

A Guide to

Florida

Temporary Cash

Assistance

(formerly known as WAGES)

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IMPORTANT

This guide does **not** fully incorporate Department of Children and Family Services (DCF) and Agency for Workforce Innovation (AWI) rules. This is because all relevant rules have not been finalized. DCF and AWI are currently at various stages of rulemaking. Where no rule citations are provided you are nevertheless advised to independently consult the Florida Administrative Code. DCF's rules for the cash assistance program are generally found at Chapter 65A; AWI's rules are generally found at Chapter 60BB.

Table of Contents

I.	INTRODUCTION	<u>-1-</u>
II.	SUBSTANTIVE ELIGIBILITY REQUIREMENTS	<u>-2-</u>
A.	Pregnant Women	<u>-2-</u>
B.	Children	<u>-2-</u>
1.	Age	<u>-2-</u>
2.	Living in the Home	<u>-3-</u>
3.	Living with a Relative	<u>-3-</u>
C.	Assignment of Support	<u>-4-</u>
D.	Cooperation with Child Support Enforcement	<u>-4-</u>
1.	What is Cooperation	<u>-4-</u>
2.	Cash Assistance Reduced for Non-Cooperation with CSE	<u>-4-</u>
3.	Food Stamps Reduced for Non-cooperation with CSE	<u>-4-</u>
E.	Immigrant Eligibility	<u>-5-</u>
1.	Eligible/Ineligible Categories	<u>-5-</u>
2.	Citizen Children of Immigrants	<u>-7-</u>
3.	Immigrant Parents' Work Requirements	<u>-7-</u>
4.	Financial Eligibility of Immigrants	<u>-8-</u>
F.	Learnfare	<u>-8-</u>
G.	Immunizations	<u>-9-</u>
H.	Teen Parents	<u>-10-</u>
1.	Living at Home	<u>-10-</u>
2.	Special Activities for Teen Parents	<u>-10-</u>
3.	Teen Parent Income/Resources/Payments	<u>-10-</u>
4.	Teen Parent Time Limits	<u>-11-</u>
5.	Prevention of Teen Pregnancy	<u>-11-</u>
I.	Child Exclusion (Family Cap)	<u>-12-</u>
1.	When Family Cap Applies	<u>-12-</u>
2.	When Family Cap Does Not Apply	<u>-12-</u>
III.	FINANCIAL ELIGIBILITY	<u>-13-</u>
A.	Income Eligibility	<u>-13-</u>
1.	Definition of Income	<u>-13-</u>
2.	Income Disregards	<u>-15-</u>
a.	\$200 and One-half Earned Income Disregard	<u>-15-</u>
b.	Child's Earned Income	<u>-16-</u>
c.	Special Needs Allowance	<u>-16-</u>
i.	Regular special needs allowance	<u>-16-</u>
ii.	High out-of-pocket expenses special allowance	<u>-16-</u>
B.	Resource Eligibility	<u>-17-</u>

1.	Definition of Resources	<u>-17-</u>
a.	Cars § 414.075(2)(a)	<u>-17-</u>
b.	Funds for Shelter	<u>-18-</u>
c.	Resources Considered in the Food Stamp and Medicaid Programs	<u>-18-</u>
d.	Transfer of Assets Penalty	<u>-19-</u>
C.	Assistance Levels	<u>-19-</u>
1.	Insufficient Funds	<u>-20-</u>
a.	For Cash Assistance	<u>-20-</u>
b.	For Participation in Work Activities	<u>-20-</u>
D.	Persons whose Income and Resources are Considered - Filing Unit:	<u>-21-</u>
1.	Optional members	<u>-22-</u>
a.	Caretaker Relatives	<u>-22-</u>
b.	Stepparents	<u>-22-</u>
2.	Mandatory Members	<u>-23-</u>
E.	Method of Payment	<u>-23-</u>
F.	Overpayments	<u>-23-</u>
IV.	PROCEDURAL ELIGIBILITY	<u>-25-</u>
A.	Application	<u>-25-</u>
1.	Felony Drug Convictions	<u>-25-</u>
B.	Verification	<u>-25-</u>
C.	Decisions	<u>-26-</u>
D.	Redetermination	<u>-26-</u>
E.	Due Process	<u>-26-</u>
1.	Notice	<u>-26-</u>
a.	Under Statute / Rules	<u>-26-</u>
b.	Under the APA	<u>-27-</u>
2.	Hearing Rights	<u>-27-</u>
a.	Under Statute / Rules	<u>-27-</u>
i.	Review of board or panel decisions	<u>-28-</u>
ii.	Hearing on Learnfare Sanctions	<u>-28-</u>
b.	Under the APA	<u>-28-</u>
F.	Policy Simplification	<u>-29-</u>
V.	ADMINISTRATION OF THE CASH ASSISTANCE PROGRAM	<u>-29-</u>
A.	Workforce Florida, Inc.	<u>-30-</u>
1.	Composition of Workforce Florida Board	<u>-31-</u>
a.	Councils	<u>-32-</u>
B.	Regional Workforce Boards	<u>-33-</u>
C.	Agency for Workforce Innovation	<u>-35-</u>
D.	One-Stops	<u>-35-</u>
1.	Purpose and Structure of the One-Stop	<u>-35-</u>

