



# DISABILITIES LAW PROGRAM

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## MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Legislative Initiatives

Date: May 26, 2016

I am providing an analysis of six (6) recent legislative initiatives today since I will not be available to prepare such critiques in June. Given time constraints, the analyses should be considered preliminary and non-exhaustive.

### 1. S.B. No. 239 (School Discipline)

This legislation was introduced on May 3, 2016. As of May 26, it awaited action by the House Education Committee.

Background is provided in the attached May 7, 2016 News Journal article. The article notes that Delaware public schools suspended 18,053 students (13.7%) of the overall student population in the 2012-13 school year. Students with disabilities comprise 13% of the overall student population but accounted for 24% of out-of-school suspensions. African-American students comprise 32% of the overall student population but accounted for 62% of out-of-school suspensions. Only 2% of the suspensions were for serious offenses.

S.B. No. 239 would limit use of out-of-school suspension to 3 circumstances (lines 45-49): 1) willfully causing or attempting to cause bodily injury; 2) threatening serious bodily injury or death to another person, except in self-defense; and 3) bringing a weapon or controlled substance onto school grounds. The legislation encourages use of interventions other than out-of-school suspension for disruptive behavior (lines 32-44). Statistics would be compiled and published which would result in remedial activities for "outlier" schools (lines 53-93).

The legislation has obvious merit given the statistics regarding students with disabilities and other minorities, especially considering that only 2% of out-of-school suspensions were for serious offenses. However, I have three (3) concerns.

First, while the bill is ostensibly intended to cover both districts and charter schools (lines 79 and 89), only districts are expected to publish standards informing parents of the circumstances justifying the removal of students from school settings (line 25). The sponsors may wish to consider an amendment to clarify that this section also applies to charter schools.

Second, the norm in public schools is that administrators (e.g. principal; assistant principal) authorize suspensions, not teachers. See, e.g. attached excerpts from Christina School District and Indian River School District codes of conduct published at <http://www.christinak12.org/studentmanual/2015-2016/Sections/PG32-Disciplinary-Processes-Procedures.pdf> and <http://www.irsd.net/common/pages/DisplayFile.aspx?itemId=8174819>. Teachers, bus drivers, and other staff generally make referrals for discipline to administrators. In contrast, S.B. No. 239 literally authorizes teachers to impose out-of-school suspensions as a matter of State law. See, e.g. lines 45-46: “A teacher ...may address a student’s disruptive behavior by suspending the student...” By statutorily expanding the scope of school personnel authorized to impose out-of-school suspension, the bill could inadvertently increase the number of out-of-school suspensions. Since public school policies may vary somewhat in defining who is authorized to impose an out-of-school suspension, as well as other discipline, it would be prudent to consider the following amendment, i.e., substitute “school” for “teacher or administrator” in lines 45, 33, and 34. The effect would be the same but public schools would not be forced to change their codes of conduct to invariably permit teachers to impose suspensions (lines 41-43 and 45-46) and other discipline.

Third, the legislation defines “disruptive behavior” at lines 6-8. Schools are then invited to adopt a broader definition (“further define”) of “disruptive behavior”. This is dysfunctional. It makes little sense to adopt a statutory definition and then invite schools to adopt a hodgepodge of non-conforming, amplifying definitions. It is also inconsistent with the public policy embedded in the attached legislation (H.B. No. 42) adopted in 2011 which instructed the Department of Education to adopt “uniform definitions for student conduct” related to student discipline. Consider the following alternate remedial amendments to lines 30-31:

(2) ~~Further define and/or~~ Provide interpretive guidance or examples of ‘disruptive behavior’ set forth in subsection (a) of this section.

OR

(2) ~~Further define and/or~~ Provide an explanation or examples of ‘disruptive behavior’ set forth in subsection (a) of this section.

The Councils may wish to consider sharing the above observations with policymakers, including the ACLU.

## 2. H.B. No. 382 (Representation of Minors in Delinquency Proceedings)

This legislation was introduced on May 12, 2016. It passed the House on May 19. As of May 26, it awaited Senate action.

Background is provided in the attached May 17, 2016 News Journal article. Under existing practice, the Office of Defense Services offers free legal representation to minors charged with a crime or act of delinquency even though not required by State law. Representation is available irrespective of family income. In 2014-15, the Public Defender represented youth in approximately 3,500 cases statewide. The article notes that juveniles are even less likely to be able to understand judicial proceedings than adults. Without counsel, they are more likely to end up in DSCY&F custody at State expense which exceeds the cost of representation.

H.B. No. 382 would codify current practice in the Delaware Code to ensure the continued availability of such representation. The following sentence is added to the Code: "Any person under the age of 18 facing criminal charges and allegations of delinquency shall be automatically eligible for representation by the Office of Defense Services." Historically, juveniles with disabilities have been disproportionately subjected to school discipline and criminal justice referrals. Moreover, the percentage of students in YRS custody with special education classifications has always been high. Therefore, the bill would have a disproportionate effect on juveniles with disabilities.

The Councils may wish to consider sharing a positive analysis with policymakers, including the Office of Defense Services.

## 3. H.B. No. 400 (Medical Marijuana)

This legislation was introduced on May 19, 2016. As of May 26, it awaited action by the House Health & Human Development Committee.

Since enactment of Delaware's original Medical Marijuana Act in 2011 (S.B. No. 17), the scope of eligibility for access to medical marijuana has been incrementally expanding. Most recently, intractable epilepsy and dystonia were added as qualifying conditions. See S.B. No. 90, enacted in 2015.

H.B. No. 400 would expand eligibility to the following: 1) adults with a terminal illness (line 14); and 2) minors with a terminal illness accompanied by pain, anxiety, or depression (lines 26-31). Access by minors would be limited to oil-based products. Further background on the legislation is provided in the attached May 21, 2016 News Journal article. The article notes that possession of marijuana was decriminalized in 2015, downgrading possession of an ounce from a criminal offense to a civil violation, akin to a traffic ticket.

Since the legislation provides a treatment option for individuals with terminal conditions, the Councils may wish to consider sharing a positive analysis with policymakers.

#### 4. H.B. No. 365 (Removal of Bar on TANF Eligibility Based on Drug Conviction)

This legislation was introduced on May 5, 2016. As of May 26, it awaited action by the House Health & Human Development Committee.

As the synopsis indicates, federal laws passed during the War on Drugs frequently barred access to public assistance programs for persons with drug felonies while allowing states to “opt out” of such bans. Most states have adopted limited or full “opt outs”. In 2011, Delaware removed the ban on drug felon eligibility for the Food Supplement Program (formerly “Food Stamps”) through enactment of S.B. No. 12. The SCPD endorsed that legislation. See attached January 25, 2011 SCPD memorandum. At that time the Council noted the common co-occurrence of substance abuse with mental health and other disorders. The Council also observed that limits on access to safety-net programs undermine successful reintegration of persons released from prison into the community. A recent Delaware News Journal editorial makes the same point in supporting H.B. 365. See attached May 18, 2016 article, “TANF Bill Sensible Step in Prison Reform”. The article reports that 24 states have adopted at least limited “opt outs” of the federal bans on TANF and Food Supplement Program eligibility. The editorial also links access to such safety-net programs to lower recidivism rates.

The TANF program has been long-recognized as an important resource for persons with disabilities. See attached National Council on Disability Position Paper, “TANF and Disability-Importance of Supports for Families with Disabilities in Welfare Reform” (March 14, 2003). The legislation would therefore have a disproportionate beneficial effect on persons with disabilities. The Councils may wish to consider sharing a positive analysis of this initiative with policymakers.

#### 5. S.B. No. 52 (Lay Caregivers; “CARE Act”)

This legislation was introduced on May 13, 2016. As of May 26, it had been approved by the Senate Health & Social Services Committee and awaited action by the full Senate.

Background is provided in the attached May 18 and May 19 articles. Consistent with the synopsis, an estimated 123,000 Delawareans provide varying degrees of unreimbursed care to adults with limitations in daily activities. In some cases, they may be expected to perform some tasks in which training would be helpful (e.g. administering medications; providing wound care; operating medical equipment). S.B. No. 52 would require hospitals to act as follows: 1) solicit a patient’s optional designation of one or more lay caregivers (lines 34-36); 2) record such designation in the Delaware Health Information Network (DHIN) (lines 37-38); 3) notify a lay caregiver of discharge from the hospital; 4) offer the lay caregiver an opportunity to obtain information about aftercare tasks (lines 50-54 and 60-61); and 5) share a discharge plan with the lay caregiver which includes education based on an assessment of the lay caregiver’s learning needs (lines 62-63 and 69-73). Consistent with the May 19 article, the Delaware Healthcare Association may have some technical concerns with the legislation.

I have the following observations.

First, the legislation would benefit patients and families by providing a simple way to designate a lay caregiver and the sharing of aftercare treatment guidance with the lay caregiver. This should enhance the provision of aftercare supports conforming to the discharge plan.

Second, the legislation could be improved by clarification that it covers psychiatric hospitals. The bill defines "hospital" as a facility covered by 16 Del.C. §1001 (line 22). That section includes some archaic language, including an exclusion for "sanatoriums". One dictionary definition of a "sanatorium" is "an institution for treatment of sick persons, especially a private hospital for convalescents or patients with chronic diseases or mental disorders." The quality and scope of discharge planning from psychiatric hospitals has been a matter of concern for many years. Indeed, the Attorney General's Office was instrumental in prompting the inclusion of prescriptive discharge planning provisions in the Mental Health Patients Bill of Rights. See 16 Del.C. §5161(b)(4). Providing patients in psychiatric hospitals the option of designating a lay caregiver could enhance the viability of discharge plan implementation. Therefore, I recommend amending line 22 as follows: "(4) 'Hospital' means as defined in a hospital as defined in either §1001 or §5101 of this title."

Third, private health insurers and Medicaid MCOs often attempt to justify denial of limitation of services (e.g. home health aide; private duty nurse) by positing that a relative or friend should provide the requested health supports. As an illustration, see attached In re J.B. (DHSS October 1, 2001)[MCO unsuccessfully argued that physical therapy should be reduced with unskilled parent expected to provide exercises]. Given the financial incentive for insurers to justify denials of service, it is important to clarify that statutes allowing lay person health care assistance are not invitations to deny services covered by insurers and MCOs. For that reason, a lay caregiver authorization in the Nurse Practice Act [24 Del.C. §1921(a)(15)] includes the following underlined caveat:

- (15) A competent individual who does not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16, may delegate to unlicensed persons performance of health-care acts, unless of a nature excluded by the Board through regulations, provided:
- a. The acts are those individuals could normally perform themselves but for functional limitations; and
  - b. the delegation decision is entirely voluntary.
  - c. Nothing contained herein shall diminish any legal or contractual entitlement to receive health-care services from licensed or certified personnel:...

S.B. No. 52 contains a similar caveat (lines 75 and 82-83):

Nothing in this chapter shall be construed to do any of the following:

...(4) Remove the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, certificate of coverage, or managed care organization contract.

This is well written but could be improved as follows if the bill is otherwise being amended:

(4) ~~Remove~~ Diminish the obligation of a third-party payer to cover any health care item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, certificate of coverage, or managed care organization contract.

The SCPD may wish to consider sharing the above observations with the prime sponsors while issuing a positive analysis to policymakers generally.

6. S.S. No. 1 for S.B. No. 134 (Homeless Bill of Rights)

The SCPD issued the attached January 29, 2016 commentary on the original version of this legislation. The Senate Substitute was introduced on May 10, 2016. As of May 26, it had been released from committee and awaited action by the full Senate.

Background is provided in the SCPD's January 29 memo. The main difference between the original (4-page) bill and the substitute (10-page) bill is establishment of a detailed complaint resolution system. In a nutshell, an aggrieved party could file a complaint with the State Human Relations Commission for processing similar to that used for complaints filed under the Equal Accommodations Act and Fair Housing Act, 6 Del.C. Chs. 45 and 46. The bill is earmarked with a 2/3 vote requirement. The Attorney General's Office shared some concerns with the bill which may prompt a amendment. The legislation includes multiple references to persons with disabilities lacking stable housing (line 55 and 80) or living in institutions (lines 87-88). It would ostensibly benefit a highly vulnerable set of individuals with disabilities.

I have the following observations.

First, there appear to be erroneous references to "§7803(1)" at lines 65, 68, 91, and 93. It would be preferable to change the references to "§7803" consistent with lines 164 and 167. I would not recommend changing the references to "§7803(a)" since this could preclude filing of complaints addressing violation of §7803(b).

Second, there is an erroneous reference to §7812 in line 150. The reference is to "a civil action" but §7812 addresses criminal enforcement. I believe the reference should be to §7811.

Third, there is an ostensible transcription error at line 97. The "line out" provision merits review.

Fourth, in line 205, the word "is" should be "are".

Fifth, lines 55-56 could be interpreted as limiting only prospectively enacted laws, ordinances, and regulations. This could result in a flurry of non-conforming enactments during the 90-day period prior to the effective date (line 256). Concomitantly, existing non-conforming laws, ordinances and regulations would be “grandfathered”. The sponsors could consider amending line 55 as follows: “No political subdivision of this State may enact or enforce any law, ordinance, or regulation contrary to subsection (a) of this section.

Sixth, line 19 contains the following recital: “Such an individual is granted the same rights and privileges as any other resident of this State.” This provision could have far-reaching consequences. For example, there are multiple public benefits programs in which State residency is an eligibility requirement. Compare, e.g., the DPH Cancer Treatment Program, 16 DE Admin Code 4203.4.0. Recognition of this effect could result in a significant fiscal note.

Seventh, the 90-day statute of limitations (lines 137-138) to file a complaint with the Human Relations Commission is relatively short. Contrast 1 year statute of limitation for Fair Housing complaints [6 Del.C. §4610(a)].

The SCPD may wish to consider sharing the above observations with the prime sponsors while issuing separate supportive commentary to policymakers similar to the January 29 memo.

#### Attachments

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KYLE GRANT/AMERICAN NEWS JOURNAL  
New legislation in the Delaware General Assembly would reconfigure out-of-school suspensions for minor infractions.

# Bill's goal: Keep kids in school

JESSICA MASULLI REYES AND MATTHEW ALBRIGHT  
THE NEWS JOURNAL

A bill introduced this week aims to keep Delaware students in the classroom by reducing out-of-school suspensions for minor infractions, such as being late to class, disrespecting a teacher or dress code violations.

The legislation, introduced by Sen. Margaret Rose Henry, D-Wilmington East, would require schools to use shorter in-school suspensions, counseling, parent-teacher conferences, tutoring and other restorative justice practices as the default for handling behavioral problems.

Out-of-school suspensions would only be allowed  
See SCHOOL, Page 11A

## School

Continued from Page 1A

for the most serious offenses, such as those involving violence, weapons or drugs.

Henry said the model of simply punishing students who act out doesn't fix anything. The legislation would push schools to use non-punitive practices intended to help students understand the harm of their behavior, learn empathy and problem solving, and build relationships and responsibility.

"You need to ask 'why are they causing a disruption?' Henry said. 'Are they doing it because they didn't have breakfast? Is there a problem in the home? We need to talk about what it is that is causing the behavior and address that.'

The bill has the backing of the American Civil Liberties Union of Delaware, which argues that too many Delaware students are being excluded from the educational environment when they receive suspensions for minor infractions.

Delaware schools suspended or expelled 18,053 students — or 13.7 percent of the overall student population — during the 2012-2013 school year, the ACLU said.

Only 2 percent of out-of-school suspensions were for serious offenses, the organization said.

"The research shows us that the more a student is out of school, the more



Sen. Margaret Rose Henry, D-Wilmington East

likely they are to drop out," said ACLU Community Organizer Shannon Griffin. "There are better ways to deal with students when you have discipline issues, and pushing a student out of school repeatedly is not the answer."

The legislation comes as the state still is reeling from the deadly attack of 16-year-old Amy Inita Joyner-Francis in the bathroom at Howard High School of Technology in Wilmington.

State prosecutors are reviewing evidence submitted by the Wilmington Police Department to decide what charges can be lodged against three girls, who have been removed from school since the attack.

The Howard High incident did not prompt the legislation this week. Instead the legislation was part of a larger review of the state's suspension data and ongoing efforts to address zero-tolerance policies, Griffin and ACLU Executive Director Kathleen MacRae said.

"We cannot suspend or expel or arrest our way out of this problem," MacRae said. "Students need tools and teachers need tools to help students learn. This is a restorative justice approach to discipline, and it's very timely."

Reid Millius, a parent from Newark, agreed. "Every situation is

"The research shows us that the more a student is out of school, the more likely they are to drop out. There are better ways to deal with students when you have discipline issues, and pushing a student out of school repeatedly is not the answer."

SHANNON GRIFFIN  
ACLU COMMUNITY ORGANIZER

unique and with the Howard girl, it's tragic, but it's something we need to learn from," she said. "A lot of the restorative practices and push for legislation is about prevention. If we are strong in prevention, hopefully we never get to the point where we have students facing charges like what we have right now."

Shenika Sample of Millsboro has seen the effect of school suspensions first hand.

One of her three children was recently given two days of in-school suspension for making noises in the hallway during testing. She said that, while her child must take responsibility for actions, the punishment seemed harsh.

She believes a better approach is to try to address the root cause of the problem and, when necessary, restrict the student's privileges, such as recess time or attendance at games or school dances, rather than removing the child from classroom learning time.

Griffin said the legislation also seeks to address troubling disparities regarding race, disabilities and gender.

African-American students made up 32 percent



Kathleen MacRae

vote on the bill, but says he wants to make sure it doesn't go too far. The bill, which has received support from a long-list of sponsors in the House and Senate, is currently pending before the Senate Education Committee. A vote is not yet scheduled.

"The number one complaint I hear from teachers is disruptive students," Bonini said. "I think the default needs to be safety. If there is a kid who is dangerous, there shouldn't be any hesitation about removing him."

Bonini, who is running for governor, said the state should look at developing a better alternative school system where disruptive kids wouldn't be warehoused but would also not interrupt learning for other kids.

He and several other Republicans have criticized other efforts in the General Assembly to rein in tough criminal justice policies like the three-strikes laws.

Jennifer Thomas of Smyrna hopes the legislation will pass. She is a mother of five children and a youth service specialist at an alternative school. "I think in all these issues, our focus needs to be on the victims and not the perpetrators," Bonini said.

