportunities and services.[26]

Similarly, various proposals pending in Congress seek to expand the number of families to which a State may grant a hardship exception to the five-year time limit.

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[24]See, e.g., Proposal of Representative Cardin (D. MD), H.R. 3625 ("Cardin bill"), section 405; Proposal of Representative Mink (D. HI), H.R. 3113 ("Mink bill"), section 203.

[25]The Mink bill, section 204(a)(3) would prohibit States from imposing sanctions where a caretaker of a child with a disability or serious illness does not have access to adequate child care or where the individual is in the process of being screened and assessed for disability or other barriers to employment, has not been offered "treatment to address the problem or disability," or cannot comply because of the need to seek other services to address the disability. This offers much more protection than the current law, but still leaves families vulnerable where the individual cannot prove that she falls into one or more of these categories or where there is no "treatment" or "services" that will alleviate the adverse impact of a disability on the individual's ability to work.

[26]This could be accomplished by amending 42 U.S.C. §607(b)(1)(B)(ii)(I) to read: "the number of families receiving such assistance during the month that include an adult or minor child head of household receiving such assistance, *but not including families in which the head of household is a person with a disability or is the caretaker of a family member with a disability and the disability or related caretaking responsibilities interferes with the head of household's ability to work thirty or more hours per week*; exceeds" (proposed new language in italics); and by amending 42 U.S.C. §607(e)(2) by inserting between "section" and "if" a reference to "(a)" and inserting at the end: "or, (b) if the individual is a person with disability or the caretaker of a family member with a disability and the disability adversely affects the individual's ability to work thirty or more hours per week; provided, however, that, notwithstanding this exception, a State must provide to such individuals who volunteer to participate access to work opportunities, work preparation services and support services, including child care, equally with individuals not subject to this exception."

However, few, if any, directly address the needs of persons with disabilities.[27] The preferred approach would be expressly to disregard in the calculation of the number of months that count toward the five-year time limit those months in which the adult is a person with a disability or a caretaker of a family member with a disability and such disability or caretaking responsibility adversely impacts the adult's ability to work full-time.[28]

With respect to most program requirements other than work requirements and time limits, States are allowed but not required to sanction recipients. In order to provide more protection to families with disabilities, the reauthorized TANF law should include a provision – modeled on the Massachusetts statute – preventing States from imposing sanctions on families when the noncompliance is "due to illness or disability."[29]

The 1996 TANF law provides that TANF agencies must assess the skills, work experience and employability of each recipient.[30] As found by the Office for Civil Rights in the January 2001 ruling concerning the Massachusetts TANF agency, in order to avoid discriminating against persons with disabilities, TANF agencies must conduct assessments to determine whether recipients have disabilities that impair their ability to

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[27]The Mink bill comes close by proposing to say, in Section 307, that a State shall disregard in calculating months against the time limit "any month throughout which the individual is in compliance with all applicable requirements of the State program." However, persons who, because of the effect of their or their children's disabilities, are unable to comply with all program requirements in a particular month would not expressly be protected by this language. Although the ADA and Section 504 should compel States to modify their program requirements to accommodate the needs of persons with disabilities, States have been extremely reluctant to modify policies expressly established by state or federal law.

[28]This could be accomplished by adding a new subsection (C) in 42 U.S.C. §608(a)(7), and relettering the subsequent subsections, with the new subsection to read: "(C) Disability exception. In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month in which such assistance was provided with respect to the individual and during which the individual's ability to work thirty or more hours per week was adversely affected because of (i) the individual's disability or (ii) the individual's need to care for a family member with a disability; provided, however, that a State must provide to such individuals who volunteer to participate access to work opportunities, work preparation service and support services, including child care, equally with individuals not subject to this exception.

[29]See note 12, supra.

[30]42 U.S.C. §608(b)(1).

benefit from the TANF program and services. However, few, if any, States conduct such assessments at this time, highlighting the importance of making this requirement more explicit in a reauthorized TANF law.[31]

Because so many low-income families may not know that they have such disabilities,[32] assessments provided by the States are critical to allow affected families to access the services, accommodations and modifications to which they are entitled. Therefore, the reauthorized TANF law should clarify and expand the existing assessment requirement to ensure that it includes an evaluation by trained professionals as to whether a family member has a disability that adversely affects the parent's ability to work full time.[33]

Finally, providing appropriate services and reasonable accommodations and modifications to persons with disabilities may require the States to incur additional costs. Since 1996, the value of the TANF block grants have declined by at least 11% due to inflation. If TANF block grants are merely level funded through 2007, the decline in real value from 1996 would increase to 22%, thus jeopardizing the delivery of services to all TANF recipients. In order to ensure that persons with disabilities are afforded access to appropriate services, while not imposing unfunded mandates on the States, Congress should increase the size of the TANF block grants to all States.

Conclusion

Low income families with children face dire consequences if they lose cash assistance benefits before they are prepared to support their families. In today's

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[31]In October 2001, the California Department of Social Services implemented a system of screening, assessing and making appropriate accommodations for learning disabilities in its TANF population. See All County Letter No. 01-70. The policy does not yet extend to other disabilities.

[32]See, e.g., Heidi Goldberg, "Improving TANF Program Outcomes for Families with Barriers to Employment," Center on Budget and Policy Priorities (January 22, 2002); Eileen Sweeney, "Recent Studies Indicate that Many Parents Who Are Current or Former Welfare Recipients Have Disabilities and Other Medical Conditions," Center on Budget and Policy Priorities (February 2000). See also Cary LaCheen, "Using Title II of the Americans with Disabilities Act on Behalf of Clients in TANF Programs," Georgetown Journal on Poverty Law & Policy, Volume VIII, No. 1 (Winter 2001), p. 88 & n.425.

[33]See, e.g., Cardin bill, section 304; Mink bill, section 309.

recessionary economy, the challenges are great for all families. Families in which an adult or child has a disability that adversely affects the adult's ability to prepare for, find and maintain gainful employment are in a particularly vulnerable position.

Revising TANF rules to allow States more flexibility to grant disability-related exemptions from full-time work rules and stringent time limits would improve the safety net for these families. At the same time, however, Congress should reaffirm that state power to grant exemptions based on disability does not carry with it the license to exclude recipients with disabilities from the full range of work preparation and support services that these families in particular so sorely need.

TANF, like the Massachusetts welfare law, should allow for exemptions for adults with disabilities and caretakers of disabled family members where the disability adversely affects the family's ability to prepare for and achieve full economic self-sufficiency. TANF, like the Massachusetts law, should also mandate that state and local TANF agencies afford to all recipients, whether exempt or not, equal and appropriate access to all TANF services. In order to ensure that persons with disabilities are not discriminated against, States should be required to assess for the existence of disabilities. And, last but certainly not least, Congress should increase TANF block grants to ensure that States have the resources to meet the critical need of families affected by disabilities.

With these improvements, a reauthorized TANF law can make great strides toward satisfying "the Nation's proper goals regarding individuals with disabilities ... to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals ...." 42 U.S.C. §12101(a)(8).