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Comments on the Welfare Reform Advisory Committee Report and Alternative Recommendations for Responsible TAFDC Changes

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Massachusetts Law Reform Institute (MLRI) is a statewide advocacy and support center, founded in 1968. Our mission is to represent low-income people, elders, and persons with disabilities working for basic human needs, to defend against policies and actions that harm and marginalize people living in poverty, and to advocate for systemic reforms that achieve social and economic justice. MLRI is the lead organization in Massachusetts engaged in policy analysis, technical assistance, and administrative and legislative advocacy on welfare, Medicaid, food stamps, low-income housing, and other poverty issues. As part of our work, we assist community-based advocates throughout Massachusetts who are working with individual low-income clients, including advocates at the eleven local civil legal services programs in Massachusetts, which collectively handle nearly 100,000 cases annually.

We submit these comments on behalf of our clients and the clients of the community groups and legal services programs we work with across the state.

We strongly dissent from the key recommendation in the report to cease allowing exemptions from work requirements and time limits for TAFDC recipients with severe disabilities, pregnant women in the last trimester, recipients caring for a disabled family member, and parents and other caregivers 60 years of age and older.

We dissent from this recommendation primarily for two reasons:

- **The recommendation is fiscally irresponsible because it creates a serious risk that the state will incur federal penalties of more than $20 million a year.**

- **The recommendation is socially irresponsible because it will cause great harm to children in families headed by a parent or caregiver with severe barriers to employment who will not be able to meet strict work requirements or support their families without assistance after two years.**

I. Fiscal irresponsibility – the recommendation creates a strong likelihood of massive financial penalties.

A. Massachusetts would not be able to meet federal work participation rates under the proposal.

The central task of the Welfare Reform Advisory Committee was to make recommendations as to how Massachusetts should restructure or revise the state's Transitional Aid to Families with Dependent Children (TAFDC) program to insure that the state would continue to be eligible for the full federal Temporary Assistance for Needy Families (TANF) block grant of $459.4 million per year when the state's current welfare waivers expire on Sept. 30, 2005 and when TANF is reauthorized. The report utterly fails to accomplish this critical task.

Under current federal law and under Congressional proposals for TANF reauthorization, states are subject to huge fiscal penalties if they do not meet federal work participation rates in the state's TANF-funded cash assistance program. Generally speaking, the work participation rate is the percentage of recipients receiving benefits in a TANF-funded program who are participating in federally countable work activities. As discussed in the Background section of the report, because of the state's welfare waivers and the caseload reduction credit in current federal law, Massachusetts will have no difficulty meeting the work participation rate before October 1, 2005 or the effective date of TANF reauthorization, whichever occurs later. However, after the waivers expire and TANF is reauthorized, Massachusetts will be subject to stringent work participation rates and will be subject to massive penalties if it fails to meet those work participation rates in a TANF-funded cash assistance program. The state could lose up to 5 percent of the block grant in the first year ($23 million) and more in subsequent years.

The report never addresses how Massachusetts will meet the federal work participation rates when the waivers expire and TANF is reauthorized. In fact, the recommendations in the report would make it much harder for Massachusetts to meet federal work rates and would aggravate the risk that the state will suffer severe fiscal penalties.

Because of the state's federal waivers, the work participation rate for Massachusetts is currently calculated by dividing the number of recipients subject to state work activities requirements (about 13,200)[1] by the number of recipients who are participating in countable activities for the requisite number of weekly hours. This gives Massachusetts a work participation rate of over 60 percent, which easily meets federal requirements. Once the waivers expire and TANF is reauthorized, however, all recipients (other than child-only cases,[2] cases with a child under age 1, and recipients in the first month of benefits), will have to be counted in the

[1] As of June 2004, there were 12,272 recipients subject to the work requirement in Massachusetts and 913 teen parents subject to school attendance requirements.