She became interested in legislation after her daughter was asked to leave school because of a

nose piercing. Thomas pointed out to the school that it was part of the family's culture, and the school eventually agreed to let her daughter keep it.

Thomas worries that minor offenses like that too frequently lead to out-of-school suspensions without any oversight of how the student is spending their time at home. She said there needs to be more follow up to determine if the student completed his or her work at home or how they spent their day.

"There is no follow up," she said. "They lose time on education, and that is why we are so low in reading and math scores."

Millius said children often act out because of other things going on in life.

"If you can take that as a cue about what is frustrating them ... you can identify what the issue is," she said. "That creates a more equitable system for disciplining children."

Thomas hopes the legislation will come with extra funding or grants for teachers to be able to implement restorative justice approaches.

"Delaware is too small, and our children are going through too much right now" to not pass the legislation, Thomas said.

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CHRISTINA  
SB

# DISCIPLINARY PROCESSES & PROCEDURES

## REFERRALS

Some behaviors student's exhibit can over time disrupt the instructional environment of the school or classroom. Many of these behaviors can be managed within the classroom by using strategies developed to re-direct and re-engage students in the process of learning. Classroom strategies are often enough to provide redirection for the bulk of disruptive behaviors seen in schools. But there are times when student behavior violates the behavioral expectations outlined in the Christina School District Student Manual in a way that requires sanctions or additional support for the student. Strategies and/or interventions may be appropriate for some behaviors but once appropriate levels of classroom/school strategies/interventions have been implemented without success OR the behavior rises above a level where strategies/interventions are not appropriate, the classroom teacher must "refer" the student to an appropriate building administrator for consideration for administrative disciplinary action.

The District utilizes an electronic "referral" system which tracks referral data at many levels allowing for monitoring and analysis of disciplinary actions. The Process for Referrals is as follows:

1. Classroom Teacher or other staff member determines that based on the student behavior, classroom strategies are not appropriate or have not been successful.
2. Teacher submits an electronic referral for the student describing the behavior to the building administrator.
3. The administrator reviews the behavior and if deemed appropriate assigns the appropriate "action" and/or appropriate disciplinary sanction.

Individuals investigating allegations of behavioral violations as outlined in the Student Manual shall not require a student to provide a statement if the student refuses.

## SUSPENSION FROM SCHOOL

Suspension is the temporary removal of a pupil from the regular school program. For purposes of clarification, students assigned administratively

to an alternative placement and students returning from expulsion shall not be considered "suspended" such as to trigger due process rights. Prior to a suspension from school the student shall:

1. Be given oral or written notice of the charges and be told on what evidence the decision may be made;
2. Be given the opportunity to present the student's side of the story; and
3. Have had prior opportunity to know that the alleged actions were in violation of established rules and regulations.

When a student is suspended, written notification of the suspension shall be sent to the parent. The notification shall state the cause and duration of the suspension. For each out-of-school suspension up to three (3) days, the principal/designee is required to hold and in-person or phone conference. If the suspension is for three (3) or more days, the principal/designee is required to hold a conference, to include the parent and child, prior to the readmission of the student. A definite time and date for a conference shall be scheduled at a place designated by the school administrator. Students have the right to submit a statement in writing concerning any incident requiring discipline action, but are not required to do so. The parent will be advised that the suspension may be appealed to the next administrative level.

Generally the notice and conference should precede the student's removal from school. However, if this is not feasible or if the immediate removal of the student from school is necessary to protect the safety of individuals, property, and/or the educational process, the necessary notice and conference, if requested, will follow as soon as practical.

In all cases of suspension an attempt shall be made to notify the parents/ guardians by telephone to request that the student be picked up from school. Students whose parents/guardians cannot be reached by telephone will be retained at school until the end of the school day. In certain emergency situations, and upon proper approval of notification, an administrator or designee may take the student to his/her home.

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(7) Any student who is found consuming beyond the prescribed or recommended dosage, or is found to be under the influence of, selling, or distributing any substance which alters or is intended to alter performance such as steroids, stimulants, amphetamines, diuretics, and related compounds, any of which are found on the NCAA list of banned drugs may be suspended from school and subject to disciplinary action up to and including expulsion as provided for in this drug and alcohol/palcohol abuse by students policy.

Each principal will be responsible for conducting an assembly each year, on or before September 15<sup>th</sup>, during which time students are given information about this section and consequences of its violation.

The Superintendent shall be responsible for developing regulations governing the approval procedure for alcohol/palcohol/drug abuse treatment programs, the monitoring of student participation in those programs and other procedures necessary to carry out this section of the policy.

SCHOOL BUS DISCIPLINE

Recognizing that pupil safety and welfare on school buses depend, to some degree on the conduct of pupils themselves, and that misbehavior which distracts a school bus driver is a serious hazard to the safety of all passengers, the Indian River School Board, herewith established the following as a means of uniformly dealing with school bus discipline problems:

“School bus transportation is a privilege extended to all pupils who qualify for same under state law. This privilege may be suspended temporarily or for the remainder of the year for violations of ‘School Bus Safety Regulations.’ The ‘Student Code of Conduct’ of the Indian River School District shall be in effect on every school bus transporting Indian River School District students or at any designated Indian River School District school bus stop.

\* /

Violations of the ‘Bus Safety Regulations’ are to be submitted by the bus driver on a discipline report form to the appropriate principal or assistant principal as soon as practical. Administrators alone have authority to invoke school bus suspensions. When suspensions from school bus transportation are invoked, parents or guardians will be responsible for providing transportation to and from school.”

EXTRA-CURRICULAR ACTIVITES

A student must be in school one half day of the extra-curricular event, or the last day preceding the event if the activity occurs on a non-school day, to be eligible to participate in any extra-curricular activity after regular school hours unless authorized by the principal. One half day is defined as three (3) hours for students who will be participating in any extra-curricular event. Any student representing the school or attending any extra-curricular activities is subject to the jurisdiction of the school during all aspects of participation. Normal disciplinary measures will

Students who are uncomfortable for any reason with discussing the matter with the individual designated to receive the report, or who are not satisfied after bringing the matter to the attention of the designated individuals, shall report the matter promptly to the Superintendent or designee.

The district will investigate all allegations of sexual harassment or misconduct in as prompt and confidential manner as possible and will take appropriate corrective action when warranted. Students who are found, as a result of such investigation, to have engaged in sexual harassment or misconduct in violation of this policy will be subject to appropriate disciplinary action, up to and including expulsion from the school district. Furthermore, retaliation in any form against students who exercise their right to make a complaint under this policy is strictly prohibited, and will itself be cause for appropriate disciplinary action.

The Sexual Misconduct portion of the policy shall be printed in any student handbook distributed to or made available to students and employees within the district.

### SUSPENSION

\* / Suspensions are authorized by the building principal or assistant principal for a period of time ranging from one day to ten school days. After having a conference with the student, the Superintendent or designee may suspend the student additional days when the administrative recommendation is to expel the student, or if unusual circumstances warrant such action.

The parent(s) or legal guardian(s) shall be notified by mail of any suspension imposed upon a student. The letter will include the reason for suspension, the day and time when the suspension begins, and the day and time when the suspension ends.

When a student is suspended, he or she may not return to regular attendance until a conference is held between parent/legal guardian and the building principal or assistant principal. When a student is suspended, he/she must be given a written note saying exactly what time the suspension begins and ends.

### Suspension Programs

The Board of Education of the Indian River School District will conduct two (2) suspension programs and school administration may use either of these depending upon the severity and/or number of previous disciplinary offenses of a student.

#### In-school Suspension

The Board of Education of the Indian River School District will conduct in-school suspensions under the supervision of a staff member designated by an administrator to ensure that school assignments are done under the supervision of a staff member designated by an administrator and students are in school for the entire day.

#### In-school Suspension Guidelines:

- Absolutely no talking, except to the teacher, will be tolerated.

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CHAPTER 189  
FORMERLY  
HOUSE BILL NO. 42  
AS AMENDED BY

HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF EDUCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

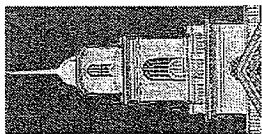
Section 1. Amend Title 14, Chapter 1, §122(b) by adding a new subsection to read as follows:

"(24) Establishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion, uniform due process procedures for alternative placement meetings and expulsion hearings, and uniform procedures for processing Attorney General's reports. Such regulations shall apply to all districts and charter schools. This subsection shall not be interpreted to restrict the ability of district and charter schools to determine which student conduct shall result in expulsion or an alternative placement."

Approved August 22, 2011

# Bill would guarantee defense for minors

## DELAWARE LEGISLATIVE SESSION MATTHEW ALBRIGHT



Top Delaware lawmakers want to guarantee juveniles have access to a public defender, regardless of family income or the level of their alleged crime.

The state Office of Defense Services already offers free legal representation to young people facing charges, even though it's not required by state law. House Bill 382 seeks to set the policy in stone so that future budget cuts or changes in leadership don't change that.

Speaker of the House Pete Schwartzkopf, D-Rehoboth Beach, who sponsored the legislation, said in a statement, "We can't rely on current practice as a guarantee for the future."

The change, if approved, would mean the courts and Public Defender's Office will be required to continue the practice.

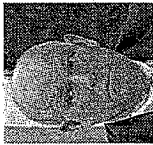
"This legislation takes the small but important step of codifying an existing practice so going forward there is no question that minors being charged with a crime in our state have the same rights to public defenders as adults," said Senate President Pro Tempore Patricia Blevins, D-Elsmere, lead sponsor of the bill in the Senate.

Schwartzkopf and Blevins are the highest-ranking lawmakers in their chambers of the Legislature. The fact that they are sponsors, along with a lengthy and bipartisan list of co-sponsors, suggests the bill will easily pass.

Lisa Minutola, chief of legal services with the state Public Defender's Office, said representing children is a different task than representing an adult. Kids are more likely to be scared and stressed out in a courtroom setting, they have a harder time understanding the legal language, and they need more coaching in how to interact with court officials.

Adults facing charges usually have to prove they can't afford to hire their own attorney before they get a public defender.

They also don't automatically get public representa-



Speaker of the House Pete Schwartzkopf, D-Rehoboth Beach, sponsored the legislation.

tion for minor offenses, like traffic tickets.

"These youth are facing very significant and sometimes life-altering consequences," Minutola said. "They need to be informed of those consequences and know what all their options are."

Not every juvenile necessarily gets a public defender. In fiscal year 2014-2015, the public defender represented almost 3,500 cases statewide. During the same period, there were almost 5,000 delinquency filings, so about 1,500 youth went without public representation.

For some offenses, mostly minor ones, juveniles can choose to go through the court process without an attorney if the court rules they are capable of doing so. In other cases, families may choose to hire private counsel.

But if a public attorney is necessary, the state shouldn't hesitate to provide one, Minutola says.

"Children are our most vulnerable population, and we want to make sure we provide them with every constitutional safeguard they can have," she said.

Criminal justice reforms have been a central topic of this legislative session, with a particular focus on juveniles.

Legislation in the works would overhaul the expungement process for juvenile offenses so that youth can more easily get criminal charges and convictions on lesser crimes removed from their records. There is a push to expand the state's civil citation program, which gives students who commit certain lower-level offenses community service and probation without putting a mark on their criminal record.

Some lawmakers also are pushing to end the practice of automatically shackling juveniles for their appearances in Family Court.

And others are trying to reduce the frequency with which schools refer students to law enforcement for



Senate President Pro Tempore Patricia Blevins, D-Elsmere, is the lead sponsor of the bill in the Senate.

things like in-school fights.

Said Schwartzkopf: "Navigating the judicial system is difficult enough for an adult, so you can only imagine how daunting it is to a juvenile. We need to guarantee that all youth will have legal representation in court to ensure fairness and the best possible outcome for all parties involved."

Laura Cohen, director of the Criminal and Youth Justice Clinic at Rutgers University Law School, praised the bill.

"It's something that national juvenile defense standards strongly urge," Cohen said. "I think Delaware's probably a little ahead of the curve, which is fabulous."

Cohen says the financial bar to qualify for public defense sometimes means that parents feel they can't afford to pay for a lawyer for their child.

"As difficult as it is for adults to navigate the justice system and understand what's happening to them — and I'd suggest it's almost impossible for a layperson to do that — it's absolutely impossible for a child to do that," she said.

Cohen argues there's a long-term fiscal benefit to the state to providing representation. Juveniles who don't have a lawyer are more likely to end up in the state's custody for the long term, costing the state far more than it takes to provide counsel.

She also says it's important for the guarantee to be in law, not just organizational policy.

"Policies come and go with changes in administration," Cohen said. "When we're talking about a due process guarantee, it shouldn't be left to the caprice of whoever happens to be in charge or fall prey to budgets."

Contact Matthew Albright at [malbright@delaware-online.com](mailto:malbright@delaware-online.com), (302) 324-2428 or on Twitter @TNJ\_malbright.

# Terminally ill could get marijuana if bill passes

MATTHEW ALBRIGHT  
THE NEWS JOURNAL

Terminally ill Delawareans could get medical marijuana if new legislation in the General Assembly becomes law.

"With each passing year, we are seeing more data on the benefits of medical marijuana, which is helping to de-stigmatize the medication," said Rep. Paul Baumbach, D-Newark and the bill's sponsor in a news release. "Dela-

wareans facing a terminal illness should be able to access medical marijuana to help ease their symptoms and to cope with an extremely difficult situation."

The change would apply to anyone suffering from a condition that is "deemed fatal within a year regardless of any other medical treatment."

Baumbach said the bill was the next logical step after a new law passed last year allowing the use

Rep. Paul Baumbach, D-Newark, wants to pass "Bob's Bill."



of cannabidiol and oil products to treat patients under 18 who suffer from conditions like seizures, muscle spasms and nausea.

That legislation was named "Rylie's Law" after a nine-year-old from Rehoboth who suffered sei-

zures after surgery to remove a tumor. Baumbach has labeled the new bill "Bob's Bill," after Newark resident Richard "Bob" Jester, who died of lung cancer earlier this year.

"My father used medical cannabis oil without his doctor's consent to treat nausea, constipation, lack of appetite, insomnia, chronic pain and anxiety," Jester's son, Rich, said in a news release. "When his oncologist found out that he was

using cannabis oil, the doctor threatened to discontinue treatment, and Bob never tried medical cannabis again, until he passed in January."

Delaware's medical marijuana program was signed into law in 2011. Currently, it can only be used to treat the side effects of a handful of conditions, like cancer and chronic seizures.

State leaders decriminalized marijuana last year, downgrading pos-

session of an ounce of the substance from a criminal offense to a civil violation, like a parking ticket.

While Gov. Jack Markell has signed those bills, he has said he does not support full legalization like Colorado or Washington state. Marijuana remains illegal at the federal level.

Contact Matthew Albright at malbright@delawareonline.com at (302) 324-2428 or on Twitter @TNJ\_malbright.



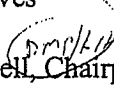
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**MEMORANDUM**

DATE: January 25, 2011

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Daniese McMullin-Powell,  Chairperson  
State Council for Persons with Disabilities

RE: S.B. 12 [Removal of Bar on Food Supplement Program Eligibility Based on Drug Conviction]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 12 which removes the prohibition against persons convicted of any drug felony from receiving federal food benefit assistance. As background, the current statute (Title 31 Del.C. §605) bars Food Supplement Program (a/k/a Food Stamps) eligibility for persons convicted of drug felonies subject to some exceptions. S.B. 13 would result in the following simplified §605:

Pursuant to the option granted the State by 21 U.S.C. §862a(d)(1), an individual convicted under federal or state law of a felony involving possession, distribution or use of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. §862a(a) against eligibility for food stamp program benefits for such convictions.

SCPD endorses the proposed legislation which would have the same effect as legislation (S.B. 255) introduced in the last General Assembly. Council has the following observations.

Given the common co-occurrence of substance abuse with mental health and other disorders, the bill would ostensibly enhance flexibility in State "safety net" programs. On a practical level, if a person lacks access to basic sustenance for self and family, the prospect for recidivism may increase. The attached December 17, 2009 article notes that enforcement of the ban seriously undermines successful reintegration of persons released from prison into the community and has a disproportionate effect on women. The House Committee report on the predecessor bill noted the favorable effect on inmate transition efforts:

Committee Findings: The committee found that this law legalizes Delaware's "opt out"

option from the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The committee also found that this bill aligns with the state's prisoner re-entry effort.

Moreover, it is anomalous to bar food benefits from a person convicted of a drug offense when no such bar exists under federal law for persons convicted of other crimes (e.g. murder; rape).

Consistent with the attached May 10, 2010 DHSS memo commenting on the predecessor bill, at least nineteen (19) states have already lifted the lifetime drug felony conviction ban altogether.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

sb 12 food stamp bar 1-25-11



## States deny food stamps, public assistance to drug offenders

THURSDAY, 17 DECEMBER 2009 18:27 DR. HENRIE M. TREADWELL AND ELISABETH KINGSBURY, J.D.

ATLANTA- Each year, hundreds of thousands of people released from U.S. prisons after felony drug convictions discover they can't get their only punishment. They are permanently denied the life-sustaining benefits of food stamps and other public assistance.

The restrictions come from the 1996 welfare reform legislation, which was adopted at a time when politicians in Washington were maneuvering to be perceived as tough on crime. It's clear that their fight for political survival blinded them to the negative impacts this ban would have on men and women trying to reestablish their lives after prison stays. Needless to say, it also has a huge impact on their children.

Plain and simple, this is public policy at its worst. With ex-convicts already facing monumental hurdles to overcome, ranging from dealing with health concerns to trying to find jobs to readjusting to their families and communities, this policy makes successfully doing any of those even more difficult.

Researchers have found that policies such as these are particularly hard on women, at a time when the female inmate population is rising. Juliana van Olphen, of San Francisco State University, says that punitive policies related to employment, housing, education, welfare, and treatment for mental health or substance abuse make it extremely difficult for drug users and former users to live normal lives and reintegrate into society.

"These policies have adversely and disproportionately affected women, especially poor women, ruining their chances of finding employment, housing or education upon release," van Olphen said after her research was published earlier this year in BioMed Central's open access journal, Substance Abuse Treatment, Prevention, and Policy.