2.	Services of the One-Stop	<u>-36-</u>
a.	Core Services	<u>-37-</u>
b.	Intensive Services	<u>-38-</u>
c.	Training Services	<u>-38-</u>
VI.	WORK REQUIREMENTS	<u>-39-</u>
A.	Countable Work Activities	<u>-39-</u>
B.	Other Ways to Get Education and Training	<u>-42-</u>
1.	Transitional E & T for Current Participants	<u>-42-</u>
2.	Adult General Education Program/Career Education Program	<u>-43-</u>
3.	Literacy Skills	<u>-43-</u>
4.	Extended E & T	<u>-43-</u>
5.	Retention Incentive Training Accounts (RITAs)	<u>-43-</u>
C.	Worker Protections	<u>-43-</u>
1.	Minimum Wage	<u>-43-</u>
D.	Participation Requirements	<u>-44-</u>
1.	Exception for Community Service Work Experience Participants ...	<u>-44-</u>
E.	Exemption from Work Requirements	<u>-44-</u>
F.	Sanctions for Failure to Comply with Work Requirements	<u>-45-</u>
G.	Protection of Children in Families being Sanctioned	<u>-46-</u>
H.	Exceptions to Noncompliance Penalties (Good Cause)	<u>-46-</u>
	Domestic Violence	<u>-47-</u>
1.	Domestic Violence Plan	<u>-47-</u>
2.	Right to Information on and Referral to Organizations	<u>-47-</u>
3.	Work Requirements	<u>-47-</u>
4.	Relocation Assistance Program	<u>-48-</u>
5.	Diversion Program for Victims of Domestic Violence	<u>-48-</u>
6.	Cooperation with Child Support Enforcement	<u>-48-</u>
J.	Support Services	<u>-48-</u>
1.	Generally	<u>-48-</u>
a.	Medicaid	<u>-48-</u>
b.	Transportation	<u>-49-</u>
c.	Child Care	<u>-49-</u>
K.	Transitional Services	<u>-49-</u>
1.	Transitional Child Care	<u>-50-</u>
2.	Transitional Education and Training	<u>-50-</u>
3.	Transitional Medical Benefits	<u>-50-</u>
VII.	DIVERSION	<u>-51-</u>
A.	Up-front Diversion	<u>-51-</u>
B.	Cash Assistance Severance Benefits	<u>-51-</u>
C.	Relocation Assistance	<u>-52-</u>
D.	Domestic Violence Diversion	<u>-52-</u>

E.	Diversion to Strengthen Florida Families	<u>-53-</u>
F.	Diversion for Families at Risk of Substance Abuse or Mental Illness	<u>-53-</u>
G.	Teen Parent Pregnancy Prevention Diversion	<u>-54-</u>
VIII.	EMERGENCY [HOUSING] ASSISTANCE PROGRAM	<u>-54-</u>
IX.	TIME LIMITS	<u>-55-</u>
A.	Two - Three Years	<u>-55-</u>
B.	What Happens When Time Limits End	<u>-56-</u>
C.	Persons not Subject to Time Limits	<u>-56-</u>
1.	Age/Disability Exemptions	<u>-56-</u>
2.	Hardship Exemptions	<u>-57-</u>
a.	Percent of Caseload	<u>-57-</u>
b.	Criteria	<u>-57-</u>
c.	Procedure	<u>-58-</u>
3.	Extensions to Time Limits	<u>-58-</u>
X.	FRAUD	<u>-59-</u>
A.	Pre-Eligibility Screening	<u>-59-</u>
B.	Recipient Fraud	<u>-59-</u>
XI.	EVALUATION	<u>-59-</u>
XII.	THREE-TIER SHELTER PAYMENT STANDARD	<u>-60-</u>