[2] Cases in which there is no adult receiving assistance do not have to be included the work participation rate calculation. In Massachusetts, parents do not have a choice not to receive assistance for themselves.

denominator for the work rate, *if the recipient is receiving cash benefits in a program funded in part with TANF funds.*

Under the report, the denominator for the work participation rate would *double* to more than 26,000 because the denominator would include about 5,600 recipients with severe disabilities, about 2,000 pregnant women in the last trimester, 2,400 recipients needed in the home to care for a disabled family member,[3] 2,700 parents of a child between the ages of 1 and 2,[4] and about 350 others currently exempt from work requirements for other reasons.

It is entirely unrealistic to expect that any significant percentage of the families headed by parents with the most severe barriers to employment will be able to engage in 34 to 40 hours per week of work activities while simultaneously caring for their children.[5] These families include many headed by mothers with serious mental health issues (including those resulting from domestic violence), cognitive limitations, and serious physical disabilities. They include caregivers struggling to care for family members with severe disabilities, women in their last trimester of pregnancy, and parents, grandparents and other relatives who are 60 years of age and older. Although some may be able to engage in some amount of gainful activity – and should be

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[3] The report would allow caring for a disabled family member to count towards the work requirement. Caring for a disabled family member would be federally countable in the Senate Finance Committee bill because the Committee accepted a Democratic amendment to that effect. The House version of TANF reauthorization would not allow caring for a disabled family member to count towards the federal work participation rate. Most observers expect that the Conference Committee on TANF reauthorization will not permit caring for a disabled family member to be a federally countable core work activity, and it may not even be allowed by the final Senate bill. If, as expected, caring for a disabled family member is not federally countable, these families would count in the denominator for the work rate under the report, but would not count in the numerator. They would therefore lower the state's work participation rate. In addition, as discussed below, if caring for a disabled family member is allowed as a state work activity but does not qualify the family for an exemption, these families would be ineligible after two years even if the parent were still needed to care for the disabled family member.

[4] The report would continue exemptions from the Massachusetts work requirement for parents of children under the age of 2, but parents with a child between the ages of 1 and 2 would be countable in the denominator for the federal work participation rate, and would therefore lower the state's work participation rate.

[5] The report states that the hourly work requirement "should be modified to align with anticipated federal requirements," and then says that all non-exempt individuals should be required to participate in core work activities for 24 hours a week and "up to an additional 10 hours per week in 'other qualified activities'." Section (B)(2)(a). The Senate Finance Committee TANF reauthorization bill would require 24 hours a week in core activities plus other activities for a total of 136 hours a month for single parents whose youngest child is school age. The House bill would require 24 hours in direct work activities plus other activities for a total of 160 hours a month. Republicans in Congress and the White House are strongly pushing for a 40-hour per week work requirement and are more likely to be successful in light of the recent elections. Therefore, the report's recommendation that the weekly hours requirement be "align[ed] with anticipated federal requirements" could mean that the report is calling for a weekly requirement of 40 hours.

supported and assisted by DTA to do so – it is unreasonable to expect that they will regularly be able to engage in work-related activities for 34 to 40 hours each week, which is more hours than any Massachusetts TAFDC parents without such barriers have ever before been expected to work. It is also unrealistic to expect that imposing a strict work requirement on these families will miraculously overcome employer reluctance to hire people with disabilities, pregnant women who will be giving birth shortly, older persons, and caregivers with family responsibilities that require attention during the work day. Adopting such unrealistic expectations would not only hurt the children in these families and their caregivers, because they would inevitably lose benefits due to sanctions and the time limit, but it would also undermine the state's ability to meet the federal work participation rate.

B. Massachusetts can avoid the risk of fiscal penalties by continuing to fund families who are not subject to work requirements under current state law from state-only funds if they would otherwise negatively affect the state's work participation rate.

To draw down the federal TANF block grant, Massachusetts is required to spend at least $358.9 million in state funds on programs and services reasonably calculated to accomplish the purposes of the block grant. This is called the state "maintenance-of-effort" or MOE requirement. Massachusetts currently covers more than half of TAFDC spending with state funds that count towards the state's MOE obligation. Less than half of TAFDC spending is covered with TANF. In particular, Massachusetts generally covers recipients who are exempt from the Massachusetts 24-month time limit with state funds, because if they were covered with federal funds they would be subject to the federal time limit.