Some states, however, have discovered that they can limit or remove the federal ban. Under the law, anyone convicted of a federal or state felony involving the possession, use or distribution of drugs is permanently banned from receiving food stamps or assistance under Temporary Assistance for Needy Families. But states are allowed to enact legislation changing or eliminating the ban. Unless they do, people with drug felony convictions can't receive food stamps or welfare assistance.

A recent review of the state policies indicates that:

- Eleven states have adopted the federal restrictions without any changes. In these states, benefits are permanently denied. It doesn't matter how long ago the crime was committed or successful the rehabilitation whether through a strong work history, drug and alcohol counseling, or by avoiding repeat offenses.
- Thirty states have altered the ban to allow people who meet certain conditions to receive food stamps or welfare assistance. Most times, the conditions include participating in alcohol and drug treatment sessions, passing drug tests, or staying out of trouble for a certain period of time.
- Nine states have lifted the ban entirely.

Still, in some states lawmakers are not even aware of the federal ban. In West Virginia, one of the states where it is in place, a key state legislator, House Health and Human Resources Chairman Don Perdue, researched how the ban was enacted—but only after a colleague passed along a complaint from a constituent. He learned that it was tucked into legislation with mundane "rules," and did not get a separate vote or notice from lawmakers.

Now, Perdue says he will consider offering legislation to address the ban.

Across the country, advocates are also pushing state legislatures to ease or eliminate the ban on people convicted of drug felonies receiving food stamps or welfare, because it is the right thing to do. How can elected officials, civic leaders and community activists encourage ex-convicts to reestablish ties with their families and communities when laws such as this one make that task harder and, at times, even impossible?

It's time to change the laws.

(Dr. Henrie M. Treadwell is director of Community Voices of Morehouse School of Medicine. This organization works to improve health services and health-care access for all. Elisabeth Kingsbury, J.D., is an attorney and senior researcher for Community Voices. Media seeking interviews with Dr. Treadwell or Ms. Kingsbury should contact Alicia Ingram at [ingramalicia@bellsouth.net](mailto:ingramalicia@bellsouth.net) or 404-493-1724 to schedule.)



## Delaware Health And Social Services

### Office of the Secretary

1801 N DUPONT HIGHWAY NEWCASTLE DE 19720

TELEPHONE 302-255-8040 FAX 302-255-4429

To: Members of the General Assembly  
From: Debbie Gottschalk (302 416-0318 or [deborah.gottschalk@state.de.us](mailto:deborah.gottschalk@state.de.us))  
Date: May 10, 2010  
Re: SB 255, Expanding Access to Federal Food Assistance

#### Current Situation

Since August 1996, the states have been allowed, by federal law, to opt out of the provision that prevents people convicted of drug felonies, on or after August 22, 1996 from receiving food benefits from the Supplemental Nutrition Assistance Program (SNAP), formerly known as Food Stamps.

As of June 2009, 19 states have no ban on drug felons receiving SNAP assistance and 19 more have lifted part of this prohibition. Delaware has a limited opt-out in State Law. This legislation seeks to completely opt out of the prohibition.

#### Why?

This is all federal money. There is no additional administrative cost to the State. These 500 adults are in households that receive food benefit assistance for others, usually children in the household. Adding the additional household member to the Food Stamp case would provide about \$150 more a month to each family and not increase administrative costs. This federal money will be spent immediately in the local economy. Passing SB 255 will decrease administrative time spent processing applications that are denied under current law and defending hearings when those decisions are appealed.

Federal law does not permit us to deny Food Stamps to people convicted of felonies such as murder, rape, fraud (other than Food Stamp), and burglary. Someone can have a felony for marijuana and not get Food Stamps, yet someone convicted of murder or sexual assault can.

This law applies to any drug conviction since August 1996. That is now 14 years and many people are no longer on probation or under Court mandated treatment. With the recession, people who never needed help before are seeking assistance with food. People may not have kept paperwork showing completion of treatment programs.

Convicted drug felons need to eat. If they do not receive Food Stamps, they will likely eat food purchased by friends and family members with Food Stamps and they will use food closets. Both of these scenarios deplete the amount of food available to needy people in the community when instead federal funds could be accessed to help these same people by food. Not allowing parents with drug felonies to receive Food Stamps may literally take food from their children.

#### Protections against fraud and misuse:

Food Assistance is provided with Electronic Benefit Transfer Cards (EBT). The cards are used like debit cards. There are no longer coupons that can be sold or traded for drugs.

There is an existing, very strong, State (and federal) law in place to permanently bar persons who engage in Food Stamp fraud from receiving future assistance. This includes trafficking in Food Stamps.

DHSS checks DELJIS monthly to make sure food benefits stop for people who are incarcerated (including those on violations of probation for failing to comply with treatment requirements or failing drug tests). DELJIS is also cross referenced for fleeing felons and probation violations. If someone enters prison with a food benefit or DSS I.D. card, the DSS Director's office is immediately notified by DOC and action is taken to stop the benefits.

# OPINION

Susan D. Leath President and Publisher  
David F. Ledford Executive Editor  
Jason J. Levine Editorial Page Editor  
Carron J. Phillips Engagement Editor



For more editorial content, visit  
delawareonline.com/opinion

## EDITORIAL

# TANF BILL SENSIBLE STEP IN PRISON REFORM

Don't let the headline fool you. A bill to "let drug felons get public assistance" isn't some kind of bleeding-heart effort to coddle criminals.

It's actually a sensible, if not small, step for Delaware to help its future.

The federal Temporary Assistance for Needy Families program is the primary government cash-assistance program for low-income families with children, designed to help adults get by as they try to get a stable job.

The monthly benefits depend upon the size of the family: a family with one child receives \$201, while a family of eight can get \$681.

A family can receive TANF benefits for no more than 36 months.

During that time, an adult in the family must either work or participate in "work-related activities," like searching for a job, for 30 hours a week.

Hardiners may decry "cons" living on the "government dime," but lest we forget that Delaware

struggles to transform inmates into productive citizens once they serve their sentences.

Our state's recidivism rate is about 50 percent after a year and 77 percent by three years.

A study by the Kaiser Family Foundation found Delaware was one of 11 states to spend more of their general funds on corrections than on higher education in 2013.

Long story short, we are pouring money down the prison hole as thousands of young lives — mostly those of black men — are flushed away, as are the hopes of their kids, who, too often, follow the same path.

Delaware is not the first state to learn this lesson and recognize the need to address it.

According to the Legal Action Center, 24 other states have modified — but not entirely eliminated — the federal ban on food stamps and TANF to those convicted of drug felonies.

Still, drug felons leave prison with, in some cases, hundreds of hurdles to overcome.

Consider this from the Alliance for a Just Society: On average, states have 123 mandatory bans and restrictions for would-be workers with felony convictions per state from employment in occupations or industries, from obtaining certain types of occupational licenses, and/or from obtaining certain types of business or property licenses. 10 states have more than 160 of these regulations, including 248 in Texas, 258 in Illinois, and 389 in Louisiana. Only nine states have fewer than 75 regulations.

Massachusetts has 70 such regulations. As of 2013, its three-year rate was 39 percent. In 2011, Louisiana, with its 389 regulations and the highest per-capita incarceration rate in the country, had a five-year recidivism rate of 48 percent.

Remember Delaware's numbers? 50 and 77 percent, respectively.

Every convicted drug felon must serve their sentence. It's what happens after that sentence that determines our future as a society.

**National Council on Disability**

*An Independent agency working with the President and Congress to increase the inclusion, independence, and empowerment of all Americans with Disabilities.*

**TANF AND DISABILITY – IMPORTANCE OF SUPPORTS FOR  
FAMILIES WITH DISABILITIES IN WELFARE REFORM**

**Position Paper**

**National Council on Disability**

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**Lex Frieden, Chairperson**

**March 14, 2003**

**Introduction**

The Temporary Assistance for Needy Families (TANF) block grant, first created in 1996 to replace Aid to Families with Dependent Children (AFDC), was slated for reauthorization in 2002. Rather than undertaking the full reauthorization, Congress passed a short extension, which has since been extended to the end of June 2003. It is likely to be reauthorized by Congress in the next few months. As part of the reauthorization process, there have been many proposals to strengthen protections for parents and children with disabilities participating in TANF-funded programs. It is important that the law establish policies that reflect both the intention and desire of people with disabilities to work, and the reality that certain individuals may still have severe work limitations requiring long-term assistance.

While the TANF program is not specifically directed towards individuals with disabilities, research data indicate far-reaching effects of this program on people with disabilities. According to the General Accounting Office (GAO), a substantially higher proportion of TANF recipients reported having physical or mental impairments than did adults in the non-TANF population. In addition, many TANF families include a child with a disability. The work requirements and lifetime limits to benefits, which are key elements of welfare reform, pose special challenges for state and local TANF agencies in addressing the unique needs of families with a disability who are TANF beneficiaries.

People with disabilities often face multiple barriers to work. In addition to the barriers faced by most low income Americans as they attempt to work, such as inadequate transportation and limited opportunities to improve education and skills, people with disabilities must meet the specific challenges of their physical or mental impairment or health condition – often requiring assistive technology, access to accessible transportation, sign language interpreters, or personal care assistance, work place supports etc. in order to participate in programs designed to assist

them in finding work. When appropriate assessments of individual needs for reasonable accommodations are provided, people with disabilities are afforded equal opportunity for full participation, independent living, and economic stability.

Also facing extraordinary challenges are parents of children with disabilities, who are frequently unable to find or to afford a child care setting able or willing to handle the special needs of their children. These parents are often called upon to miss work to provide for these special needs, putting them at risk of incurring TANF sanctions. They are more likely than others to experience significant hardships when forced to leave the TANF program due to time limits.

While these additional challenges faced by people with disabilities may seem to paint a bleak picture, in fact, TANF creates a great opportunity to creatively design programs that can give parents with disabilities, and parents of children with disabilities, the training and support they need to secure and maintain employment. Some states and communities are already collaboratively working to help people with disabilities prepare for and sustain employment. Greater national emphasis on systemic collaboration and review of policies and legislation among federal, state, and local entities that bring consumers with disabilities to the table and begin dialogue and actions would serve to remove barriers and create real opportunities for people with disabilities to transition from welfare to work.

There have been many proposals to address the unique circumstances facing families on TANF who experience a disability (of the parent or the child or another family member). The most common of these proposals would require states to provide more comprehensive assessments of barriers to employment, including disabilities; provide states with greater flexibility in determining what counts as a work activity; bar states from sanctioning a family for non-compliance with a program rule if the TANF recipient or a family member has a barrier which prevents compliance and has not been provided with help in addressing that barrier; and provide funds for state-level advisory panels to consider ways in which a state can improve its TANF policies and procedures to better assist families who have barriers, including disabilities.

“Every American should have the opportunity to participate fully in society and engage in productive work. Unfortunately, millions of Americans with disabilities are locked out of the workplace because they are denied the tools and access necessary for success.” President George W. Bush, New Freedom Initiative at p. 18, (Feb. 2001),

[www.whitehouse.gov/news/freedominitiative/freedominitiative.html](http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html). For many people with disabilities, TANF, if appropriately designed, could provide the tools and access needed to unlock doors to opportunity, productivity, and economic self-sufficiency. This paper summarizes research about people with disabilities and TANF and some of the proposals being offered for consideration to improve how TANF-funded programs address the needs of families with a member with a disability. This paper concludes with the following recommendations from the National Council on Disability (NCD) for TANF reauthorization:

- Increase TANF and childcare funding;
- Ensure that parents with disabilities are screened, in a timely manner, with appropriate diagnostic tools;

- Prohibit states from sanctioning families until the state has taken steps to identify barriers, provided the family with assistance in meeting the rules; and modified rules, if necessary to address the parent's or child's disability so that the family can comply with TANF requirements;
- Provide states with flexibility in how they define countable work activities, including rehabilitation and participation in other activities that will help the parent to become work-ready, and how they determine the length of time a particular individual or family will need the specific services or treatment;
- Provide states with additional resources to train case workers and other staff who serve TANF recipients about issues unique to disabilities, including how to provide timely and effective screening, and how to identify programs, resources, and opportunities for collaborative community initiatives to achieve systemic improvements in services for people with disabilities;
- Create advisory panels at the state level to assist states in addressing the needs and barriers of people with disabilities;
- Facilitate access to continued Medicaid or other health coverage when recipients move from welfare to work;
- Assist states to better coordinate and provide services needed by children with disabilities and their families to address the multiple challenges facing parents and children with disabilities;
- Ensure that TANF programs and services comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

### **Family Members with Disabilities and TANF – What We Know From the Research**

#### ***Parents with disabilities.***

##### Case #1

*“DD is a 42 year-old woman with two children who has been trying to find appropriate work for the past five years. She has been receiving TANF ... She suffers from phlebitis, which causes severe pain without warning; her leg will become swelled and force her to rest, and on some days she cannot get out of bed at all. Extensive standing, walking, or other physical activity exacerbates the problem. She worked as a clerk for the Liquor Control Board for six months ..., but she was forced to quit because the job involved lifting boxes, and she was physically unable to perform the job's requirements. ... In 2001 she took the civil service exam as a clerk/typist, and she passed, but most recently she was #577 on the waiting list. Should her name come up, she will likely be further hindered by her lack of a General Equivalency Degree. DD is not considered exempt from TANF work requirements by DPW, and so she has had to look for work, and attend job readiness programs, rather than focus on a program which would enable her to earn her G.E.D. and improve her chances ... If she does find an appropriate job, she will need a boss who will grant her accommodations on days when she is unable to come to work. DD emphasizes that she is ready and willing to support her children, but after five years on TANF, despite her steady efforts to find work, she still does not have an education, the networking skills, or the medical support that would enable her to leave the welfare rolls. ... DPW referred her to a program in which she could obtain job training while also obtaining her GED, but on the second day of the program, her phlebitis acted up and she could not get out of bed. ... she cannot re-*

*enroll until she provides satisfactory proof ... but she cannot see a doctor [in time to keep the slot.] Eventually she may be able to re-enroll, but her sixty months on TANF will have long since run out. It is possible, though far from certain, that she could have obtained a full-time job by now, with the potential for raises and promotions, if she had been placed in a high-quality GED program at the outset of her time on TANF, if she had regular medical coverage and a steady relationship with a doctor who could provide ongoing treatment for phlebitis ... and if she had been placed in a good job training and placement program which helped line up interviews for appropriate clerical positions. Instead, DD encountered frustration, denials and inappropriate job offers.” Community Legal Services, Philadelphia, PA, Case Histories of Disabilities in TANF Families in Pennsylvania.*

#### Case #2

*“I am 28 years old and I have two children, ages five and seven. I have suffered from epilepsy ever since I was five, and I have unpredictable seizures that make it difficult to work. Although I can usually control the epilepsy with medication, when I am under a lot of stress I am more likely to experience seizures ... The father of my children was abusive to me, but in the summer of 1999 I escaped from the situation with the help of ... a domestic violence program. After leaving, I had a difficult time finding employment that would allow me to support my family ... I received TANF for a few months, but then my income from working in a laundromat was high enough that I was no longer eligible. Unfortunately, the laundromat manager had to let me go because I was having a lot of seizures, some of them at work ... that caused me to miss work. I turned to the state for help again ... I reapplied and thought I had completed the process. Around that time, I was also in intensive care for six days due to severe seizures. For that reason I missed an ... appointment. When I got home from the hospital, I was greeted with a letter saying that since I hadn't shown up at the meeting I was not eligible for that month because I had not completed the application process. ... no TANF, no food stamps, and no help with childcare or other support services. I called my caseworker to explain that I had been hospitalized. ... For some reason, she questioned whether I had an appropriate referral to be hospitalized ... Even though my caseworker knew about my history of domestic violence and health problems, I was never told about good cause for exemptions.” Statement of a Maine mother from collection of Maine Equal Justice Partners.*

There is now a substantial body of research that documents the nature and extent of physical and mental impairments of parents participating in TANF programs.<sup>1</sup> In a national study of TANF recipients, the General Accounting Office (GAO) found that 44 percent of TANF recipients had at least one physical or mental health impairment, three times higher than the rate of such impairments among adults not receiving TANF benefits.<sup>2</sup> In 1999, 38 percent of TANF

<sup>1</sup> For a more detailed discussion, see Eileen P. Sweeney, *Recent Studies Indicate that Many Parents Who are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions*, Center on Budget and Policy Priorities, February 2000, <http://www.cbpp.org/2-29-00wel.htm>. For a discussion of the most recent studies as well as the prevalence of other barriers to work in the TANF population, see Heidi Goldberg, *Improving TANF Program Outcomes for Families with Barriers to Employment*, Center on Budget and Policy Priorities, January 2002, <http://www.cbpp.org/1-22-02tanf3.htm>.

<sup>2</sup> U. S. General Accounting Office, *Welfare Reform: More Coordinated Federal Effort Could Help States and Localities Move TANF Recipients with Impairments Toward Employment*, GAO-02-37, October 2001, available at [www.gao.gov](http://www.gao.gov).



recipients reported an impairment severe enough that the individual was unable or needed help to perform one or more activities, such as walking up a flight of stairs or keeping track of money and bills.<sup>3</sup> In a second report, in July 2002, GAO found that recipients with impairments are half as likely to exit TANF as recipients without impairments. And, people with impairments are less likely than people without impairments to be employed after leaving TANF. Some who no longer receive TANF receive Supplemental Security Income benefits (SSI) while others do not.<sup>4</sup> In 2002, the U.S. Department of Health and Human Services (HHS) Office of the Inspector General confirmed that high numbers of people with disabilities receive TANF.<sup>5</sup>

The Manpower Demonstration Research Corporation (MDRC), in another study measuring barriers among recipients in four large urban counties, found that nearly one-third of the non-working recipients studied reported having fair or poor health. Companion ethnographic interviews conducted by MDRC indicated that health problems were likely to be under-reported and under-rated in the survey and that the survey data did not accurately reflect the depth of severity of the problems that the mothers and children faced.<sup>6</sup>

There is a high incidence of mental impairments among parents who receive TANF. Based on its National Survey of American Families, the Urban Institute has reported that almost half of parents receiving TANF either said that they were in poor general health or scored low on a standard mental health scale. One-third either said that their health limits their ability to work or scored as having very poor mental health.<sup>7</sup> Approximately one-quarter of those who have left welfare and are not working also have mental health impairments.<sup>8</sup> Two studies, in Michigan and Utah, did in-depth diagnostic questioning of TANF recipients. The Michigan study focused on a sample of all TANF recipients in one urban county while the Utah study looked at those who had received welfare for at least three years. In Michigan, one-quarter experienced major or clinical depression, one-seventh had post-traumatic stress disorder, and about seven percent had general anxiety disorder. The results in Utah were similar: two-fifths had major or clinical depression, about one-seventh had post-traumatic stress disorder, and about seven percent had general anxiety disorder.<sup>9</sup>

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<sup>3</sup> Id.