I. INTRODUCTION

The 1996 Florida Legislature abolished the Aid to Families with Dependent Children (AFDC) program. In its place, the Legislature created “Work and Gain Economic Self Sufficiency” (WAGES). Chapter 414, Florida Statutes. However, WAGES was abolished in 2000 with the passage of the Florida Workforce Innovation Act which created Workforce Florida, Inc. Chapter 445, Florida Statutes. The cash assistance program is administered by the Department of Children and Family Services (DCF), formerly known as the Department of Health and Rehabilitative Services (HRS), and the statutorily created nonprofit corporation known as Workforce Florida, Inc. Temporary cash assistance, also called transitional welfare, is similar to AFDC in that, in most instances, it provides cash assistance and work activities services to families with minor children living in the home as well as to some pregnant women. § 414.095(2)(a). It is unlike AFDC in that, among other things, it treats two-parent families the same as single parent families, making both eligible for assistance. § 414.095(2)(a). Additionally, it is time-limited, provides no statutory due process protections for families, is not an entitlement, and contains one of the harshest sanction schemes in the country. Cash assistance receives federal funding through the Temporary Assistance to Needy Families (TANF) block grant which replaced the federal AFDC program in 1996. 42 U.S.C. § 602 et seq. Workforce Florida, Inc. additionally uses other federal grants, like the federal Workforce Investment Act, to provide job training and education monies to many low income workers even if they are not poor enough to qualify for cash assistance.

II. SUBSTANTIVE ELIGIBILITY REQUIREMENTS

There is no statutory deprivation requirement in the cash assistance program. Even children in two-parent families who are not deprived of the support or care of a parent qualify for assistance. A childless woman at the end of her pregnancy is also eligible, even if her unborn child is not "deprived" of its father's support.

In the AFDC program, children were required to be "deprived" of the support of one or both

parents. The only two-parent families eligible for cash assistance were families in which one or both parents were disabled or unemployed.

A. Pregnant Women

Pregnant women who do not have any other children may be eligible for cash assistance. In the cash assistance program, a pregnant woman with no other children is eligible for cash assistance in her final month of pregnancy. § 414.095(15)(a). However, pregnant women in their last trimester who are restricted from work activities by doctor's orders are also eligible. § 414.095(6). Pregnant women may have to participate in parenting classes in exchange for cash assistance. § 414.095(6).

It does not appear that the father of the unborn child is eligible even if he lives with the mother of his unborn child. However, he would be eligible upon the birth of the child. § 414.095(2)(b).

B. Children

Children below a certain age and living in the home of a parent or caretaker relative are eligible for cash assistance.

1. Age

In the cash assistance program, a "minor child" is defined as being under 18 years old or being under age 19 so long as they are a full-time student in a secondary school or at the equivalent level of vocational or technical training. "Child" does not include anyone who is married or divorced. § 414.0252(8).

Unlike Florida's AFDC program, eighteen-year-olds who remain in school are now eligible for cash assistance until they turn nineteen.

2. Living in the Home

The child must be "living in the home." § 414.095(15)(a). Absences of less than 30 consecutive days do not affect eligibility. However, when it "becomes clear" that the child will be absent from the home for at least 30 **consecutive** days, the parent or caretaker relative must notify the Department within 5 days. If not, the parent or caretaker relative will be "disqualified" from receiving cash assistance for 30 days for the first occurrence, 60 for the second, and 90 for the third and subsequent occurrences. § 414.095(15)(h).

Split custody arrangements affect eligibility. Unless one of the parents demonstrates to the Department that the parent provides primary day-to-day

custody, parents who live apart but "equally share custody and control" of the child are ineligible. § 414.095(15)(i). Note that when separated parents do not "equally share custody and control," this provision does not apply.