Under federal TANF law, Massachusetts has the flexibility to continue to fund recipients with state MOE funds. Recipients who are covered with state-only funds do not have to be counted in the work participation rate calculation. Thus, the state can assure itself that it will not be subject to fiscal penalties by continuing to use state-only funds to cover recipients with major barriers to employment.

The report recognizes that the state can avoid federal penalties by funding benefits for some recipients with state-only funds. In particular, the report in section (B)(2)(b) recommends that persons participating in education and training activities that are not countable towards federal work participation rates be funded with state-only funds so they do not impair the state's work participation rate.[6]

Despite this recognition, the report fails to recommend that state-only funds be used for

[6] The report also recognizes in section (B)(4) that federally ineligible lawful immigrants can be covered with state-only funds, as Massachusetts did until August 2002, and that these funds count towards the state's maintenance of effort requirement. We fully support the report's recommendation to restore cash assistance benefits to federally ineligible lawful immigrants. We also endorse the comments of the Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition in support of restoring benefits for lawful immigrants, as well as MIRA's other comments.

other persons with serious barriers to employment, including persons with severe disabilities, persons needed in the home to care for a disabled family member, and pregnant women in the third trimester. Indeed, the report recommends that parents whose youngest child is between the ages of 1 and 2 continue to be exempt,[7] but does not specify that they should be funded with state-only funds. Consequently, these 2,700 parents will count against the state's work rate. In addition, the report would end exemptions for persons caring for a disabled family member, so these 2,400 recipients would also count against the state's work participation rate.[8] Further, the report recommends that recipients with disabilities be granted good cause on an ad hoc basis (rather than the current system of exemptions), without addressing the fact that such recipients would count against the state's work participation rate unless they are funded with state-only funds.[9]

The state's current system of exempting recipients with major barriers to employment from work requirements and time limits is a tried and tested method of identifying recipients who should be funded with state-only funds to assure that they do not count not against the state's work participation rate. **Any other course of action risks incurring millions of dollars in federal penalties and is fiscally irresponsible.**[10]

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[7] Chapter 5 exempts parents of children under the age of two provided that the child is not excluded from assistance by the state's family cap rule.

[8] DTA stated at the Committee meeting on October 22, 2004 that the report would recommend that recipients caring for a disabled family member would continue to be exempt. Nevertheless, the report eliminates their exemptions, and instead would allow caring for a disabled family member to be a countable activity in Massachusetts. Caring for a disabled family member is not currently countable towards the federal work participation rate, and it is not likely that it will be federally countable when TANF is reauthorized. See note 3, above. These families will therefore most likely count against the state's federal work participation rate unless they are covered with state funds.

[9] In contrast, other states are recognizing the advantage of establishing exemptions and paying for exempt recipients from state-only funds. Nebraska, for example, has recently amended its state TANF plan to provide that exempt recipients are covered in a separate state program. The Nebraska TANF plan states, "This separate state program allows Nebraska to exempt from work requirements and state and federal time limits those single-parent families where the adult or minor parent is incapacitated and with a medically determinable impairment or who has significant barriers to participation in approved work activities. Nebraska will provide the services necessary to help these individuals overcome and/or remove the barriers preventing them from effectively engaging in approved work activities and attaining the maximum level of economic independence possible for their families through work." Exemptions in Nebraska include persons with serious disabilities, persons needed in the home to care for a disabled family member, pregnant women in the third trimester, and persons 60 years of age and older. Amendment to the 2003 Nebraska State Plan for the Temporary Assistance for Needy Families (TANF) Program, effective Nov. 1, 2003; http://hhs.state.ne.us/wer/TANFPlan03.doc.

[10] The report's recommendations will also be costly in many other ways. For instance, when their two-year time limit is up and parents caring for a disabled family are forced to go to work, many disabled family members will have to go into nursing homes or residential placements or need other expensive state services. Many families that lose benefits because of sanctions or because they have

II. Social irresponsibility–the recommendation will harm children whose parents have disabilities or other severe barriers to employment and will be unable to meet strict work requirements or support their families without assistance after two years.