<sup>4</sup> U.S. General Accounting Office, *Welfare Reform: Outcomes for TANF Recipients with Impairments*, GAO-02-884, July 2002, available at <http://www.gao.gov>.

<sup>5</sup> HHS Office of the Inspector General, *State Strategies for Working with Hard-to-Employ Recipients*, OEI-02-00-00630, July 2002, <http://oig.hhs.gov/oei/reports/oei-02-00-00630.pdf>.

<sup>6</sup> Denise Polit, Andrew London, and John Martinez, *The Health of Poor Urban Women: Findings from the Project on Devolution and Urban Change*, Manpower Demonstration Research Corporation, May 2001, <http://www.mdrc.org/Reports2001/UC-HealthReport/UC-HealthRpt-Overview-2001.htm>. The study was conducted in four large urban counties: Cuyahoga County, Ohio; Los Angeles, California; Miami-Dade, Florida; and Philadelphia, Pennsylvania.

<sup>7</sup> Sheila Zedlewski, *Work Activity and Obstacles to Work Among TANF Recipients*, Urban Institute, Series B, No. B-2, September 1999, <http://www.urban.org>.

<sup>8</sup> Pamela J. Loprest, Sheila R. Zedlewski, *Current and Former Welfare Recipients: How Do They Differ?* Urban Institute, Discussion Paper 99-02, 1999, <http://www.urban.org>.

<sup>9</sup> Sandra Danziger, Mary Corcoran, Sheldon Danziger, et al., *Barriers to the Employment of Welfare Recipients*, University of Michigan Poverty Research and Training Center, February 2000, <http://www.fordschool.umich.edu/poverty/wesappam.pdf>; Amanda Smith Barusch, Mary Jane Taylor, et al., *Understanding Families with Multiple Barriers to Self Sufficiency: Final Report*, University of Utah Social Research Institute, February 1999, <http://www.socwk.utah.edu/pdf/sri-final1.pdf>. See also, *Why Some Women Fail to Achieve*

Three states — Kansas, Washington, and Utah — undertook significant efforts to determine the extent of learning disabilities among current TANF recipients. The three studies found that somewhere between one-fifth and one-third of recipients have learning disabilities. The Washington study suggested that up to one-half may have learning disabilities.<sup>10</sup> There also are significant numbers of parents who have physical disabilities. While less has been written about the nature and extent of recipients' physical impairments, it appears that about one-fifth of current TANF recipients have physical impairments that limit their ability to work. According to a 1999 report by the University of Utah Social Research Institute, among recipients who were not working, about one-third had physical problems. The Utah study suggests that the figure may be even higher among longer-term recipients.<sup>11</sup>

### *Children with disabilities.*

#### *Case #3*

*"I have four children, three of whom have special needs ... my son, who is eight, has attention deficit hyperactivity disorder and has been diagnosed with oppositional defiant disorder ... my son, who is nine, is being studied for depression. My daughter, who is now six, has spina bifida, which is a serious problem that has required her to be catheterized several times a day ever since she was six months old. ... The worst part of my story is that when my daughter was from about six months until three, I put her in day care so I could work. The day care would not perform the catheterization because of legal concerns. I was scared that if I did not work that I would be sanctioned and our family would go without needed food or some other necessity. So I worked and my daughter did not get catheterized that day. Her health was put at risk so I could meet unreasonable obligations in order to get my TANF check to take care of my family ... ."*  
*Statement of a Maine mother from collection of Maine Equal Justice Partners.*

Research shows significant numbers of children with disabilities live in poverty and many are in TANF families. The number of poor children with disabilities has increased dramatically over

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*Economic Security: Low Job Skills and Mental Health Problems are Key Barriers*, Research Forum on Children, Families and the New Federalism, August 2001, <http://www.researchforum.org>, summarizing the findings of Danziger, et al.; Surjeet K. Ahluwalia, Sharon M. McGroder, Martha Zaslow, Elizabeth Hair, *Symptoms of Depression Among Welfare Recipients: A Concern for Two Generations*, Child Trends, December 2001, a discussion of the problems facing both adults and children with mental impairments in TANF, see Elisa Rosman, Jan McCarthy, and Maria Woolverton, *Focusing on Families in Welfare Reform Reauthorization: Adults with Mental Health Needs and Children with Special Needs*, National Technical Assistance Center for Children's Mental Health, Georgetown University Child Development Center, October 2001. This series of nine short issue briefs is available at <http://gucdc.georgetown.edu>.

<sup>10</sup> Martin Gerry, Candace Shively, *The Kansas Learning Disabilities Initiative*, National Technical Assistance Center for Welfare Reform, University of Kansas, and Kansas Department of Social and Rehabilitative Services, January 1999; *Learning Disabilities: A Report by the State of Washington Department of Social and Health Services, Economic Services Administration, Work First Division*, September 1998; Barusch, Taylor, et al., *Understanding Families with Multiple Barriers to Self Sufficiency: Final Report*.

<sup>11</sup> Barusch, Taylor, et al., at 44-45, Table 14. "When asked if their health interfered with specific activities, 38.4 percent answered that their health interfered a lot with vigorous activities, 12.0 percent reported that their health interfered a lot with moderate activities, 27.5 percent reported a lot of difficulty climbing several flights of stairs, and 26.9 percent reported a lot of difficulty walking more than one mile."

the past two decades — from 3.94 million in 1983 to 4.99 million in 1996.<sup>12</sup> Using data from the National Survey of America's Families, Child Trends reports that children in families receiving welfare are more likely to have a physical, learning or mental health condition that limits their activity (20 percent of the children) than children whose families have left welfare (14 percent of the children). Additionally, children of current and former recipients are more likely than other poor children to have such conditions.<sup>13</sup> In July 2002, the General Accounting Office reported that 15 percent of TANF families include a child with an impairment.<sup>14</sup> The MDRC study found that one-fourth of non-employed mothers receiving TANF had a child with an illness or disability that limited the mothers' ability to work or attend school.<sup>15</sup> The Michigan study of TANF recipients in one urban county found that 22 percent of respondents had a child with a health, learning or emotional problem.<sup>16</sup> In a study of California families receiving welfare, a 1996 study found that "the presence of chronically ill and disabled children has a significant negative impact on mothers' labor force participation, even after controlling for differences in women's human capital characteristics, household configuration, and other income." The presence of a child with a disability or chronic health problem was associated with a 36 to 90 percent reduction in the odds that the mother worked, depending on the number of children with disabilities in the family.<sup>17</sup>

***Families with a member with a disability - multiple barriers.***

***Case #4***

*"I suffer from anxiety, panic and social phobia disorder. I have four children and the youngest two need to use a respiratory machine every four to eight hours. This makes child care very hard to find and also very expensive. In the past, I tried to attend a Job Club ... but I was too sick and overwhelmed to go and I couldn't do it. ... About six months ago, I got a doctor's note that said that I couldn't work at that time due to my problems. My caseworker told me that "the state is not going to go for this," and that I would have to work." Statement of a Maine mother from collection of Maine Equal Justice Partners.*

***Case #5***

*"My name is Sandra. I am a 27 year old mother of three boys ages 12, 8 and 1. My children and I live with my mother, two of my mother's grandchildren, and my adult brother, Billy, who is severely mentally retarded. I went to live with my mother when I left an abusive situation a year and a half ago. I have had many problems that keep me from working full-time, especially taking care of my disabled family members. Two of my children have medical problems that I must deal*

<sup>12</sup> Glenn T. Fujiura, Kiyoshi Yamaki, *Trends in Demography of Childhood Poverty and Disability*, published in *Exceptional Children*, Vol. 66, No.2, 187, 190-192, Winter 2000. This study looked at annual data sets – 1983 through 1994 – from the National Health Interview Survey, for children ages three to 21.

<sup>13</sup> Kathryn Tout, Juliet Scarpa, Martha J. Zaslow, *Children of Current and Former Welfare Recipients: Similarly at Risk*, Child Trends, March 2002, <http://www.childtrends.org/PDF/leaversRB302.pdf>.

<sup>14</sup> U.S. General Accounting Office, *Welfare Reform: Outcomes for TANF Recipients with Impairments*, GAO-02-884, July 2002, available at <http://www.gao.gov>.

<sup>15</sup> Polit, London, and Martinez, May 2001.

<sup>16</sup> Sandra Danziger, et al., February 2000.

<sup>17</sup> Meyers, Lukemeyer, Smeeding, *Work, Welfare, and the Burden of Disability: Caring for Special Needs of Children in Poor Families*, Center for Policy Research, Syracuse University, April 1996, <http://www-cpr.maxwell.syr.edu/incomsec/incomlst.htm>.

*with. Shawn, my eight year old, has Attention Deficit and Hyperactivity Disorder. I must make sure that he takes his medication. I take him to therapy each week. Mark, my baby, was hospitalized for several weeks when he was born with a severe respiratory infection and seizures. He is still sickly and has many doctors appointments. My brother cannot take care of himself. My mother is in poor health herself, suffering from high blood pressure, anxiety and other health problems. She needs my help to take care of Billy. I cook food for him, help feed him, change his clothes, and help him with bathing and other personal care. My mother is often too tired and sick to do these things and Billy cannot do them for himself. ... I have worked for most of my adult life at various jobs ... I have had learning disabilities throughout my life, which have made it hard to keep a job. Also, I miss so much work to take care of my family that I get into trouble for attendance. I have participated in job training programs offered by the Welfare Department, which have been useful for me. But I could not go to school regularly because of my family responsibilities. I wish I could work steady and support my family. But these problems often cause me to miss work, and I don't see that changing in the future."*<sup>18</sup>

It is common for families with a parent with a disability or a child with a disability to have other barriers as well.<sup>19</sup> These barriers include having more than one health condition, more than one person with disabilities in the family, and the range of barriers faced by other low-income parents as they attempt to work, such as lack of child care, inadequate or non-existent transportation, and limited education and skills. In its July 2002 report, the General Accounting Office found that eight percent of TANF families include both a parent with impairments and a child with impairments.<sup>20</sup>

A study prepared by the University of Kentucky Institute on Women and Substance Abuse for the Kentucky Cabinet for Families and Children found that the majority of TANF clients have at least one significant barrier to becoming self-sufficient.<sup>21</sup> Two-thirds (67 percent) of the Targeted Assessment Project clients had significant mental health problems alone or in combination with domestic violence, substance abuse, and/or learning problems. Mental health problems were a factor in all cases assessed with three problems. Of those assessed with only one issue, most had a serious mental health problem, such as major depression, agoraphobia, bipolar disorder, anxiety disorder, post-traumatic stress disorder, or psychotic disorders. Of those assessed with a mental health problem, 73 percent said that they were not receiving services to address the problem, and 44 percent said they had never received services.

As the number of barriers a parent faces increases, the chances that the parent will be working decrease. It also is very likely that the existence of some impairments, such as clinical depression, low intelligence, and learning disabilities, exacerbate a parent's inability to address

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<sup>18</sup> Sharon Dietrich, Community Legal Services, Philadelphia, PA, *Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work*, page 15.

<sup>19</sup> For a more detailed discussion, see Heidi Goldberg, *Improving TANF Outcomes for Families with Barriers to Employment*, page 7; and Eileen Sweeney, *Recent Studies Indicate that Many Parents Who are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions*, pages 18-21.

<sup>20</sup> U.S. General Accounting Office, cited above.

<sup>21</sup> *The Targeted Assessment Project and TANF Reauthorization: Preliminary Client Data, July 1, 2000 – December 31, 2001*, prepared by University of Kentucky Institute on Women and Substance Abuse and Center on Drug and Alcohol Research for the Kentucky Cabinet for Families and Children, May 23, 2002

other barriers and to comply with program rules. In its *Temporary Assistance for Needy Families (TANF) Program: Second Annual Report to Congress*, the Department of Health and Human Services stated that, “[a]lthough there have been dramatic gains in work for many TANF families, too many families with multiple barriers to success are at risk of being left behind.”<sup>22</sup> The Urban Institute has found that “[p]erhaps the strongest predictor of not participating in work activity is the presence of multiple obstacles.”<sup>23</sup> A Michigan study similarly found that the more barriers a woman has, the less likely it is that she is working. The authors predicted that women with four to six barriers had only a 41.4 percent probability of working at least 20 hours per week and women with seven or more barriers had only a 5.6 percent probability of working at least 20 hours per week.<sup>24</sup> As a result, it is important not only to have identified the barriers a parent or family faces but then to work to reduce the number of barriers to increase the likelihood that the parent can both secure and retain employment.

### **Consequences for Families with Disabilities in TANF**

Some of the studies also have looked at the outcomes for TANF families in which there is a member with a disability. They found the following:

#### ***Families are often inappropriately sanctioned.***

##### *Case #6*

*“I brought my son to Children’s Hospital and Dr. Rudd discovered my son has CP [cerebral palsy]. While my son was in the hospital, I got sanctioned because I wasn’t going to school for the mandatory 20 hours a week. They told me to get a doctor’s note and I did, but they haven’t taken my sanctions off. They need to have a different program for parents whose children are disabled.”*<sup>25</sup> *Minnesota parent*

##### *Case #7*

*“I suffer from multiple mental illnesses. I have two children who live at home with me, my son, who is 17, and my daughter who is 10. I am getting treatment and eventually hope to get to the point where I can work, but my doctor believes it will take a while. In the summer 1998, ASPIRE verified that I could not work because of my disabilities. In October, 1998, even though nothing had changed, ASPIRE had me sign a family contract that required me to work 25 hours per week through “Build, Develop and Learn” (BDL). I signed it because I thought I had to and I was told that my family would be sanctioned if I didn’t sign it. Apparently the goal of this contract was to move me into a “full time job”. In the spring of 1999, I was sanctioned for not going to a meeting with my BDL worker. I appealed and had a hearing over the phone. My counselor wrote a letter ... she explained how my disabilities affect me, ... and that I needed more help with my disabilities before I could think about getting a job. The doctor said that making me participate would be counter-productive to my treatment. I’m not sure how, but we lost the hearing. Luckily,*

<sup>22</sup> *Temporary Assistance for Needy Families (TANF) Program: Second Annual Report to Congress*, U.S. Department of Health and Human Services, August 1999, at 140.

<sup>23</sup> Pamela J. Loprest, Sheila R. Zedlewski, *Current and Former Welfare Recipients: How Do They Differ?* Urban Institute, Discussion Paper 99-17, November 1999, <http://www.urban.org/>

<sup>24</sup> Danziger, Corcoran, et al., at 23.

<sup>25</sup> *Faces of Change*, Alliance for Children and Families, <http://www.alliance1.org/Home/Home.asp>.

*I found help at Maine Equal Justice Partners. We appealed ... and DHS's attorney agreed with us that I could not work and DHS dropped the sanction. ... I hope no one with mental illness has to go through what I did." Statement of Maine mother, collection of Maine Equal Justice Partners.*

Most states impose severe sanctions on families receiving welfare when a parent fails to comply with TANF work requirements. More than two-thirds of the states impose full-family sanctions, stopping aid to children as well as parents when a parent fails to meet a program requirement. Nearly half of these states impose the full-family sanction the first time a parent fails to meet the requirement. Various research studies have analyzed the extent to which parents who have been sanctioned were unable to understand what was required of them to comply with state rules and did not understand the consequences for failing to comply — in other words, rather than willfully ignoring program rules, the parent's barriers impeded her ability to comply with the rules.<sup>26</sup> This may have happened because the requirements or activities were inappropriate for the parent, the parent never understood the program rules, the parent failed to receive the information in essential accessible format and other alternative means of communication, or the parent did not receive other support she needed to be able to comply. In many cases, the states do not identify the barriers or develop appropriate activities and services for people with barriers. Then, when the family fails to meet program requirements, a sanction is imposed.

Studies suggest that high numbers of families with a member with a disability are being sanctioned. For example:

- MDRC found that, “[w]elfare recipients with multiple health problems and with certain health problems (notably, physical abuse, risk of depression, having a chronically ill or disabled child) were more likely than other recipients to have been sanctioned in the prior year.” And, among those who had left welfare, “[w]elfare leavers with multiple health problems were more likely than other women who had left welfare to say that they had been terminated by the welfare agency rather than that they left of their own accord.”<sup>27</sup>
- Studies in Utah and Delaware suggest that parents who have learning disabilities or who have low intelligence find it difficult to understand and comply with the program's rules.<sup>28</sup>
- One-third of the families who were sanctioned in Utah, thereby losing their family's entire cash benefit, cited an individual health condition as the reason for their failure to participate; one-fifth cited mental problems.<sup>29</sup>

<sup>26</sup> See, for example, studies in Delaware and Iowa: David J. Fein, Wang S. Lee, *Carrying and Using the Stick: Financial Sanctions in Delaware: a Better Chance Program*, Abt Associates, Inc., May 1999, <http://www.abtassoc.com/reports/ES-Sanfin3.pdf>; and Lucia Nixon, Jacqueline Kauff, Jan L. Losby, *Second Assignments to Iowa's Limited Benefit Plan*, Mathematica Policy Research, August 1999, at 19, 23, <http://www.mathematica-mpr.com/PDFs/secondlbp.pdf>.

<sup>27</sup> Polit, London and Martinez, 2001.

<sup>28</sup> Barusch, Taylor, et al., at 51; Fein, Lee, at 13, 22.

<sup>29</sup> Michelle K. Derr, *The Impact of Grant Sanctioning on Utah's Families*, University of Utah, October 1998.

