



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

March 3, 2006

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

Dear Secretary Leavitt:

The Consortium for Citizens with Disabilities (CCD) is a coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, DC. We work together to advocate for federal policy that ensures the self determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD TANF Task Force seeks to ensure that families that include persons with disabilities are afforded equal opportunities to engage in critical TANF programs — including both basic assistance programs and employment-related services that can help parents find and retain jobs — and appropriate accommodations in those programs and TANF-related requirements.

We are writing to request that you take steps to ensure that the TANF regulations which your Department will issue in the coming months are fair to people with disabilities and give states the flexibility they need to assist individuals with disabilities to move to greater independence. We also urge you to consider the unique circumstances of parents with children with disabilities and other family members with disabilities and ensure that states are able to count as work activity the time that a parent spends caring for a family member with a disability. We also request that you meet with us to talk about these important issues.

We believe that, by designing policies that take into account the needs of families with a member with a disability, HHS can help the states move greater numbers of these families off of welfare and toward greater independence. Without reasonable supports and appropriate regulatory flexibility, however, families with a family member with a disability could be assigned to inappropriate work activities that both fail to reflect their circumstances and are far less likely to help parents with disabilities secure and retain jobs and move toward independence. When parents with

disabilities (and parents caring for family members with disabilities) are assigned to inappropriate activities, they often — through no fault of their own — fail at the work activity and are subject to inappropriate sanctioning and the crises that flow from abrupt — and often prolonged — loss of income support. Without appropriate regulatory flexibility, we also believe that HHS will be signaling to states that they need not comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. This would be unacceptable from a policy standpoint, violate the letter and spirit of these important laws designed to protect the rights and interests of Americans with disabilities, and be inconsistent with HHS's current policies.¹

Specifically, we are requesting that any regulations issued by HHS do the following:

1. Define the various work activities listed in the TANF statute to specifically provide that a state will receive work activity credit for a parent's participation in rehabilitative services if the state has determined that the person has a disability and such services are needed to assist the person to move to greater independence, including work. There are several ways that HHS could craft the regulations that would be in keeping with the TANF statute and ensure that individuals with disabilities are afforded the opportunity to engage in appropriate work activities (see below). There should be no time limit placed on the period for which such participation can count as work activity — that should be determined based upon the person's disability and how long he or she will need to participate in the services in order to succeed in moving to greater independence, including work.
2. Provide that states will receive work activity credit — either under the definition of community service or another non-time-limited work activity that counts towards all required hours of participation (not just the hours in excess of the first 20) — for the time a parent spends caring for a child with a disability or an adult relative with a disability.

With regard to giving states work activity credit for time individuals spend in rehabilitation services or a parent spends caring for a child or adult relative with a disability, we believe that HHS can include these activities under “community service.” Activities that help individuals with disabilities — including parents with disabilities or caring for a child or other family member with a disability — become more integrated into the broader community are activities that provide an important service to the community and make those communities stronger. This includes mental health counseling, substance abuse treatment, training focused on a person's learning disability, and other rehabilitative services a person with a disability may need to move to greater independence. Activities that help individuals with disabilities become more employable and complete daily activities more independently, and activities that can help adults become more involved and engaged parents in schools, religious institutions, after-school activities, and other community institutions all provide a valuable service to the community.

HHS also could count a parent caring for a child with a disability or an adult relative with a disability simply as work. In addition, some activities that relate to helping

¹ We commend the Department for the very fine Guidance on TANF and the ADA that the Office for Civil Rights issued in 2001, following up on earlier guidance in 1999, and for the video training tape on the Guidance, produced by OCR and included on HHS's website in 2005.

parents develop work skills should be counted as vocational education training, even if the training or skills provided are more related to helping an individual with a disability learn to address the obstacles to employment created by their disability, rather than providing the job skills for a particular occupation.

It should be noted that many activities that could help individuals with disabilities could be considered “job readiness” activities. However, the short statutory time limit on these activities means that this should not be the only category under which activities designed to aid those with disabilities move toward independence are housed. For states to have the flexibility they need to meaningfully serve individuals with disabilities, they will need full flexibility to provide more than four consecutive weeks of tailored services. Often the person will need such services for many months — and some will need services for a longer period. If under the regulations, job readiness were the only category under which such activities could “count,” the regulations themselves would create a barrier to people with disabilities receiving the types of services and supports they need in order to have full and meaningful access to the TANF program, as required by the ADA and Section 504. Such a structure would create only the illusion that such services would be countable for people with disabilities who need them. Finally, as we noted with regard to caring for a family member with a disability, any characterization of these activities should allow them to be counted towards all required hours of participation, not just the hours in excess of the first 20 hours.

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

As a practical matter, as advocates who want people with disabilities to have full opportunity to work, we do not believe that protections built in to the penalty provisions, such as those described in #3, above, will have the same effect on serving people with disabilities that providing states with work activity credit will have. States, quite reasonably, prefer not to be labeled as having “failed” to meet a federal standard and are likely to design their programs to meet the requirements as well as to avoid penalties. The fact that they may be able to get penalty relief for serving people with disabilities — while useful — may not ensure that states feel comfortable designing their programs to ensure full and meaningful access up-front for people with disabilities, if they cannot get credit towards the participation rate for their efforts. Penalty relief alone is very unlikely to encourage them to have methods of administration for their programs that comply with the ADA

and Section 504. As a result, we see this proposal very much as an addition to, not a substitute for, the other recommendations.

We would appreciate the opportunity to meet with you to discuss this important matter further. We can be contacted through CCD TANF Task Force co-chair, Sharon McDonald, at 202-638-1526, ext. 109.

Thank you for considering our requests. We believe that states will not have the flexibility they will need to serve people with disabilities in their TANF programs while designing their programs to comply with the federal TANF, ADA and Section 504 laws, without inclusion of these provisions.

Sincerely,

American Association on Health and Disability
American Association on Mental Retardation
American Association of People with Disabilities
American Counseling Association
American Dance Therapy Association
American Music Therapy Association
Association of Assistive Technology Act Programs
Association of University Centers on Disabilities
Bazelon Center for Mental Health Law
Brain Injury Association of America
Council for Exceptional Children
Council for Learning Disabilities
Easter Seals
Epilepsy Foundation
Helen Keller National Center
National Alliance to End Homelessness
National Association of Councils on Developmental Disabilities
National Association of County Behavioral Health and Developmental Disability Directors
National Association of State Head Injury Administrators
National Coalition on Deaf-Blindness
National Mental Health Association
National Organization of Social Security Claimants' Representatives
National Respite Coalition
The Arc of the United States
United Cerebral Palsy
United Spinal Association.

cc: Dr. Margaret Giannini, Office on Disability
Dr. Wade Horn, Administration for Children and Families
Dr. Patricia A. Morrissey, Administration on Developmental Disabilities

Ms. Sidonie Squier, Office of Family Assistance

Mr. Winston Wilkinson, Office for Civil Rights

Mr. Charles G. Curie, Substance Abuse and Mental Health Services Administration