A. The report confuses "full engagement" with mandates on recipients.

All members of the Committee supported the concept of "universal" or "full" engagement, by which Committee members meant that DTA and other state agencies should be subject to an affirmative duty to develop and provide programs and services for persons with major barriers to employment so that they can achieve their maximum potential. Support for full engagement is consistent with retaining exemptions from strict work requirements and time limits for vulnerable populations who rely on subsistence benefits for themselves and their children. In the view of most members of the Committee, the goal of equal opportunity is not best achieved by imposing work mandates and a two-year time limit on persons with major barriers to employment. Rather, the goal of equal opportunity is best met by retaining exemptions for these families, but simultaneously providing them with services and supports to assist them in addressing their substantial barriers to employment. This approach was recently adopted by Nebraska, which approved a policy of exemptions from work requirements and time limits coupled with access to appropriate services.[11]

DTA, however, had a preconceived agenda to eliminate exemptions before the Committee even began meeting. This agenda was pressed vigorously by DTA staff persons present at the meetings, including DTA staff who were not members of the Committee. It was evident throughout the process, that DTA sought a report that would make recommendations to DTA that DTA wanted to have made.

The Committee recognized that appropriate programs and supports for persons with disabilities and others who are now exempt do not now exist in Massachusetts. Certainly, such programs do not exist on the scale necessary to serve the 13,000 individuals who would become subject to work requirements and time limits under the report's recommendation. One organization participating on the Committee took the position that exempting recipients with disabilities from work requirements allows DTA to ignore those recipients. But that member made clear that the responsibility for assuring that persons with disabilities participate in work activities should be fully shared by DTA and other state agencies and should not be placed primarily on the recipient. DTA seized upon the argument that exemptions allow it to ignore recipients with disabilities to insist that exemptions should be eliminated even though only one other member of the Committee took that position, and that member did so with a very different emphasis than DTA's.

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reached the time limit will become homeless and will need costly shelter placements, state or local funds will be needed to transport their children to school, their children are more likely to need remedial education services. Families with no means of support are also at much greater risk of illness and will add further strain to the MassHealth budget.

[11] See note 9, above.

The report cites no evidence that removal of exemptions will indeed lead to real opportunity for persons with disabilities and other major barriers to employment. Indeed, the Committee was unable to identify any states with model programs to serve persons with disabilities, including those states that do not have exemptions. The evidence from other states is that persons with disabilities are disproportionately sanctioned for noncompliance and suffer greater hardships than other recipients after the loss of their benefits.[12] Once recipients are cut off assistance, it is even easier for the state to ignore their need for services. And once recipients are cut off assistance, they will have lost the one most critical service the state currently provides to persons with disabilities – subsistence benefits for vulnerable families with children.

DTA's recent history on the issue of exemptions is instructive. In January 2004, in his proposed budget for state fiscal year 2005, the Governor proposed substantially tightening the standard for disability exemptions for TAFDC recipients. Then, later in January, DTA announced its intention to implement the heightened standard effective March 2004. DTA projected that nearly half of the recipients determined disabled by the state's Disability Evaluation Service would not meet the heightened standard and would lose their exemptions. DTA's stated reason for implementing the heightened standard in March of 2004 was a projected shortfall in the TAFDC appropriation, not a desire to take on the challenge of providing necessary services to this population. DTA dropped its plan to heighten the disability standard when the Legislature appropriated the funds that were projected to be necessary to cover the TAFDC account, and the Legislature rejected the heightened standard in the FY 2005 state budget.

DTA made no effort to "engage" disabled recipients who would have lost benefits under the heightened standard, even though DTA was prepared to subject them to work requirements and time limits. Taking an even more extreme position than the one the Administration proposed and the Legislature rejected last year, DTA is now seeking to eliminate exemptions on the basis of disability altogether. Having made virtually no effort to provide to address the needs of recipients with disabilities and other major employment barriers, DTA seeks to subject them to work requirements and time limits, rather than shoulder its duty to provide appropriate opportunities and services. "Full engagement" should mean equal opportunity, not unrealistic mandates on vulnerable families, who will inevitably be even less "engaged" once they lose their subsistence benefits.