- In Iowa, one-fifth of parents who were placed in the state's limited benefit plan a second time – the plan in which families that have not complied with program rules receive a reduced benefit (akin to a sanction) – said that their disability/health contributed to their being returned to the sanction status, while almost three out of ten cited their lack of understanding of program rules.<sup>30</sup>

Families who leave TANF due to sanctions are less likely than others who leave TANF to be working, and if they are working, they are likely to be earning less than others who have left TANF.<sup>31</sup> A recent study in three cities — Boston, Chicago, and San Antonio — also found that children in sanctioned families are more likely to have behavior problems and emotional problems than children in other families on welfare or who never received welfare.<sup>32</sup>

A medical study issued in 2002 provides additional information about young children in sanctioned families. The study looked at the impact of sanctions on the health of infants and toddlers. It was conducted in six cities from August 1998 through December 2000: Baltimore, Boston, Little Rock, Los Angeles, Minneapolis, and Washington, DC. The researchers found that households with children aged 36 months or younger whose welfare benefits had been terminated or reduced by sanctions had odds of being food insecure 1.5 times as great as comparable households whose benefits were not decreased. In addition, young children in families whose welfare benefits had been terminated or reduced by sanctions had 1.3 times the odds of having been hospitalized since birth.<sup>33</sup>

***Families with a family member with disabilities often are not working after leaving TANF.***

***Case #8***

*“My name is Eve. I live in Philadelphia. I have received welfare since about 1997. I have three children, my son Woodley, who is now grown up and away in Job Corps; my 28-year-old son, Naquaine; and my son, Andrew, who died as an infant. I am the sole caregiver for Naquaine,*

<sup>30</sup> Nixon, Kauff, and Losby, August 1999, cited in footnote 26. Chronic health conditions identified as contributing to being placed in the program included drug addiction, manic depression, and chronic asthma.

<sup>31</sup> Heidi Goldberg, *A Compliance-Oriented Approach to Sanctions in State and County TANF Programs*, Center on Budget and Policy Priorities, March 2001, <http://www.cbpp.org/3-28-01tanf.pdf>.

<sup>32</sup> P. Lindsay Chase-Lansdale, Rebekah Levine Coley, Brenda J. Lohman, Laura D. Pittman, *Welfare Reform: What About the Children? Welfare, Children and Families: A Three-City Study*, Policy Brief 02-1, Johns Hopkins University, 2002, [http://www.jhu.edu/~welfare/19382\\_Welfare\\_jan02.pdf](http://www.jhu.edu/~welfare/19382_Welfare_jan02.pdf). “We need to attend much more carefully to the plight of families experiencing welfare sanctions. Sanctioned families have a number of characteristics that serve as markers of concern for the healthy development of children and youth. As such, state and federal governments should explore options for identifying and reaching out to the most disadvantaged and high-risk families involved in the welfare system. Possible policy options include assistance to bring families into compliance with rules before they are sanctioned, closer monitoring of sanctioned families, and the provision of additional supports, such as mental health services, academic enrichment, after-school programs, and other family support services.” *Id.*

<sup>33</sup> Children's Sentinel Nutrition Assessment Program, *The Impact of Welfare Sanctions on the Health of Infants and Toddlers*, July 2002, Arch Pediatr Adolesc Med, Vol. 156, 678-683, <http://dcc2.bumc.bu.edu/csnappublic/welfaresanctions.htm>. In the article, the authors conclude that, “Child health professionals should be concerned that increasingly stringent requirements proposed for the 2002 welfare reform law reauthorization may further jeopardize the health of some of America's most vulnerable children as the economic cycle, sanctions, and time limits simultaneously decrease families' resources.”

who suffers from autism. Naquaine needs 24 hour a day care. I have been the only one to provide it since my husband left a long time ago. Because I need to take care of Naquaine, I simply cannot work 40 hours a week, every week. ... Things are always coming up with Naquaine that make me drop everything to take care of him. If his bus is late, I need to wait with him. If he acts up in school, the teachers call me and expect me to come immediately. The after-school program has been a great help. But the welfare office cut off my childcare subsidy, and the program is getting ready to put him out, because I cannot pay. I am so worried about losing my care for him. When you are a single parent, it is very hard to both work and take care of your children. When I came on welfare, I tried to do it by working the 11:00 pm to 7:00 am shift, when my children were sleeping, so I could take care of them during the day. I left Naquaine and my baby Andrew with my older son when I went to work, because I didn't have anyone else to care for them. My baby died one night while I was at work; he just stopped breathing. They say it was Sudden Infant Death. I feel like if I had been there Andrew would not have died. People on welfare have no problem working if their children are safe. I want to work. I've worked all my life. But it always ends up that I get fired because of missing work. Everything may be going well on the job, then something comes up, and I lose it." <sup>34</sup>

Many parents with disabilities who have left TANF do not work; some have lost jobs they held when they left TANF.

For example:

- In a Colorado study, 35 percent of the former TANF recipients surveyed were not working at the time of the survey. Almost one-third said that personal health problems or other personal problems prevented them from working.<sup>35</sup> That study concluded: "We need to attend much more carefully to the plight of families experiencing welfare sanctions. Sanctioned families have a number of characteristics that serve as markers of concern for the healthy development of children and youth. As such, state and federal governments should explore options for identifying and reaching out to the most disadvantaged and high-risk families involved in the welfare system. Possible policy options include assistance to bring families into compliance with rules before they are sanctioned, closer monitoring of sanctioned families, and the provision of additional supports, such as mental health services, academic enrichment, after-school programs, and other family support services."
- In a Mississippi survey of people who left TANF early in 1998, three to eight months later 53 percent had not worked since leaving TANF and 65 percent were not working at the time of the survey. Of the latter group, 27 percent reported they were physically or mentally ill.<sup>36</sup> In the article about this study, the authors conclude that, "Child health

<sup>34</sup> Sharon Dietrich, Community Legal Services, Philadelphia, PA, *Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work*.

<sup>35</sup> *Evaluation of the Colorado Works Program: First Annual Report*, Berkeley Planning Associates, November 1999, at 29, Figure 2-4.

<sup>36</sup> Jesse D. Beeler, Bill M. Brister, Sharon Chambry, et al., *Tracking of TANF Clients, First Report of a Longitudinal Study: Mississippi's Temporary Assistance for Needy Families Program*, Center for Applied Research, Millsaps College, revised January 1999, at 12, Table 8.



professionals should be concerned that increasingly stringent requirements proposed for the 2002 welfare reform law reauthorization may further jeopardize the health of some of America's most vulnerable children as the economic cycle, sanctions, and time limits simultaneously decrease families' resources."

- A study by the Hudson Institute and Mathematica Policy Research of Milwaukee families who were involved in the conversion of the Wisconsin welfare plan from AFDC to Wisconsin Works (W-2), found that among those who reported a personal disability or health problem or the disability or health problem of a family member, 23 percent were not employed, were not in a W-2 work training placement and did not receive either SSI or a kinship care payment.<sup>37</sup>

Anecdotal evidence suggests that, to avoid the ultimate loss of benefits, some TANF recipients with disabilities were shifted off TANF and onto the SSI roles before they could take advantage of the TANF supports and services that might have led to employment.

#### **Parents with a child with disabilities face more barriers to work.**

##### *Case #9*

*"My name is Theresa. I am a 33 year old ... mother of three children ages 13, 10 and 8. I currently receive TANF for myself and my three children, and I am likely to reach my five-year lifetime limit for TANF in March, 2003. My 10-year-old Chae suffers from Attention Deficit Hyperactivity Disorder and major depression. His needs prevent me from working in a full-time job. I participated in several job training programs offered by my welfare caseworker ... I did not have a good experience at these programs, but I really wanted to find a way to get the education and training that I needed to find a job that would support my family. In June, 2000, I decided to close my TANF case and join the Army. I thought the Army would provide me with training and job advancement that I did not get through the welfare department. While I was in the Army my children were cared for by my relatives. But several months after I enlisted, Chae was diagnosed with ADHD and major depression. He was even hospitalized for some time due to his depression. Because of his illness and hospitalization, I was forced to get a leave of absence and later an Honorable Discharge from the Army in order to take care of him. I returned to Philadelphia and re-opened my TANF case. I currently meet my work requirements ... by doing 20 hours per week of community service, as well as an independent job search. I am afraid of working too much. Because of what happened when I was in the Army and not around for Chae. I am very scared that he can be hospitalized again if I don't spend enough time taking care of him. I very much want to find a job that will enable me to get off welfare and support my family. But I am also very concerned about my children's health and well being. I feel that I am in a "lose-lose" situation."<sup>38</sup>*

<sup>37</sup> Rebecca Swartz, Jacqueline Kauff, Lucia Nixon, Tom Fraker, Jay Hein, Susan Mitchell, *W-2: Converting to Wisconsin Works: Where Did Families Go When AFDC Ended in Milwaukee?* Hudson Institute and Mathematica Policy Research, 1999, at 37-38, Table 6-4, <http://www.mathematica-mpr.com/PDFs/w2report.pdf>.

<sup>38</sup> Sharon Dietrich, Community Legal Services, Philadelphia, PA, *Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work*, p.21.

In addition, research indicates that parents with children with disabilities are less likely to leave TANF, and when they do leave welfare for work, they are less likely to have the flexibility on their jobs to meet their children's needs. For example:

- The presence of a child with disabilities in a family has been found to dramatically reduce the chances that the parent will be working. A 1996 Syracuse University study of California families receiving welfare found that “the presence of chronically ill and disabled children has a significant negative impact on mothers’ labor force participation, even after controlling for differences in women’s human capital characteristics, household configuration, and other income.” The presence of a child with a disability or chronic health problem was associated with a 36 to 90 percent reduction in the odds that the mother worked, depending on the number of children with disabilities in the family.<sup>39</sup>
- In a study of women in urban and rural Michigan who receive TANF cash assistance and who have children with disabilities, families identified three systemic barriers to self-sufficiency for their families: poorly trained welfare caseworkers who do not understand the complexities of raising a child with disabilities, limited public transportation (nonexistent in rural areas and unreliable, inaccessible, or limited in range in urban areas) and inadequate child care.<sup>40</sup>

### State Responses to the Research

The results of these studies suggest that states need to design their programs better to identify and assist parents with disabilities and parents of children with disabilities. Two key features of the 1996 law make these improvements possible: the flexibility states have to design their programs to assist families to move to self sufficiency and the availability of federal TANF funds. The decline in cash assistance caseloads — freeing up TANF funds to provide work supports and to assist families with barriers — provided some states with the opportunity to look more closely at how best to meet the needs of this population.<sup>41</sup>

Some states have been moving in this direction. Some of the steps states have taken include:

- *Reducing inappropriate sanctions.* Tennessee has established a sanction review procedure that determines whether the state followed its policies and also provides the family with a second chance to come into compliance. In 2001, Maine adopted a pre-sanction review procedure as well. Vermont, Iowa, and Utah have procedures that help to

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<sup>39</sup> Marcia K. Meyers, Anna Lukemeyer, Timothy Smeeding, *Work, Welfare, and the Burden of Disability, Caring for Special needs of Children in Poor Families*, Center for Policy Research, Syracuse University, April 1996, <http://aspe.hhs.gov/daltcp/reports/wrkwlfes.htm>.

<sup>40</sup> Barbara W. LeRoy, Donna M. Johnson, Sharonlyn Harrison, *Open Road or Blind Alley? Welfare Reform, Mothers and Children with Disabilities*, Skillman Center for Children, Wayne State University, Occasional Paper Series 2000, No. 4, November 2000, <http://www.skillmancenter.culma.wayne.edu>

<sup>41</sup> For information on TANF spending, see U.S. Department of Health and Human Services, *Temporary Assistance for Needy Families (TANF) Fifth Annual Report to Congress*, February 2003, Tables 2:8 through 2:15, <http://www.acf.hhs.gov/programs/ofa/indexar.htm>, and Zoe Neuberger, *TANF Spending in Federal Fiscal Year 2001*, Center on Budget and Policy Priorities, March 2002, <http://www.cbpp.org/3-21-02tanf.htm>.

better identify families with disabilities who need greater supports or modifications of rules in order to come into compliance with program rules.

- *Tailoring services to the individual needs of families with a member with disabilities so that the parent can move towards employment.*<sup>42</sup> Tennessee has established the “Family Services Counseling” (FSC) program designed to help parents address barriers. The 100-plus masters-level social workers across the state who staff the FSC program have the authority to modify program rules so that a family can comply; secure treatment, education and training; and otherwise take steps to help parents and children with barriers such as mental health, learning disabilities, domestic violence and substance abuse. Pennsylvania has created the “Maximizing Participation Project” (MPP) for people with barriers who cannot meet the current work requirement and are approaching their five year time limit. MPP provides comprehensive assessments and intensive case management to help parents address barriers. There is no minimum work requirement in MPP. Currently, 1700 parents with disabilities voluntarily participate in MPP.<sup>43</sup> Vermont has designed a collaborative effort between its TANF agency and the vocational rehabilitation agency, creating 11 new counselor positions in the VR agency, to work with TANF families with disabilities.<sup>44</sup> Kentucky’s 32 Targeted Assessment Specialists, employed by the University of Kentucky under a contract with the state’s TANF agency, are on-site at public assistance and child protective services offices in 18 communities to conduct assessments, pre-treatment, and follow-up services focused on mental health, domestic violence, substance abuse and learning problems.<sup>45</sup>
  
- *Adjusting requirements when a parent’s full attention needs to be devoted to the health and welfare of a child with a disability.* Illinois recently modified its rules to provide for a “family care” barrier, stopping the TANF time clock for a parent who provides full-time care required by a child under age 18 or a spouse due to their medical condition. California has a rule similar to the Illinois rule, providing that if a person’s care-taking responsibilities for a child or other family member who is ill or incapacitated significantly impairs the ability of the person to be regularly employed or to participate in welfare-to-work activities, the person will be exempt from the work rules and the months will not count toward the person’s time clock.

Helpful guides for state and county administrators on how to identify and serve families with a member with a disability have been published, often with funding from HHS.<sup>46</sup> In addition, in

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<sup>42</sup> For greater detail about these and other state programs, see Heidi Goldberg, *Recent TANF Proposals Would Hinder Successful State Efforts to Help Families Overcome Barriers to Employment and Find Better Paying Jobs*, Center on Budget and Policy Priorities, April 2002, <http://www.cbpp.org/5-9-02tanf.pdf>.

<sup>43</sup> Jonathan M. Stein, Brendan Lynch, *The Administration’s Proposed Increases in TANF Work Requirements are Unfair to Pennsylvania TANF Recipients with Disabilities*, Community Legal Services, April 2002.

<sup>44</sup> 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.

<sup>45</sup> See study referred to in footnote 22.

<sup>46</sup> See Gretchen Kirby, Jacquelyn Anderson, *Addressing Substance Abuse Problems Among TANF Recipients: A Guide for Program Administrators*, Mathematica Policy Research, July 2000, <http://www.mathematica-mpr.com/PDFs/addresssubstance.pdf>; Michelle Derr, Heather Hill, LaDonna Pavetti, *Addressing Mental Health Problems Among TANF Recipients: A Guide for Program Administrators*, Mathematica Policy Research, July 2000,

2001, the Office for Civil Rights at HHS issued guidance to states and counties on the applicability of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act in TANF-funded programs.<sup>47</sup> This technical assistance has helped state administrators to focus on ways to assist parents with disabilities as well as parents with a child with a disability.

The HHS Inspector General's report provides some information about the types of actions states are taking to identify families with barriers to work and then concludes that "states are still facing challenges": "States report facing several challenges in addressing recipients with barriers to employment. At least 13 states report they do not have the capacity to serve all recipients with some of the barriers we addressed. Forty-one states do not have any specific strategies to help recipients who face multiple barriers. Only nine states report using pilot programs to implement new approaches for any of these populations. Additionally, few states have information about the barriers faced by recipients who have been sanctioned or have strong evidence about the effectiveness of their strategies to help recipients with the barriers we addressed in this inspection."<sup>48</sup>

Solid TANF methods of administration can make all the difference for people with disabilities as they struggle to support and nurture their families and live independently. However, experience to date suggests that while TANF's potential is being realized for some families with a disability, the state's TANF rules can also unravel a family if the parent's disability is not identified and services and supports are not provided. The following examples from Colorado set out starkly the differing consequences. These examples are taken from a report by the Governor of Colorado's Task Force on TANF implementation that focused on several barriers, including mental health issues, chronic health problems, physical disabilities, learning disabilities, language barriers, and multiple barriers.<sup>49</sup> The examples were included in testimony before the House Human Resources Subcommittee of the Ways and Means Committee on April 11, 2002.<sup>50</sup>

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<http://www.mathematica-mpr.com/PDFs/addressmental.pdf>. See also, Rebecca Brown, Evelyn Ganzglass, *Serving Welfare Recipients with Learning Disabilities in a Work First Environment*, National Governors Association Center for Best Practices, 1999, <http://www.nga.org>; Amy Brown, *Beyond Work First: How to Help Hard-to-Employ Individuals Get Jobs and Succeed in the Workforce*, Manpower Demonstration Research Corporation, 2001, <http://www.mdrc.org/Reports2001/HardtoServe/MDRCHow-ToHardtoEmploy.pdf>; M. Robin Dion, Michelle K. Derr, Jacquelyn Anderson, LaDonna Pavetti, *Reaching All Job Seekers: Employment Programs for Hard-to-Employ Populations*, Mathematica Policy Research, October 1999, <http://www.mathematica-mpr.com/PDFs/hdemploy.pdf>.

<sup>47</sup> Office for Civil Rights, U.S. Department of Health and Human Services, *Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families)*, January 2001, <http://www.hhs.gov/ocr/prohibition.html>; see also 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>. In his reply to the HHS Inspector General's report, cited at footnotes 5 and 45, at page 23, HHS Assistant Secretary for Children and Families Wade Horn indicated that there has been broad dissemination of the OCR guidance on TANF and disabilities.

<sup>48</sup> HHS Office of the Inspector General, cited at footnote 5, above, page iii. The report focused on eight barriers: substance abuse, domestic violence, mental health issues, chronic health problems, physical disabilities, learning disabilities, language barriers, and multiple barriers.

<sup>49</sup> Both clients' stories are printed in *Moving Forward with Welfare Reform*, The Governor's Task Force on Welfare Reform Report, Colorado, September 12, 2000.