It is unclear whether the child can get assistance in a split custody arrangement. Further, the statute does not specify the percentage of time the child must spend in a dwelling to meet "living in the home" criteria. § 414.095 (15)(a). In addition, although the statute requires that the child live with a "custodial" parent or one with "primary day to day custody," neither of these terms are defined. § 414.095(2)(b)1.

3. Living with a Relative

In order for anyone in the family to qualify for cash assistance, the child must live with one or both parents or a caretaker relative. The caretaker relative must be within the specified degree of blood relationship designated by the Department. Adults who are "related to the child by... marriage" are also eligible, as they were in the AFDC program. §§ 414.0252(11), 414.095(2)(a)(4).

The statute does not specify what degree of relationship is required for caretaker relatives. The Department may address this by rule.

C. Assignment of Support

Families must assign "any rights a member of the family may have to support from any other person" as a condition of receiving cash assistance. § 414.095(8). This includes both child support and **non**-child support rights. However, the family cannot be required to assign more than "the total amount of temporary assistance provided to the family." Once the family leaves cash assistance, the assignment must end. If a parent or caretaker relative fails to assign such rights, the entire family is ineligible for cash assistance until assignment is made. § 414.095(15)(e).

D. Cooperation with Child Support Enforcement

1. What is Cooperation

The family must cooperate with Child Support Enforcement (CSE) as a condition of eligibility. § 414.095(7). See also § 409.2566. Cooperation includes:

- assisting in identifying and locating a non-custodial parent and providing complete and accurate information on that parent;

- assisting in establishing paternity; and
- assisting in establishing, modifying or enforcing a support order with respect to a child of a family member.

2. Cash Assistance Reduced for Non-Cooperation with CSE

If a parent or caretaker relative is not cooperative in establishing, modifying, or enforcing a child support order and does not have good cause [§§ 414.095(7), (15)(d)], the entire family is ineligible "until the state agency indicates that cooperation...has been satisfactory" [414.095 (15)(d)-(e)]. If cooperation could subject the individual to a risk of domestic violence, good cause not to cooperate is established. § 414.095(15)(d).

3. Food Stamps Reduced for Non-cooperation with CSE

A **custodial** parent or caretaker relative who gets food stamps **or** cash assistance for a child under 18 (whose parent(s) is absent) is ineligible for food stamps unless the custodial parent or caretaker relative cooperates with CSE in establishing paternity or obtaining support. This sanction does not apply if the person has good cause for not cooperating in establishing paternity. Good cause will be determined by the state agency that administers the child support enforcement program. § 414.32(1)(a).

Cooperation with CSE was never required as a condition of receiving food stamps in the past. Further, violations of requirements relevant to the AFDC program did not necessarily affect food stamps as they do now.

The **non-custodial** parent is also ineligible for food stamps if that putative parent fails to cooperate with establishing paternity without good cause. § 414.32(1)(b). Further, any person who is behind in payment of court-ordered child support is ineligible for food stamps. This sanction does not apply if the court is allowing the debtor to delay payment or if the debtor is complying with an approved payment plan. § 414.32(2).

Good cause is irrelevant when there is a failure to pay child support. Good cause is only considered when there is a failure to cooperate in establishing paternity. This means that parents without the financial ability to meet court-ordered support will be ineligible for food stamps until they have entered into court-approved arrangements concerning their delinquent child support obligations.

E. Immigrant Eligibility

1. Eligible/Ineligible Categories

An applicant must be a citizen or "qualified non-citizen." § 414.095(2)(a)1. The Department is required to participate in SAVE (Systematic Alienage Verification for Entitlements) to verify both the validity of the documents provided by immigrants who apply for assistance and the immigrant's eligibility. § 414.095(3)(c).

"Qualified non-citizen" is defined at § 414.095(3) to include any individual:

- who is admitted to the United States as a refugee under § 207 of the Immigration and Nationality Act (INA);
- who is granted asylum under § 208 of the INA;
- who is granted conditional entry under § 203(a)(7) of the INA;
- whose deportation has been withheld;
- who is paroled (under § 212(d)(5) of the INA) for at least one year;
- who is admitted as a permanent resident;
- who is a "Cuban or Haitian entrant"; or
- who has been battered or subject to extreme cruelty in the U.S. by a spouse or parent or other certain household member and who has applied for or received protection under the federal Violence Against Women Act of 1994 (VAWA), Pub. L. 103-222, if the need for benefits is related to the abuse and the batterer no longer lives in the household.