B. It is unrealistic to suppose that programs and services for vulnerable recipients will materialize when exemptions are eliminated, in light of the report's failure even to describe what programs and services would be needed for these recipients and the failure to give any indication whatsoever as to how much these programs and services will cost.

Committee members were concerned that Massachusetts' spending on work supports, including education, training, and transportation services for current and former TAFDC recipients is woefully inadequate. Massachusetts spends far less of its TANF and MOE funds on

[12] See notes 2–22, below.

work supports than do other states, and state spending on work supports dropped dramatically between state fiscal year 2002 and state fiscal year 2005.[13] Members of the Committee agreed that sufficient funds have not been appropriated to provide necessary programs and services even for those recipients who have not been identified as having major barriers to employment. Members of the Committee also agreed that programs to serve persons with disabilities would be more costly than programs for recipients who do not have identified barriers to employment.

Faced with DTA's insistence on eliminating exemptions, a majority of Committee members agreed to the elimination of exemptions but only on condition that exemptions not be eliminated unless and until programs and systems were developed and funded for persons with disabilities. With the exception of DTA and one other member, Committee members who took this position did so in the interests of reaching consensus and not because of any view by the majority of members that eliminating exemptions was wise or necessary.[14]

The report pays lip service to this reluctant consensus, but does not describe in any detail the types or amount of programs and services that would be required and does not attempt to calculate the cost of providing the necessary programs and services. In the section on "legislative recommendations," the report states that "universal or full engagement," which the report conflates with elimination of exemptions, "challenges the Department to develop programs, which meet parents where they are, and tailor self-sufficiency plans so that all parents can be engaged in activities that promote their highest potential." However, absent tested programs and a massive increase in funds, there is no prospect that the Department will meet that challenge. Instead of challenging the Department to provide needed services, the elimination of exemptions will subject vulnerable recipients to sanctions and the end of all cash assistance after 24 months due to the time limit.[15]

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[13] Massachusetts' appropriations for the Employment Services Program plummeted from $37.5 million in state fiscal year 2002 to $11 million in state fiscal year 2004. In state FY 04 Massachusetts also spent an additional $5.9 million in one time federal funds for job search services for TAFDC recipients. For 2005, the ESP appropriation is $19 million plus a possible additional $3 million in retained revenue. In federal fiscal year 2002, Massachusetts spending on work supports and transportation was 4.2 percent of total state TANF and MOE spending; nationally, states spent an average of 11.8 percent of TANF and MOE funds on work supports and services. In federal fiscal year 2003, Massachusetts spending on work supports and services declined to 2.2 percent of total TANF and MOE spending, compared with 10.8 percent nationally. For state FY 05, the appropriation for work supports and services (including the potential retained revenue) is 2.7 percent of TANF and MOE funds, one quarter of the national average in federal FY 03. Federal financial information is available at http://www.acf.dhhs.gov/programs/ofs/data/index.html.

[14] Most members of the Committee are either staff of state agencies or work for entities that rely upon contracts with the state. As a result, they could not freely disagree with a position that DTA insisted upon.

[15] In the section on "Additional Considerations for Regulatory or Administrative Changes," the report states that "the Department should consider providing proven 'barrier removal' activities and specialized strategies." In addition to making it clear that DTA need only "consider" providing the services, it is notable that these activities are not even listed in section (B)(2)(b) as allowed activities that

C. Because many if not most parents with severe disabilities will not be able to meet a work activities requirement of 34 to 40 hours a week and will not be able to support their families after two years of assistance, elimination of exemptions will lead to extreme hardship for vulnerable families.

Experience in other states that have tried to impose rigid hourly work requirements is that those requirements are not workable even for families that do not have severe disabilities.[16] Families who would lose their exemptions under the report's recommendations are even less likely to be able to comply with strict work requirements. Federal data on state TANF programs confirm that persons with disabilities are less likely to have positive employment outcomes than otherwise similar adults and they are less likely to meet work participation requirements.[17]

Members of the Committee other than DTA unanimously agreed that strict work requirements and time limits are not appropriate for this population. Nevertheless, the report recommends elimination of exemptions and the consequent imposition of rigid hourly work requirements of 34 to 40 hours a week, depending on which version of TANF reauthorization passes Congress.