<sup>50</sup> Paul Marchand, Co-chair of Consortium for Citizens with Disabilities TANF Task Force, testimony before

Case #10

*“Client A was tested and had an IQ of 67. She was sent to Vocational Rehab and then instructed to seek work. She received childcare for two occasions and then was sanctioned in Colorado Works. Her family became homeless in November 1998 and the children were placed in foster care in December 1998.”*

Case #11

*“Client B has an IQ of 67 and is a victim of domestic violence. There is suspicion of brain damage as a result of abuse. She cannot communicate well, she is conscientious but has few skills. She has an anxiety disorder which cannot be treated because of her heart problem. She sees a physician weekly to manage blood thinning medications. She had surgery for a valve replacement one year ago. She was assigned to a community college program which reported that she would be doing fine but then the next day she couldn't remember what she had learned. It takes the parent approximately one month to learn a bus route. The county required that she find a job in six months. Later that expectation was lowered to ten hours of time within her supported living program.”*

“The description of the steps the state took to help Client B provides a sense of the types of steps that states will need to take in order to help some parents with disabilities to maximize their potential. Unfortunately, no steps — not even ongoing child care for her children — were taken to assist Client A, with the tragic consequence that she was sanctioned, lost her home, and then lost custody of her children.”

### **Proposals to Improve Outcomes for Families with Disabilities in TANF**

It is clear that disability is a significant issue within the TANF program and that the unique needs of individuals with disabilities must be addressed if the system is to achieve the goal of securing employment and economic independence for TANF recipients who live with a disability. A number of improvements needed in the TANF law have been proposed by organizations representing people with disabilities to assist states to best meet the needs of families with disabilities.<sup>51</sup> The National Council on Disability makes the following recommendations to strengthen the ability of the states to support families with disabilities in their welfare system.

**1. Increased TANF and Child Care Funding.** Last year, the Congressional Budget Office estimated that the costs to states of meeting new work requirements and increased participation

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Human Resources Subcommittee, Ways and Means Committee, April 11, 2002.

[http://www.aucd.org/legislative\\_affairs/testimony\\_tanf.htm](http://www.aucd.org/legislative_affairs/testimony_tanf.htm). In the testimony, Mr. Marchand stated: “It should not be acceptable to the Congress that even one parent with disabilities or one parent caring for a child with disabilities faces these types of consequences in TANF. Unfortunately, the research suggests that problems like this are all too frequently occurring across the country, at great personal expense to parents and children.”

<sup>51</sup> For a more detailed discussion, see two documents prepared by the TANF Task Force of the Consortium for Citizens with Disabilities, *Principles Guiding the Reauthorization of TANF*, and *TANF Reauthorization Policy Priorities*, both of which are included in the testimony of Paul Marchand, The Arc, on behalf of the Consortium before the Human Resources Subcommittee of the Ways and Means Committee, April 11, 2002. The *Policy Priorities* also are available on the CCD website, <http://www.c-c-d.org/tanfreautho.htm>.

rate targets would be up to \$11 billion over five years (roughly \$6 billion in work program costs and \$5 billion in increased child care costs for work program participants). The Center for Law and Social Policy estimates that the five-year costs of implementing proposed increased work and participation rate requirements are in the range of \$15.1 billion above what states would otherwise spend under current law.<sup>52</sup> Without the funding needed to meet the new requirements, states will have to cut effective programs now funded with TANF in order to comply. In other words, there already is significant evidence that states need more than they currently receive annually in order to simply maintain the programs they currently have in place.

The Congressional Budget Office estimated that an additional \$4.55 billion in child care funding over the next five years is needed to ensure that the mandatory federal child care funding stream, state funds used to match these federal funds, and the TANF funds devoted to child care keep pace with inflation. CBO's \$4.55 billion figure may understate the cost of maintaining current services because the estimate assumes that states will be able to maintain their current levels of using TANF for childcare. This is unlikely to occur. In 2002, states spent \$1.6 billion *more* than their annual TANF allotments, by drawing on unspent TANF funds carried over from prior years.<sup>53</sup> These "carry-over" funds have been exhausted or nearly exhausted in most states. To bring spending in line with their annual TANF block grant allotment, many states will have to *cut* TANF funding for various programs, including child care programs, in the next few years. The funding shortage will hit hardest families who have children with disabilities who may require more expensive specialized care.<sup>54</sup>

Not surprisingly, the types of services and supports that families with a member with a disability need in order to succeed are often intensive, individualized, long-term, and more costly than the services that families without barriers need. If no additional funds are added to the basic TANF block grant, as inflation further erodes the value of the TANF block grant, it will become increasingly difficult for states to pay for the services and supports that people with disabilities need in order to be able to move successfully from welfare to work. Additional funding for both the TANF block grant and the child care program will be necessary to enable these programs to meet federal requirements and programmatic needs for families with disabilities.

**2. Screening and Assessment.** The reauthorization must include provisions to ensure that parents with barriers, including disabilities and other health conditions, are screened in a timely manner with appropriate diagnostic tools to determine if a more comprehensive assessment is needed. Comprehensive assessments must be provided by qualified professionals to identify barriers to employment and to suggest to state or county staff the steps needed to assist the family. As part

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<sup>52</sup> Steve Savner, Julie Strawn, Mark Greenberg, *TANF Reauthorization: Opportunities to Reduce Poverty by Improving Employment Outcomes*, April 2002, <http://www.clasp.org>.

<sup>53</sup> Zoe Neuberger, *Annual TANF Expenditures Remain \$2 Billion Above Block Grant*, Center on Budget Policy and Priority, October 30, 2002

<sup>54</sup> CBO's \$4.55 billion figure may understate the cost of maintaining current services because the estimate assumes that states will be able to maintain their current levels of using TANF for childcare. This is unlikely to occur. In 2002, states spent \$1.6 billion *more* than their annual TANF allotments, by drawing on unspent TANF funds carried over from prior years. These "carry-over" funds have been exhausted or nearly exhausted in most states. To bring spending in line with their annual TANF block grant allotment, many states will have to *cut* TANF funding for various programs, including childcare programs, in the next few years.

of the screening and assessment process, states should also consider documentation from other systems of the existence of a disability in a family. The changes to TANF must also ensure that screening and assessments are voluntary on the part of TANF beneficiaries and that TANF beneficiaries with disabilities are not subjected to a sanction or closure for failing to participate in a screening or assessment. Screening and assessment results must be maintained in accordance with professional standards of confidentiality.

**3. Sanctions.** The federal legislation should prohibit a state from sanctioning a family until the state has: 1) taken steps to identify barriers, including disabilities; 2) provided the family with assistance in meeting the rules; and, 3) modified rules, if necessary to address the parent's or child's disability, so that the family can comply. The federal legislation should require states to have pre-sanction review procedures to reduce the chance of arbitrary and inappropriate sanctions being applied against a family with a family member with a disability. Based on the research on people with barriers and sanctions, it is reasonable to expect that greater numbers of parents with disabilities and other barriers will be sanctioned rather than helped under proposals for the new TANF program if they are not provided these protections.

**4. State Flexibility.** As pointed out in an earlier section of this paper, a key feature of the 1996 law that has made it possible for states to improve the way they support individuals with disabilities has been the flexibility states have to design their programs. The federal legislation should build on the 1996 statute by providing states with flexibility in how they define countable work activities, including rehabilitation and participation in other activities that will help the parent to become work-ready and how they determine the length of time that a particular individual or family will need the specific services or treatment. States must be given greater flexibility in how they will determine who will be exempt from the time limit and for how long.

TANF Families with disabilities must be provided with the services and supports needed to assist them to be able to successfully move into an independent work setting. States need the flexibility to design the individualized plans that parents with disabilities and children with disabilities need. For example,

- While 30 hours of activity each week is required by current law for families with children age six or older, states currently have the flexibility to require 40 hours of participation from families, but most have not chosen to do so universally. Instead of focusing on keeping participants busy for precisely 40 hours per week while they are on welfare, states have been able to place a greater emphasis on structuring work programs that provide the types of activities needed to move participants with and without disabilities into paid employment and off of welfare (regardless of the precise number of hours these activities add up to each week).
- Some parents with young children with disabilities are helped by the provision in the current statute that allows states to get full credit when a parent with a child under the age of six (regardless of disability) is working for 20 hours because they are able to meet their child's needs while being involved in a countable work activity part-time, for 20 hours. The flexibility states have to provide this modest protection must be retained.<sup>55</sup>

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<sup>55</sup> For a detailed discussion of why the 40 hour proposal is not feasible and will be impossible for many parents to

- Important information is available on the issue of state flexibility from the Vermont experience, which has created “hybrid” TANF/VR counselors in the VR agency. The agency’s experience with non-TANF closures may be instructive. Forty-eight percent of VR’s non-TANF successful closures to employment were people whose primary disability was mental illness, mental retardation, learning disability, or substance abuse. “The average length of time from applying for services to becoming employed for these individuals has been: mental illness, 15 months; mental retardation, 14 months; learning disability, 17 months; and substance abuse, 10 months.”<sup>56</sup> Without the flexibility to adapt work requirements and participation rates to the needs of the individuals, states would be forced to provide services to recipients which are less individualized and less appropriate to their needs, forcing recipients into a “one size fits all” approach that will be harmful to parents with disabilities and children with disabilities in TANF families.

The federal legislation should also allow states with waivers to continue under their waiver rules after reauthorization. A number of states were granted waivers to the welfare requirements under the old AFDC rules and were allowed to continue to operate under the same waiver, even when the rule differed from the new TANF rules. Often these rules allow states to provide more appropriate activities for parents than are permitted under standard federal TANF rules and, in some cases, to extend time limits for some parents with disabilities based on individual circumstances. It is important to note that NCD does not endorse a practice that exempts an individual from work requirements in lieu of providing the appropriate accommodations for the disability. However, extensions may be justified and especially important for families with care giving requirements that make it impossible for them to participate in required activities.<sup>57</sup>

**5. Training.** The federal legislation should provide states with additional resources to train caseworkers and other staff who serve TANF recipients about issues unique to disabilities, including timely and effective screening, and the design of programs responsive to the needs of people with barriers of disability, identification and utilization of resources available in the community, and opportunities to develop collaborative relationships with other state and local public and private agencies, including grants to states and counties interested in supporting initiatives to achieve systemic improvements in addressing the needs of persons with diagnosed and undiagnosed disabilities. Caseworkers and other staff should also receive training in the unique needs of, and issues that have implications for, people with disabilities from diverse cultures. According to Fujiura, “If you have a disability in America, and you are from a diverse racial/ethnic group, odds are that you and your family live in poverty and that you will be poorer than others of your class and color.” <http://www.mswitzer.org/sem99/papers/fujiura.html>.

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meet, see Sharon Dietrich, *Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work*, Community Legal Services, April 2002, [http://www.clsphila.org/Tanf\\_reauthorization.htm](http://www.clsphila.org/Tanf_reauthorization.htm). The appendix to the paper provides examples of families in Pennsylvania who are working or trying to work and whose family circumstances would make it impossible to meet 40 hours as they cannot meet the current 30 hour requirement. In the majority of the examples, the parent is caring for children with disabilities or other family members with disabilities.

<sup>56</sup> Johnette T. Hartnett, cited above at footnote, page 7.

<sup>57</sup> Ruth Bourquin, *Persons with Disabilities and TANF: A Promising Massachusetts Model*, Massachusetts Law Reform Institute, March 2002.



**6. Advisory Panels.** The federal legislation should create advisory panels at the state level to assist the state in determining steps it should take to improve how it addresses the needs of people with barriers, including people with disabilities, in their TANF programs.

**7. Health Care.** The federal legislation should facilitate access to continued Medicaid or other health insurance coverage when recipients move from welfare to work. For any family, health coverage is essential. For a parent with a disability, continuing health care coverage when working may be the key support that allows the parent to work while addressing her medical needs. Transitional Medicaid Assistance (TMA) has helped to meet this need. For a parent with a disability, because TMA is time-limited, it will not fill the gap over time if the parent's job does not provide insurance — which is often the case for many low-wage jobs. However, it does help to ease the transition and, in states that have expanded Medicaid coverage to more parents at incomes higher than the very low TANF levels, the parent may be able to move into the expanded Medicaid coverage program after TMA. Because the Medicaid eligibility rules for children are more generous and the children can also enroll in the State Children's Health Insurance Program if they are over-income for Medicaid, TMA is most important for parents who typically have to meet more stringent income eligibility rules than children.<sup>58</sup> Studies in other income programs, such as SSI, have shown that fear of loss of health coverage is one reason that recipients with disabilities may be reluctant to work.<sup>59</sup> While there are no parallel studies in TANF, it would seem likely that similar concerns exist for parents with disabilities in TANF. The Transitional Medicaid Assistance program reauthorization period must parallel the reauthorization period for the rest of TANF.

**8. Service Coordination.** Because multiple services are available at the state and local level for adults and children with disabilities, the federal legislation should assist states to better coordinate and provide services needed by children with disabilities and their families, including coordination among state agencies to address the multiple challenges facing parents and their children with disabilities.<sup>60</sup>

**9. ADA and Section 504 Compliance.** The federal legislation should be consistent with federal civil rights protections for individuals with disabilities under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, enabling states to easily comply with all three Acts. These recommendations would help states and counties meet their legal obligations to implement the long-standing national policy set forth in Section 504 of the Rehabilitation Act and the ADA to ensure that people with disabilities have equal and meaningful access to their TANF-funded programs, including the ability to benefit from state programs that assist families in transitioning from welfare to self-sufficiency.

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<sup>58</sup> For information on state actions to expand Medicaid for parents, see Matthew Broaddus, Shannon Blaney, Annie Dude, Jocelyn Guyer, Leighton Ku, Jaia Peterson, *Expanding Family Coverage: States' Medicaid Eligibility Policies for Working Families in the Year 2000*, Center on Budget and Policy Priorities, February 2002, <http://www.cbpp.org/1-2-02health.pdf>.

<sup>59</sup> See, for example, *The Environment of Disability Policy Income: Programs, People, History and Context*, National Academy of Social Insurance, 1996, page 104.

<sup>60</sup> See Rosman et al, Issue Brief 3, page 4.

## **Conclusion**

There is now a very strong record that indicates that significant numbers of parents with disabilities and parents with children with disabilities are in the TANF program. The record also indicates that many of these families have been sanctioned and have not received the services and supports they need to succeed. Some of the states, using the flexibility that Congress gave them in 1996 and the TANF funds freed up due to falling cash assistance caseloads, have taken very practical steps to assist these families. The federal legislation should include provisions to ensure that people with disabilities receive the appropriate supports and services to enable them to transition to work successfully.

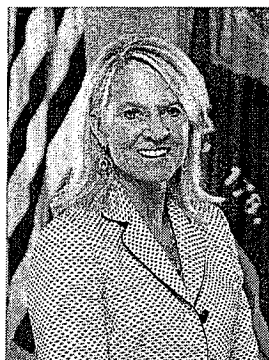
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The National Council on Disability wishes to acknowledge the contributions of Eileen Sweeney, Cary LaCheen, and Celane McWhorter to this paper.

# Delaware caregivers could get training from new legislation



Matthew Albright, The News Journal 5:53 p.m. EDT May 19, 2016



(Photo: Submitted photo)

Hospitals would be required to better equip friends and family to care for their loved ones after they are discharged under a proposed state bill.

Senate Bill 52, known as the CARE Act, would require hospitals to designate a caregiver for patients and make sure contact information for that person is placed in the statewide health record database. It would also require hospitals to make sure caregivers understand how to properly do all the things in the patient's discharge plan.

That could be anything from simply making sure the person gets to doctors' visits on time to more sensitive tasks like administering medicine, dressing a wound or operating medical machinery.

"Anyone who's been admitted to a hospital knows that a patient's recovery and care doesn't end at discharge," said Sen. Bethany Hall-Long, the bill's primary sponsor. "Oftentimes the responsibility for that care falls on a family member with no clinical training, which is unfair to the caregiver, hazardous to the patient, and expensive for the hospital if it results in readmission."

Patricia Maichle is director of the Delaware Developmental Disabilities Council and is herself a long-term caregiver for her daughter, who has a disability, and grandchildren.

"Caregivers' lives are unbelievably stressful from day to day," she said. "This will help us to lessen that stress."

**STORY: [Nearly half of Delawareans over 35 are caregivers \(/story/news/health/2016/01/19/face-caregiving-delaware/78311382/\)](#)**

**STORY: [Terminally ill could get marijuana if bill passes \(/story/news/politics/2016/05/19/marijuana-terminally-ill/84594764/\)](#)**

As one example, Maichle says a doctor's office stopped allowing her to schedule appointments and receive sensitive medical information on her daughter's behalf, citing federal privacy laws. If her name were placed in her daughter's health records, that headache might have been avoided.

"It will be the feeling that I don't have to explain myself, I don't have to jump through hoops, and that's what we face all the time," she said. "This wouldn't just help me, it would help hundreds and hundreds of people across the state."

Wayne Smith, president of the Delaware Health Association, says the bill would largely formalize what hospitals already are doing. Not only are there regulatory and accreditation requirements to maintain a full "continuum" of care, it is in hospitals' best interests to make sure there is good care because it minimizes the rate at which patients have to be re-admitted.

"We're all in favor of caregivers. They're an integral part of the system," Smith said.



Wayne A. Smith, president and chief executive officer of the Delaware Healthcare Association (Photo: Courtesy of the Delaware Healthcare Association)

However, Smith says his organization has some concerns about particular mechanics of the bill, like a requirement that training take place face-to-face. He worries that could lead to some patients staying in the hospital longer than necessary if the caregiver is late or misses an appointment, for example.

Hall-Long said she's open to working with the association, mentioning the possibility of allowing caregivers to receive training via video or phone communication.

# CARE Act moves out of committee, heading to Del. senate floor

Author: Lili Zheng, Reporter/Producer, [lili\\_zheng@wmdt.com](mailto:lili_zheng@wmdt.com)(mailto:lili\_zheng@wmdt.com)

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CARE Act moves out of committee, heading to Del. senate floor | WMDT.com Mobile

Page 1 of 1

DOVER, Del. -A Delaware bill that aims to better coordinate care after a patient has been discharged from the hospital has made it out of the Health and Social Services committee and is headed to the Senate floor.

Senate Bill 52, also known as the CARE Act, would provide a framework for caregivers after a patient is discharged.

According to bill sponsor District 10 Senator Bethany Hall-Long, the hospital would train caregivers in proper aftercare like cleaning wounds and administering special diets, for example.

Senator Hall-Long, a nurse herself, says without proper care, missteps could drag out recovery time. In some cases, it could even require readmission.