DTA cuts off all benefits to nearly 500 families a month who are subject to work requirements under current law, and imposes about 400 partial sanctions a month.[18] DTA itself has projected that if recipients with disabilities and other major barriers to employment are also subject to work requirements, they will be sanctioned at an even higher rate. In February 2004, when it was planning to phase in a heightened disability standard, DTA estimated that 25 percent of the recipients who would lose their exemptions under the heightened standard would be sanctioned and would lose some or all of their benefits.[19] Eliminating exemptions altogether, including exemptions for persons determined to have very severe impairments that interfere with

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would meet the individual's weekly work requirement.

[16] See, e.g., Dietrich, S., *Many Welfare Recipients Could Not Meet TANF Proposals for 40 Hours of Work,* Community Legal Services, Inc., Philadelphia, PA (May 2002), http://www.clsphila.org/Tanf_reauthorization.htm.

[17] Jacobson, J., et al., *Steps Toward Self-Sufficiency: A Study of the Characteristics and Work Participation of TANF Recipients in Fiscal Year 1999*, Mathematica Policy Research, Inc. (Dec. 2002); http://www.mathematica-mpr.com/publications/.

[18] Sanction data supplied by DTA on July 28, 2004 show that for the period from March 2004 to June 2004 DTA sanctioned and cut off all benefits to an average of 478 families a month and imposed partial sanctions on an average of 403 families a month. DTA imposed more than double this number of sanctions in January and February 2004, when DTA was implementing the extension of the work requirement to parents of pre-school children. These are figures for new sanctions each month; more families are under sanction at any point in time because of sanctions imposed in prior months.

[19] Calculated from data supplied by DTA on February 12, 2004.

work, will inevitably result in even more sanctions.[20]

Moreover, DTA predicted the 25 percent sanction rate for persons losing exemptions when it was still operating under the waivers. Once the waivers expire and TANF is reauthorized, DTA will be under heavy fiscal pressure to sanction nonexempt recipients paid for in the state's TANF-funded program, because otherwise they will count against the state's work rate.[21]

Thus, sanctions can be expected to increase dramatically: first, because many more recipients will be subject to sanctions; second, because recipients with more severe barriers to employment will be subject to sanctions and those recipients tend to be sanctioned at higher rates; and third, because DTA will have an incentive to remove nonexempt recipients from the rolls to avoid having them count against the state's work participation rate. It is disingenuous to claim otherwise.

Sanctioned families suffer real hardship when they lose their subsistence benefits. A national survey found that mothers who left welfare after being sanctioned were more than three times as likely to have experienced material hardship (homelessness or eviction, hunger, or moving in with others) as mothers who stayed on welfare. Sanctioned mothers were more than six times as likely to have experienced hunger. Overall levels of hardship among sanctioned leavers were high.[22]

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[20] Research has generally shown that sanctioned families are more likely to face significant barriers to employment as compared to families that avoid sanction. For a review of the literature, see Pavetti, L. et al., *Review of Sanction Policies and Research Studies*, Mathematica Policy Research, Inc. (March 2003), http://www.mathematica.org/publications/PDFs/sanclit.pdf. See also Polit, D., et al., *The Health of Poor Urban Women: Findings from the Project on Devolution and Urban Change*, Manpower Demonstration Research Corp. (May 2001), http://www.mdrc.org/publications/77/execsum.pdf. This research project studied a sample of low-income women in 3 cities and one county with a large city. The study found that recipients with a larger number of health problems were more likely to be sanctioned than healthier recipients.

[21] See Greenberg, M. and Rahmanou, H., *Imposing a 40-Hour Requirement Would Hurt State Welfare Reform Efforts, Center for Law and Social Policy* (Feb. 12, 2003), http://www.clasp.org/DMS/Documents/1045149164.99/view_html (individuals who do not meet federal work requirements "will become a 'drag' on the state's ability to meet participation rates, and there will be increased risk that such families are sanctioned and terminated from assistance rather than provided needed assistance to move towards employment").

[22] Reichman, N., et al., *Variations in Maternal and Child Wellbeing*, Working Paper #03-13-FF (April 2003), http://crcw.princeton.edu/workingpapers/WP03-03-FF-Reichman.pdf. This report focused on parents of children age one: the findings are consistent with findings on parents of older children. See, e.g., Children' Sentinel Nutrition Assessment Program, *Impact of Welfare Sanctions on the Health of Infants and Toddlers* (July 2002), http://dcc2.bumc.bu.edu/csnappublic/C-SNAP%20Report.pdf; Cook, et al., *Welfare Reform and the Health of Young Children: A Sentinel Survey in Six United States Cities*, Archives of Pediatric and Adolescent Medicine (Jul. 2002), Vol. 156, no. 7, summary at http://archpedi.ama-assn.org/cgi/content/short/156/7/678. A study conducted in Boston and two other

In addition to the likelihood of hardship from sanctions, those families who manage to retain their assistance for 24 months will face the loss of all assistance when they reach the time limit. DTA's study of recipients who lost benefits because of the time limit found that nearly 30 percent were not working at the time of the interview. Unlike the recipients who would lose benefits under the report's recommendations, these were all recipients who had not been identified as having disabilities or other major barriers to employment. One-third of those who were not working had not worked at all since leaving welfare. Of those who were working, more than half were working fewer than 35 hours a week. In most cases, this was because full-time work was not available, they could not get appropriate child care, they did not have job skills, they had transportation issues, or the parent or child had health problems. In light of the average weekly wage of $8.21, even full-time year round work would not yield enough to provide adequate support. For the majority, full-time work was not a realistic option. Food insecurity, other hardships, and debt levels increased.[23]

DTA's time limit study represents a best case scenario for recipients who do not have major identified barriers to employment and who reach the 24-month time limit when the economy in Massachusetts is booming.[24] For recipients with major barriers to employment who will reach the time limit during what may well be a less favorable job market, the prospects are much bleaker. These recipients will be even less able than the recipients in DTA's study to support their families solely through work after only two years.

Instead of assuring greater access to necessary services, eliminating exemptions will make TAFDC cash assistance less accessible to families with a disabled parent or a disabled family member who needs care. Sanctions and time limits will cause vulnerable families in Massachusetts to fall deeper into poverty, will add to the state's ranks of homeless families, and will undermine the ability of the children in these families to succeed in school and in life. Not only is the report flawed in assuming that some unspecified and as yet undeveloped services will magically appear if exemptions are eliminated, it is also flawed in assuming that provision of these services will mean that most of these families can support themselves through work.

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cities found that children in families that had been sanctioned had higher rates of serious behavioral and emotional problems than children in other TANF families. Fifty-six percent of preschoolers in sanctioned families who had left welfare scored in the "range of concern" for serious behavioral and emotional problems. Chase-Landale, P.L., et al, *Welfare Reform: What About the Children?*, Welfare, Children, and Families: A Three City Study, Policy Brief 02-01 (January 2002), http://www.jhu.edu/~welfare/19382_Welfare_jan02.pdf.

[23] Mass. Dep't of Transitional Assistance, *After Time Limits: A Study of Households Leaving Welfare Between December 1998 and April 1999* (Nov. 2000).

[24] Recent studies show that families that left welfare in 2000 or later are *less* likely to be working than families that left in the 1990s and that the share of families that leave welfare and are not working and do not have a job or other stable source of income has *increased*. See, e.g., Loprest, P., *Fewer Welfare Leavers Employed in Weak Economy,* Urban Institute (Aug. 2003), http://www.urban.org/url.cfm?ID=310837.

D. Stating that "clear safeguards" should be in place and that extensions of the time limit could be granted if services are not available is no substitute for the protections in current law.