"On occasion when it's a change of shifts or an overcrowded ER and people are waiting for beds, certainly someone could slip out the door and miss their caregiver getting educated," she tells 47ABC.

According to Senator Hall-Long, the act also means hospitals will make a note when a patient does not have a designated caregiver.

We're told now that the bill has moved out of committee, it could reach the Senate floor in June.

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The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

**DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

In re:

First State ID#

J. B.

Appearances: Mary Beth Putnick, Esq., Community Legal Aid Society, Inc.  
Appellant's mother, witness  
Senior Case Manager, Division of Developmental  
Disability Services (formerly DMR), witness  
M.P.T., Appellant's physical therapist, witness

I. Jr., Esq., Counsel for First State Health Plan  
i, M.D., Medical Director for First State Health Plan, witness  
for First State Health Plan  
R.N., Pediatric Case Manager for First State Health Plan,  
witness for First State Health Plan

I.

(sometimes hereinafter "Appellant"), through counsel, Mary Beth Putnick, Esq., opposes a decision of First State Health Plan ("First State"), acting for the Delaware Medical Assistance Program ("DMAP"), to reduce his physical therapy services from twice per week to once per week, for treatment of symptoms and conditions associated with spastic quadriplegic pattern cerebral palsy. Appellant contends that the action taken by First State fails to meet procedural due process and is substantively not supported by the evidence.

First State contends that the requested services, twice per week visits from a physical therapist, fails to meet the following medical necessity guidelines:

- Be the least costly, appropriate, available health service alternative and will represent an effective and appropriate use of program funds;

- Be the most appropriate care or service that can be safely and effectively provided to the beneficiary, and will not duplicate other services provided to the beneficiary;
- Be sufficient in the amount, scope and duration to reasonably achieve its purpose; and
- Be timely, considering the nature and current state of the beneficiary's diagnosed condition and its effects and will be expected to achieve the intended outcomes in a reasonable time.

## II.

By letter dated February 15, 2001 (Exhibit 4), First State reduced the Appellant's physical therapy services from twice per week to once per week citing that the current level of therapy is for maintenance and that a home program should be in place with follow through by family and home health aides.

Pursuant to that denial, the Appellant filed an internal appeal. By letter dated April 4, 2001 (Exhibit 4) First State upheld its initial denial.

On April 30, 2001 the Appellant requested a State Fair Hearing. (Exhibit 5)

On May 11, 2001, First State filed a State Fair Hearing Summary (Exhibit 4). By letter dated May 17, 2001, the Appellant was notified that a fair hearing would take place in New Castle, Delaware on June 11, 2001. By letter dated June 6, 2001, the Appellant was notified that the fair hearing was re-scheduled to July 16, 2001.

The hearing was conducted on July 16, 2001 in New Castle, Delaware. This is the decision resulting from that hearing.

## III.

Pursuant to authority conferred by 31 *Del. C.* §§ 502 (5), 503 (b), and 505 (3), the Division of Social Services ("DSS") of the Delaware Department of Health and Social Services, operates the DMAP to provide benefits under Title XIX of the Social Security Act to certain qualifying individuals. DSS has contracted with First State, a managed care organization, to administer benefits under the DMAP. As an agent for DSS, First State is governed by the same rules, regulations, and principles that would otherwise control DSS's operation of the DMAP. In fact, this is explicitly required by regulation. *See DSSM* § 5304.3.

First State is a capitated<sup>1</sup> managed care organization ("MCO") that directs, on behalf of the Division of Social Services, benefits covered under Title XIX of the Social Security Act.

<sup>1</sup> See 42 CFR 434.2. A capitation fee is paid by DSS to managed care contractors "for each recipient enrolled under a contract for the provision of medical services under the State plan, whether or not the recipient receives the services during the period covered by the fee."

is a third party beneficiary of a contract between First State and the Division of Social Services. He is a seventeen-year-old male diagnosed with spastic quadriplegic pattern cerebral palsy, with a secondary diagnosis of mental retardation.

#### IV.

Jurisdiction for this hearing is pursuant to §5304 and §5304.3 of the Division of Social Services Manual (DSSM). Under §5304:

an opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim ... is denied... and to any recipient who is aggrieved by any action of the Division of Social Services... Only issues described in the notice of action sent to the appellant or issues fairly presented in the appellant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.

Section 5304.3 provides jurisdiction for a hearing of an adverse decision of a Managed Care Organization.

#### V.

At the time of the hearing was a seventeen-year-old male with spastic quadriplegic pattern cerebral palsy is fed by tube and is unable to verbally communicate. In 1993, underwent surgery for bilateral hamstring lengthening and in 1998 received posterior spinal fusion.

After evaluating progress notes and orders prepared by his physical therapist and physician (Exhibit 1), which indicate that physical therapy is appropriate 1-2 times per week, First State determined that a reduction to one session per week of physical therapy was appropriate. (Exhibit 4). On February 15, 2001, First State reduced the Appellant's physical therapy services to once per week on the basis that the current level of therapy is for maintenance and that a home program should be in place with follow through by family and home health aides. First State's decision was appealed internally. By letter dated April 4, 2001, First State upheld its initial denial on the basis that the physical therapy services do not meet the State of Delaware's definition of medical necessity. On May 30, 2001, Appellant filed a request for a Fair Hearing with the Division of Social Services seeking to overturn the reduction of physical therapy services. Pending the outcome of the hearing, benefits have been maintained at the twice per week level.

#### VI.

Appellant maintains that as a condition precedent to termination or reduction of services, the MCO is required to conduct a timely face-to-face assessment of the patient. They base this contention on a January 27, 2000 Medicaid Policy Letter attached as Exhibit "C" to Exhibit 2. This letter, in pertinent part, states:

"...the MCO, or one of its Agencies (i.e.; a Home Health Agency) must conduct a face to face meeting and/or assessment, preferably at the site the care is given, with the Medicaid recipient or a parent." (Emphasis added)

Appellant reads into this policy letter a requirement that is not present. Appellant asserts, that an MCO or one of its Agencies be directed to perform an assessment *of the appropriateness of a reduction in services*. The policy does not require this action, only that a face-to-face assessment take place. In this case, the Appellant's physical therapist, \_\_\_\_\_, MPT, was providing regular and timely assessments of the Appellant. Therefore, there is no question that a timely face-to-face assessment has been performed, consistent with the requirements of DSS Medicaid policy.

## VII.

Appellant also maintains that First State has failed to establish that there was a change in the Member's medical condition or needs prior to reducing the Member's physical therapy authorization to one visit per week, or that good cause exists for the reduction of services.

The basis for the rule, which requires that Medicaid benefits can not be terminated or reduced absent *a demonstration of a change in circumstances* or other good cause (*See, Collins v. Eichler*, C.A. Mo. 90A-JL2 (Del.Super.1991)(Emphasis added), is the protection of the Appellant's property interest in medical care from arbitrary decisions by the state Medicaid offices and their agents.

While First State agrees that there has been no change in circumstances, they argue that good cause exists for the reduction in services because the treatment plan allows for physical therapy 1-2 times per week, and since their reduction is within the treatment plan, their decision to reduce benefits to once per week is proper. At the hearing, First State testified that while passive stretching is indicated on a daily basis and the Appellant is receiving these services from a physical therapist twice per week, these services should be performed by the Appellant's mother, \_\_\_\_\_ (it has been agreed by both parties that Delaware state law does not allow these services to be performed by a home health aide). (*See also*, Exhibit "A" of Exhibit 2). In fact, in their reduction of benefits letters dated February 15, 2001 and April 4, 2001, First State indicates that the purpose of the visit from the physical therapist is not to perform actual physical therapy on the Appellant, but rather to, "allow the therapist to evaluate the patient and adjust the home program." Appellant's physical therapist and Appellant's mother both testified that Appellant's mother is physically unable to perform passive stretching to a therapeutic level while Ms. \_\_\_\_\_ testified that she is unable to perform passive stretching similar to that provided by the physical therapist. During the home assessment by \_\_\_\_\_, R.N., Pediatric Case Manager for First State, on March 5, 2001, after the initial denial, Ms. \_\_\_\_\_ neither inquired about Ms. \_\_\_\_\_ ability to perform passive stretching nor requested that Ms. \_\_\_\_\_ demonstrate the physical therapy services she is performing for her son.



..., Senior Case Manager for the Division of Developmental Disability Services testified that the Appellant is currently nursing home eligible and that most people with the Appellant's diagnosis are in nursing homes. She further testified that Appellant's mother, is the primary caregiver and provides almost all of the care for her son.

... Medical Director for First State and also a licensed physical therapist, testified that the purpose of physical therapy was to maintain the patient's function, position and comfort, and to prevent further losses. She states that her review of the progress notes, physician orders (Exhibits 1 & 2) and her general knowledge of the disease lead to her conclusion that once per week physical therapy, including passive range of motion and passive stretching were indicated, notwithstanding her testimony that passive stretching should be performed daily. Dr. ... further testified that she never examined or worked with the Appellant in his physical therapy regimen. Here the Appellant's treatment goals and plan has not changed since First State took over Appellant's care in January 2000. They were and continue to be maintenance related, as no improvement is expected.

At a minimum, "due process requires that government officials refrain from acting in an irrational, arbitrary or capricious manner." (*Mayer v. Wing*, 922 F.Supp. 902, 911 (S.D. New York 1996).

Here, it is admitted by all parties that the Appellant's condition has been relatively stable since the time of the initial authorization for twice per week physical therapy services. It is also admitted by First State that passive stretching is indicated in this case on a daily basis, so as to prevent further contractures and to minimize muscle spasticity. Finally, it is agreed that a home health aide is not permitted to perform passive stretching on the Appellant. First State maintains that ..., the Appellant's physical therapist, should have instructed the Appellant's mother on passive stretching techniques to be performed under his indirect supervision so as to alleviate the need for First State to provide a physical therapist more than once per week. As part of his family education, both ... and ... testified that ... was instructed in passive stretching technique, among others.

First State's position is not actually that the physical therapy services that they reduced in their letter of February 15, 2001 (Exhibit 4) are not medically necessary, but rather that they believe an unskilled and unlicensed party can provide the appropriate level of service. They have, in fact, testified that passive stretching is indicated on a daily basis. They further maintain that their decision to reduce physical therapy services *by a physical therapist* is based upon an analysis of the Appellant's medical records and the in-home assessment performed by ..., R.N., after the initial denial. Because these medical records do not indicate that a change in services is indicated and First State has failed to produce any reasonable evidence to support their contention that good cause exists for their reduction of physical therapy services to once per week, First State's decision to reduce physical therapy benefits is arbitrary.

The court in *Eichler v. Collins, supra*, noted that,

“... it is clear that in administrative hearings a finder of fact *must* give more weight to evidence from treating physicians than to evidence from reviewing physicians, ...” (Emphasis added).

In this case, the physical therapy progress notes and physician orders from the Appellant's treating health care providers show no change in treatment plan, no change in the goals of therapy, and no other changes in circumstances that would justify First State's reduction of physical therapy benefits to the Appellant. Therefore, in order to have appropriately reduced benefits and show that their decision is not arbitrary, First State must show that good cause exists for the reduction of benefits.

Here, First State maintains that the treatment plan and physician orders allow for physical therapy one (1) to two (2) times per week, and also provided testimony that passive stretching is indicated daily. They further acknowledged that a home health aide is legally prohibited from providing these services, yet failed to provide any testimony evidencing the evaluation of the Appellant's mother's ability to perform these medically necessary services while maintaining that the mother, and not the physical therapist, is the appropriate person to be performing the aggressive passive stretching required by her son. Due process demands that decisions affecting government benefits be made according to “ascertainable standards” that are applied in a rational and consistent manner. *Mayer v. Wing, supra* at 911. Here, there are simply no ascertainable standards articulated by First State, but merely supposition that Appellant's mother is capable of performing aggressive passive stretching at an appropriate level of care and in an appropriate manner.

First State has failed to meet its burden of proving that there is a change in circumstances or that good cause exists necessitating a reduction in services. In this case, there is no showing by First State that Appellant's medical condition or treatment goals are changed, or that good cause exists to reduce Appellant's physical therapy benefits to once per week.

A review of the testimony and documentary evidence dictates that First State has failed to provide a reasonable or rational basis for its' decision to deny authorization for payment for twice per week physical therapy services. Since First State's decision to reduce physical therapy benefits to once per week does not comply with the protections afforded under due process and they have not made a *prima facie* case for reduction of physical therapy services to once per week, the decision to reduce authorization to once per week physical therapy cannot be sustained on the record.

X.

For these reasons, the decision of First State to deny authorization for payment of twice per week physical therapy services for ... is REVERSED.

Date: October 16, 2001

*Michael L. Steinberg/vmd*  
MICHAEL L. STEINBERG  
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE DIVISION OF SOCIAL SERVICES

OCT 19 2001

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POSTED

MLS/vmd

cc: \_\_\_\_\_ Esq., counsel for First State  
Mary Beth Putnick, Esq., counsel for Jamie Brooks  
, Chief Administrator Managed Care



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES

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MEMORANDUM

DATE: January 29, 2016

TO: All Members of the Delaware State Senate  
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: S.B. 134 (Homeless Bill of Rights)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 134 which provides persons experiencing homelessness protection from discrimination while on the streets and when seeking access to housing, employment, and temporary shelter as necessary to end their episode of homelessness. This Bill amends Title 6 by adding Chapter 78, "Homeless Persons Bill of Rights," which provides basic legal and civil protections and ensures equal treatment for persons experiencing homelessness in Delaware. SCPD endorses the proposed legislation given the high incidence of persons with disabilities in the homeless.

As background, similar legislation creating a bill of rights for homeless individuals has been passed in a few states (e.g. Rhode Island; Illinois) and municipalities. See attached November 7, 2015 Wikipedia article. In 2013, the Delaware Homeless Planning Council issued a report which included a recommendation to promote adoption of a homeless bill of rights in Delaware (Executive Summary and excerpt attached). The report (at p. 8) discusses the prevalence of persons with disabilities among the homeless population. In June, 2014, legislation (H.B. 373) was introduced to establish such a bill of rights. It was tabled in the House Housing and Community Affairs Committee.

S.B. 134 is identical to the House bill tabled in 2014. It is intended to prevent discrimination based on homelessness in a variety of contexts, including using public places, seeking employment, applying for housing, seeking temporary shelter, and voting. Local governments would be barred from enacting ordinances or regulations inconsistent with the listed rights (e.g. overbroad vagrancy laws). An aggrieved person could file a civil action for and obtain damages and attorney's fees for violations of the law.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position and observations on the proposed legislation.

cc: Homeless Planning Council  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

SB 134 homeless bill of rights 1-27-16

# Homeless Bill of Rights

From Wikipedia, the free encyclopedia

The **Homeless Bill of Rights** (also **Homeless Person's Bill of Rights** and **Acts of Living bill**) refers to legislation protecting the civil and human rights of homeless people. These laws affirm that homeless people have equal rights to medical care, free speech, free movement, voting, opportunities for employment, and privacy. Legislation of this type has become law in Rhode Island, Connecticut and Illinois and is under consideration by several other U.S. states.

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## Controversy over Legislation Affecting the Homeless

An issue in homeless bills of rights are local codes that outlaw loitering, vagrancy, sitting or lying on the sidewalk, begging, eating in public, and other behaviors. These codes disproportionately affect homeless people.<sup>[1]</sup>

The National Law Center on Homelessness and Poverty concludes its report on the "criminalization of homelessness" with an exhortation to change the laws:<sup>[1]</sup>

Laws that criminalize visible homelessness are immoral and offend our basic human instincts. They are contrary to the fundamental religious and political principals from which the American people seek guidance, and their existence demonstrates that we have fallen vastly short of our religious and foundational aspirations.

Business interests, represented by the California Chamber of Commerce, have called Assemblymember Tom Ammiano's Homeless Person's Bill of Rights <sup>[2]</sup> a "job killer" which would create "costly and unreasonable mandates on employers."<sup>[3]</sup> Some municipalities and local politicians also oppose the laws, which impose state authority to overturn local regulations. San Francisco Supervisor Scott Wiener commented:<sup>[4]</sup>

Our local laws against forming encampments, passing out and blocking sidewalks, and otherwise monopolizing public spaces would be wiped off the books. Think we have a street behavior problem now? Just wait until this passes.

The *Los Angeles Times* suggested in an editorial that the Homeless Bill of Rights does not go far enough unless accompanied by economic resources allocated to provide housing.<sup>[5]</sup> Joel John Roberts, CEO of People Assisting the Homeless, argued similarly that the Homeless Bill of Rights may be toothless and even enabling. Roberts writes:<sup>[6]</sup>



Homeless Bill of Rights laws affirm that people living on the street have a reasonable expectation of privacy in their property.



The "Beds Not Bars" slogan suggests that society must help homeless people instead of outlawing their behavior.



Skid Row in Los Angeles is sometimes mentioned as an area that would deteriorate if homelessness was not regulated

There needs to be a balance between criminalizing homelessness with ordinances that persecute people who are forced to live on the street, and giving those same people the right to do whatever they want without any consequences.... A more powerful Bill of Rights for people who are homeless, however, would consist of one simple right: the right to housing.

## Legislation in the United States

The idea of a "Homeless Bill of Rights" has been discussed periodically in the U.S., and was presented formally by a group of New York City ministers on Martin Luther King, Jr. Day, 1992.<sup>[7]</sup> City Councilperson Peter Vallone introduced several versions of such a Bill in 1998, despite strong opposition from Mayor Rudy Giuliani.<sup>[8]</sup>

Puerto Rico and some states have passed laws adding homeless people to their lists of groups protected against hate crimes.<sup>[9]</sup>

### Rhode Island

Rhode Island was the first state in the U.S. to pass a "Homeless Bill of Rights". John Joyce, who was homeless for a period in his life, is responsible for the initial introduction of the bill. The Rhode Island law, S-2052, was ratified in the state of Rhode Island on June 21, 2012 and signed into law by Governor Lincoln Chafee on June 27.<sup>[10]</sup> It amends the Rhode Island Fair Housing Act with wording intended to protect the rights of homeless people and prevent discrimination against them. It is the first U.S. state-level law designed to protect the rights of homeless people.