Recipients who are not protected by exemptions are subjected to the draconian operation of DTA's computer system. That system is programmed to sanction nonexempt recipients automatically if the worker fails to input data showing that the recipient is either in compliance or has good cause for not complying.[25] The report states that if "necessary support services" are not available, "clear safeguards" should be in place to protect recipients from sanctions. But instead of specifying how these "clear safeguards" are to be assured, the report only says that DTA should grant "good cause" if necessary services are not available.

Unfortunately, recent experience with DTA's implementation of "good cause" provisions in the FY 2005 budget shows that DTA does not have the staff – or perhaps does not have the will – to give serious consideration on a case-by-case basis to recipients' individual circumstances. The FY 2005 budget mandated that DTA review good cause criteria *with* the recipient before imposing a sanction. St. 2005, c. 149, § 218. DTA's instructions for implementing this provision, however, provide that to obtain review of good cause the recipient must return a computer generated good cause notice with a specified good cause reason circled within 10 days of the mailing date of the notice. No provision is made for recipients who have limited English proficiency or recipients who cannot read an English or Spanish notice. No provision is made for recipients with cognitive impairments or those who do not have telephone service. No provision is made for recipients who get only a busy signal, a full voice mail box, or a vacation message when they try to call their worker for an explanation of the notice – all common occurrences in light of DTA workers' caseloads. If the worker does not receive and input the request for good cause by the 10th day after the notice was mailed, the sanction issues automatically. The "good cause" procedure adopted by DTA is not workable for persons who cannot manage a paper process or cannot advocate successfully for themselves. Like the recommendation for funding and programs, the recommendation of "clear safeguards" is based on wishful thinking rather than reality.

The report also states that time limit "extensions would continue to be available to those who are satisfying work participation requirements, but have been unable to obtain employment through no fault of their own." Current DTA extension policy grants extensions of the time limit based primarily on DTA's determination of whether the person has participated and is participating in work activities. In some cases, extensions are granted for a limited time to complete an education or training program. 106 C.M.R. § 203.210. The regulations also provide for extensions if there are no appropriate job opportunities locally, but DTA never grants extensions for that reason. The parsimony of DTA's practice and policy regarding extensions is

[25] DTA's computer system is set to default to a sanction automatically unless the worker takes affirmative steps to stop the sanction. See DTA Field Operations Manual 2004-37A (September 24, 2004) (sanction process prevented only if worker inputs "meets compliance" or a good cause reason). This sanction policy has been described as "sanction first, ask questions later." Letter of Melanie Malherbe, Greater Boston Legal Services, and others to DTA Comm'r John Wagner (Oct. 5, 2004).

evidenced by the fact that in a sample month, only 82 TAFDC recipients were receiving benefits pursuant to a time limit extension, even though hundreds of recipients reach the end of their time limit every month.[26] There is no provision in the DTA regulations for extensions because of barriers to employment, such as disability or the need to care for a disabled family member. Nothing in the regulations would allow an extension for a pregnant woman in the third trimester for whom it does not make sense to start an education or training program and whom employers will not hire because they expect her to give birth shortly. And nothing in the report would require DTA to alter its current extension practice and policy.

Chapter 5 established exemptions to reduce the risk that the most vulnerable families would suffer these hardships. That mechanism is the clearest "safeguard" DTA has yet implemented to assure that vulnerable families do not lose their subsistence benefits. The report fails to make a case as to why the exemptions should be removed.

Conclusion

In sum, the recommendation to eliminate exemptions for parents with severe disabilities, parents needed in the home to care for a disabled family member, pregnant women in their last trimester, and parents and other caregivers age 60 or older will create a grave risk of federal penalties and cause great harm to the most vulnerable families in the Commonwealth. The recommendation to eliminate exemptions should be rejected. Instead, the Legislature should retain exemptions, should continue to cover exempt families with state maintenance of effort funds, should provide the resources for the programs and services needed to provide real opportunities for parents with severe barriers to employment, and should direct DTA to meet its responsibility to ensure that every family is provided the resources it needs to meet its full potential.

Corrected November 15, 2004.

[26] DTA June 2004 caseload data.