#### Excerpt from Rhode Island bill S-2052

- 34-37.1-3. Bill of Rights. – No person's rights, privileges, or access to public services may be denied or abridged solely because he or she is homeless. Such a person shall be granted the same rights and privileges as any other resident of this state. A person experiencing homelessness:
1. Has the right to use and move freely in public spaces, including, but not limited to, public sidewalks, public parks, public transportation and public buildings, in the same manner as any other person, and without discrimination on the basis of his or her housing status;
  2. Has the right to equal treatment by all state and municipal agencies, without discrimination on the basis of housing status;
  3. Has the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider;
  4. Has the right to emergency medical care free from discrimination based on his or her housing status;
  5. Has the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to his or her housing status;
  6. Has the right to protection from disclosure of his or her records and information provided to homeless shelters and service providers to state, municipal and private entities without appropriate legal authority; and the right to confidentiality of personal records and information in accordance with all limitations on disclosure established by the Federal Homeless Management Information Systems, the Federal Health Insurance Portability and Accountability Act, and the Federal Violence Against Women Act; and
  7. Has the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence.

The well-established Rhode Island Coalition for the Homeless (and a newer subgroup called Rhode Island Homeless Advocacy Project) collaborated with the more radical Occupy-Providence group to lobby successfully for the Bill.<sup>[11][12]</sup>

The law does not guarantee positive rights such as housing or food, and some homeless advocates are concerned that it has not had enough impact.<sup>[13]</sup>

### Connecticut

On June 5, the Connecticut Assembly passed a Homeless Bill of Rights (SB 896) with seven protections similar to those passed in Rhode Island. Pending signature by Governor Dan Malloy, the bill would take effect on October 1, 2013. The Connecticut law significantly includes freedom from police harassment in its first section.<sup>[14]</sup>

#### Excerpt from Connecticut bill SB 896

(a) There is created a Homeless Person's Bill of Rights to guarantee that the rights, privacy and property of homeless persons are adequately safeguarded and protected under the laws of this state. The rights afforded homeless persons to ensure that their person, privacy and property are safeguarded and protected, as set forth in subsection (b) of this section, are available only insofar as they are implemented in accordance with other parts of the general statutes, state rules and regulations, federal law, the state Constitution and the United States Constitution. For purposes of this section, "homeless person" means any person who does not have a fixed or regular residence and who may live on the street or outdoors, or in a homeless shelter or another temporary residence.

(b) Each homeless person in this state has the right to:

1. Move freely in public spaces, including on public sidewalks, in public parks, on public transportation and in public buildings without harassment or intimidation from law enforcement officers in the same manner as other persons;
2. Have equal opportunities for employment;
3. Receive emergency medical care;
4. Register to vote and to vote;
5. Have personal information protected;
6. Have a reasonable expectation of privacy in his or her personal property; and
7. Receive equal treatment by state and municipal agencies.

(c) Each municipality shall conspicuously post in the usual location for municipal notices a notice entitled "HOMELESS PERSON'S BILL OF RIGHTS" that contains the text set forth in subsection (b) of this section.

## Illinois

On August 22, 2013 Illinois became the second state to adopt a homeless bill of rights.<sup>[15]</sup>

### Excerpt from Illinois bill SB 1210

#### Section 10. Bill of Rights.

(a) No person's rights, privileges, or access to public services may be denied or abridged solely because he or she is homeless. Such a person shall be granted the same rights and privileges as any other citizen of this State. A person experiencing homelessness has the following rights:

1. the right to use and move freely in public spaces, including but not limited to public sidewalks, public parks, public transportation, and public buildings, in the same manner as any other person and without discrimination on the basis of his or her housing status;
2. the right to equal treatment by all State and municipal agencies, without discrimination on the basis of housing status;
3. the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider;
4. the right to emergency medical care free from discrimination based on his or her housing status;
5. the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to his or her housing status;
6. the right to protection from disclosure of his or her records and information provided to homeless shelters and service providers to State, municipal, and private entities without appropriate legal authority; and the right to confidentiality of personal records and information in accordance with all limitations on disclosure established by the federal Homeless Management Information Systems, the federal Health Insurance Portability and Accountability Act, and the federal Violence Against Women Act; and
7. the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence.

(b) As used in this Act, "housing status" has the same meaning as that contained in Section 1-103 of the Illinois Human Rights Act.

## California

State Assemblymember Tom Ammiano (D-San Francisco) introduced a Homeless Person's Bill of Rights<sup>[2]</sup> to the California Assembly in December 2012.<sup>[16]</sup> In May 2013, the Appropriations Committee postponed debate until January 2014.<sup>[4]</sup> Assemblymember Ammiano said in a statement that his bill was suspended largely because of the costs of setting up new infrastructure and enforcing the new rules.<sup>[4]</sup> A report by the Chair of the Assembly Appropriations Committee estimates that setting up hygiene centers across the state would cost \$216 million, with ongoing operating costs of \$81 million annually.<sup>[2]</sup> The report also estimates that setting up facilities for annual law enforcement reports would cost \$8.2 million, with ongoing operating costs of \$4.1 million annually.<sup>[2]</sup> Without providing estimates, the report notes that other costs, some potentially significant, include those associated with the right to counsel conferred to the homeless for defending against infractions, and those associated with defending against lawsuits brought against cities by the homeless alleging violations of rights conveyed under the bill.<sup>[2]</sup>



California's Homeless Bill of Rights (Right2Rest Act), SB 608, was introduced by Senator Carol Liu (D) in February 2015. The "Right to Rest Act," would, among other things, protect the rights of homeless people to move freely, rest, eat, perform religious observations in public space as well as protect their right to occupy a legally parked motor vehicle. Also refer to UC Berkeley's Policy Advocacy Clinic Presents: California's New Vagrancy Laws a New Report on the Growing Criminalization of Homeless People in California.

A vote was not rendered during the 2015 process in the Housing and Transportation Committee and was asked to come back for a vote in the next California legislation session with amendments in order to get the necessary votes and pass to the next house. Please refer to the Western Regional Advocacy Project (WRAP) in San Francisco, who drafted the legislation along with other homeless, housing, public/social policy advocates. The Right2Rest is the first of three campaigns in California's Homeless Bill of Rights (Right2Rest, Legal Representation, and Hygiene Centers). Both Oregon and Washington states have same/similar legislation and are working with WRAP to draft and pass a Homeless Bill of Rights in their perspective states. Homes should be a human right.

## See also

- Bill of Rights
- Human rights in the United States
- Aggressive panhandling

## References

1. The National Law Center on Homelessness and Poverty, "Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities ([http://www.nlchp.org/view\\_report.cfm?id=366](http://www.nlchp.org/view_report.cfm?id=366))", November 2011.
2. Assem. Bill No. 5 (2013-2014 Reg. Sess.) ([http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB5](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB5))
3. "Updated homeless 'bill of rights' passes CA legislative committee (<http://blogs.sacbee.com/capitolalert/latest/2013/04/updated-homeless-bill-of-rights-passes-committee.html>)"; *Sacramento Bee*, 23 April 2013.
4. T.J. Johnston, "State Homeless 'Bill of Rights' Put on Hold Until Next Year (<http://sfpublicpress.org/news/2013-05/state-homeless-bill-of-rights-put-on-hold-until-next-year>)"; *San Francisco Public Press*, 30 May 2013.
5. Editorial: "Homeless rights bill is wrong: There's no point in criminalizing homelessness. But a proposed 'bill of rights' is not the answer either. What the homeless really need are resources (<http://www.latimes.com/news/opinion/editorials/la-ed-homeless-bill-of-rights-20130111,0,1281934.story>)"; *Los Angeles Times*, 11 January 2013.
6. Joel John Roberts, "Is a Homelessness Bill of Rights Just a Bill of Goods? ([http://www.huffingtonpost.com/joel-john-roberts/homelessness-bill-of-rights\\_b\\_1617389.html](http://www.huffingtonpost.com/joel-john-roberts/homelessness-bill-of-rights_b_1617389.html))"; *Huffington Post*, 22 June 2012.
7. Hatchett, David. "Homeless 'Bill of Rights' to revive Dr. King's 'fading voice'", *New York Amsterdam News*, 11 January 1992; accessed via ProQuest (<http://search.proquest.com/docview/226364509>), 11 July 2013.
8. Glenn Thrus, "Vallone Plans to Beat Rudy on Homeless Rights Bill (<http://www.citylimits.org/news/articles/504/vallone-plans-to-beat-rudy-on-homeless-rights-bill#.Ud7tBb8mz34>)"; *City Limits*, 31 August 1998.
9. "Hate Crimes Against the Homeless: An Organizing Manual for Concerned Citizens ([- 11. Robert Wengronowitz, "Lessons From Occupy Providence", \*The Sociological Quarterly\* 54\(2\), March 2013. Accessed via Wiley \(<http://onlinelibrary.wiley.com/doi/10.1111/tsq.2013.54.issue-2/issuu> 3 July 2013. "OP would not have been able to negotiate the deal with the City without the decades-long effort by RICH and later RIHAP to create organizational infrastructure—for example, communication networks, development of coalitional relationships, and media contacts. In fact, RICH's infrastructure itself significantly supported the founding of RIHAP. Rhode Island became the first state to pass a Homeless Bill of Rights in late June 2012, an action less likely without RICH, RIHAP, OP, and their ability to work across differences. For instance, some RICH members were concerned that OP was "too radical," but OP was fortunate in that RICH considers seriously the concept of coalition building. Ryczek \(2011, capitalization in original\) defended the collaboration this way to RICH members: 'Coalitions rarely see eye to eye on each and every single factor concerning their common interests... We certainly...will not agree on all issues. Yet, where common ground and common goals DO exist it must be our role to move on such commonalities.'"
  12. Mallory Moretti, "Occupy Prov. marches for homelessness: Governor allows tents on State House law \(\[http://www.wpri.com/dpp/news/local\\\_news/providence/occupy-providence-march-rally-for-homelessness-affordable-housing-in-rhode-island\]\(http://www.wpri.com/dpp/news/local\_news/providence/occupy-providence-march-rally-for-homelessness-affordable-housing-in-rhode-island\)\)"; \*WPRI\*, 10 December 2011.
  13. Jake Grovum, "Nation's 1st Homeless Bill of Rights Slow to Cause Change in Rhode Island \(<http://www.governing.com/news/state/si-first-homeless-bill-of-rights.html>\)"; 12 November 2012.
  14. Scott Keyes, "Connecticut Passes Landmark 'Homeless Person's Bill Of Rights' Law \(<http://thinkprogress.org/justice/2013/06/12/2139181/connecticut-homeless/?mobile=nc>\)"; \*ThinkProgress\*, 12 June 2013.
  15. <http://www.chicagohomeless.org/illinois-becomes-2nd-state-to-enact-a-homeless-bill-of-rights/>
  16. Kevin Fagan, "Tom Ammiano backs homeless rights bill \(<http://www.sfgate.com/news/article/Tom-Ammiano-backs-homeless-rights-bill-4091599.php>\)"; \*San Francisco Chronicle\*, 4 December 2012.](http://www.nationalhomeless.org/publications/hatecrimes/hatecrimes>National Coalition for the Homeless</a>, January 2012.</li>
<li>10. )

## External links

- Text (<http://webservice.rilin.state.ri.us/PublicLaws/law12/law12356.htm>) of the Rhode Island bill

- Text (<http://www.ilga.gov/legislation/fulltext.asp?DocName=09500HB1878eng&GA=95&SessionId=51&DocTypeID=HB&LegID=30714&DocNum=1878&GAID=9&Session=>) of the Illinois bill
- Interview (<http://occupiedprovidencejournal.wordpress.com/tag/homeless-bill-of-rights/>) with late Rhode Island homeless advocate John Joyce

Retrieved from "[https://en.wikipedia.org/w/index.php?title=Homeless\\_Bill\\_of\\_Rights&oldid=689414556](https://en.wikipedia.org/w/index.php?title=Homeless_Bill_of_Rights&oldid=689414556)"

Categories: [Homelessness in the United States](#) | [Rhode Island law](#) | [Human rights instruments](#) | [Homelessness and law](#)

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# Ending Discrimination for Delaware's Homeless

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## *Protecting the Rights of Our Most Vulnerable Citizens*

This report brings attention to the families and individuals in Delaware experiencing homelessness, or at risk of homelessness, who face discrimination due to their housing status, source(s) of income, and/or disability status while on the streets and when seeking access to housing, employment, and temporary shelter.

*Prepared by the Policy Committee on Ending Homelessness in Delaware, a Working Group of the Homeless Planning Council of Delaware*

March 2013

## **Policy Committee on Ending Homelessness in Delaware**

A Working Group of the Homeless Planning Council of Delaware

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## Ending Discrimination for Delaware's Homeless

Protecting the Rights of Our Most Vulnerable Citizens

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### EXECUTIVE SUMMARY

This report aims to bring the attention of Delaware legislators to the families and individuals experiencing homelessness, or at risk of homelessness, who face discrimination due to their housing status, source of income, and disability status while on the streets and when seeking access to housing, employment, and temporary shelter.<sup>1</sup> In July 2012, Rhode Island passed the first Homeless Persons' Bill of Rights in the nation, providing protections for all citizens of their State regardless of their housing status.

Discriminatory practices aggravate the problem by unnecessarily prolonging experiences of homelessness and burdening the State's criminal justice, homeless services, and human services systems. As part of a comprehensive strategy to prevent and end homelessness in Delaware we must ensure that persons experiencing and at risk of homelessness receive equal treatment under the law, and have equal access to the goods and services necessary to end their homelessness.

### **HOMELESSNESS, DISCRIMINATION, AND CRIMINALIZATION**

➤ **DISCRIMINATION IN ACCESS TO TEMPORARY SHELTER:** Temporary shelters in Delaware discriminate against persons due to their disability status, whether physical or psychiatric disability. Unlike other citizens in Delaware, disabled persons experiencing or at risk of homelessness are subject to overt housing discrimination by the very system meant to serve them.

#### **POLICY RECOMMENDATIONS:**



- Develop a Homeless Persons' Bill of Rights for the State of Delaware that requires all shelter providers to comply with the American Disabilities Act and Delaware's Fair Housing Act.

➤ **CRIMINALIZATION ON THE STREET:** Persons living on the streets are vulnerable to policies that target the homeless for performing necessary life-sustaining activities (e.g. eating, sleeping, sitting, standing) that they have no option but to perform in public places. Laws that make it illegal to do things that persons experiencing homelessness must do as a result of their homeless status criminalize homelessness. Persons experiencing homelessness are frequently treated unequally by authorities with regards to their use of public space in our communities. This criminalization of homelessness

<sup>1</sup> See APPENDIX A: Definitions

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places unnecessary burdens on Delaware's criminal justice system. It also saddles the homeless with fines they cannot afford, and criminal records that inhibit their ability to access housing, employment, and the essential human services they need to end their homelessness.

### **POLICY RECOMMENDATIONS:**

- Develop a Homeless Persons' Bill of Rights for the State of Delaware that ensures equal treatment under the law, equal access to and use of public space for all Delaware citizens, regardless of their housing status.
- Pursue alternative justice system strategies to criminalization such as police training, human services and police department collaborations, police department homeless liaisons, and homeless diversion or community courts.
- Review municipal and state codes, and their enforcement, to ensure that laws do not unfairly target the homeless due to their housing status.

## **HOUSING AND EMPLOYMENT DISCRIMINATION**

➤ **FAIR HOUSING AND EQUAL EMPLOYMENT OPPORTUNITY:** Persons experiencing or at risk of homelessness are frequently denied access to housing and employment for which they would otherwise be eligible due to practices by landlords and employers that discriminate against applicants based on their housing status and/or source(s) of income. These practices aggravate the problem by denying individuals and families equal opportunities to access the housing and income they need to end their homelessness.

### **POLICY RECOMMENDATIONS:**

- Develop a Homeless Persons' Bill of Rights for the State of Delaware that protects all
- ✱ Individuals and families in Delaware experiencing or at risk of homelessness from discrimination based on their housing status and source of income.
- Add "housing status" and "source(s) of income" to Delaware's Fair Housing Act and Delaware's Equal Opportunity Law.

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In this Bill they define the term "housing status" as "the status of having or not having a fixed or regular residence, including the status of living on the streets or in a homeless shelter or similar temporary residence."<sup>8</sup>

### D. EQUAL ACCESS TO TEMPORARY SHELTER

The Fair Housing Amendments Act of 1988 (FHAA) prohibits discrimination in the sale or rental of housing on the basis of disability. As a result of the Olmstead settlement with the Department of Justice in July 2011, Delaware has made significant progress towards ensuring that individuals with a diagnosed psychiatric disability have access to permanent community-based housing. However, it is also necessary to ensure that psychiatrically and physically disabled persons experiencing or at risk of homelessness are protected from discrimination with regards to equal access to temporary shelter in situations of crisis. In this report, "temporary shelter" means any emergency, transitional, or temporary shelter provided to individuals and/or families experiencing homelessness by any federal, state, faith-based, non-profit, or private agency.

Eight hundred and forty-six (37%) of the adults served by Delaware's homeless services system in FY 2011 reported having a disability of long duration<sup>9</sup>. Approximately 10% of Delaware's homeless in 2011 were physically disabled.<sup>10</sup> During Delaware's Registry Week in June 2012 for the 100,000 Homes Campaign, volunteers located and interviewed a total of 186 homeless individuals living on the streets in Delaware over the course of 3 mornings. Of those persons, 78% reported one or more behavioral health issue, while 40% reported a dual diagnosis of mental illness and substance abuse disorder.<sup>11</sup> In Delaware's 2012 Point in Time survey, 27% of individuals reported having a diagnosed mental illness, and 24% reported having a substance abuse problem.

Homeless individuals diagnosed with physical and psychiatric disabilities, including co-occurring disorders (recurring mental illness *and* recurring substance abuse disorder), are at greater risk of being denied access to shelter than the general homeless population in Delaware due to their disability

<sup>8</sup> Rhode Island Homeless Persons' Bill of Rights, 34-37-3, 27-29

<sup>9</sup> Homeless Planning Council of Delaware. (2012). Delaware HMIS FY2011 Data Report.

<sup>10</sup> Homeless Planning Council of Delaware (2011). Point in Time Data.

<sup>11</sup> Homeless Planning Council of Delaware. (2012). Delaware Registry Week Community Brief Back Fact Sheet.