According to the statute, aliens who are **ineligible** for cash assistance include any person who is:

- paroled into the United States for less than 1 year; or
- a **non-immigrant**, including a tourist, business visitor, foreign student exchange visitor, temporary worker, or diplomat.

Welfare reform legislation in 1996 and 1997 imposed a broader definition of the term "qualified alien" (8 U.S.C. § 1641(b), (c)) upon state TANF programs, like Florida's cash assistance program, which opt to extend benefits to qualified

noncitizens. Under federal law, a qualified alien presently includes:

- permanent residents
- refugees
- asylees
- aliens granted withholding of deportation
- persons granted parole for one year or more
- Cuban/Haitian Entrants (see definition at 45 C.F.R. § 401)
- aliens with conditional entry
- certain battered aliens
- Amerasians within the first five years of obtaining that status

While Amerasians are not technically included in the federal definition of a qualified alien, states are not given the discretion to deny benefits to this group during their first five years in that status.

Although Chapter 414 does not specifically reference Amerasians as eligible, DCF policy includes as eligible all the above non-citizens described as "qualified" under federal law as well as Amerasians.

Notwithstanding eligibility pursuant to status, federal law states that qualified non-citizens arriving in the U.S. after August 22, 1996, are barred from getting TANF-funded assistance for the first five years they are in the country. This five year ban does not apply to newly arriving refugees, asylees, those granted withholding of deportation, Cuban/Haitian Entrants, or Amerasians.

In the AFDC program in Florida, all aliens permanently residing in the United States under color of law (PRUCOL), including asylum applicants and parolees, used to be eligible for benefits. PRUCOL is no longer a relevant category for temporary cash assistance.

2. Citizen Children of Immigrants

Citizen or qualified non-citizen children of illegal or ineligible non-citizens are eligible for cash assistance as long as the family otherwise meets all

eligibility criteria. § 414.095(3)(a).

3. Immigrant Parents' Work Requirements

Immigrant parent(s) who are authorized to work by INS in this country, must comply with the cash assistance program's work activity requirements. § 414.095(3)(b).

However, if both parents in a two-parent family or the only parent in a single-parent family are not eligible for cash assistance due to immigration status, then the family is considered as not containing an adult, i.e. a type of "child-only" family, and is not eligible for child care assistance or other supports or services. § 414.045(b)4.

Generally, adults who are not included in the calculation of cash assistance in child-only cases are exempt from participating in work requirements. § 445.024(3)(c). This provision seems consistent with § 414.045(b)4. above (denying work support), but is not consistent with § 414.095(3)(b) which imposes a work requirement on ineligible immigrant parents who have work permission (such as parolees for less than one year). Nevertheless, it appears that such a family, if sanctioned for failure to participate in work activities, could assert as good cause the lack of support services which are needed to comply with work requirements. Compare § 414.045(b)4 with § 445.025 ("[l]ack of provision of support services may be considered as a factor in determining whether good cause exists for failing to comply with a work activity requirement but does not automatically constitute good cause..."). A finding that lack of support services constitutes good cause for failing to participate in a work activity is not absolutely precluded even for families who are specifically prohibited from getting child care and other work-related supports from the cash assistance program.

4. Financial Eligibility of Immigrants

In the cash assistance program, the income of all "illegal or ineligible alien[s], less a pro rata share for the illegal alien or ineligible alien" must be counted in determining the eligibility of the family if the immigrant is a mandatory household member. § 414.095(3)(d). Additionally, the "entire assets" (no pro rata reduction) of such an alien must be included. § 414.095(3)(e).

F. Learnfare

The cash assistance program punishes "habitual truant" children and teenage participants who are not education exempt. This is called "Learnfare." Cash assistance for the child or teenager is reduced if the school-age child or teen meets the truancy or drop-out definitions at Fla. Stat. §§ 228.041 (28) or 228.041(29) unless there is good cause. Chapter 414 says that good cause includes the following: the student is expelled and there is no alternative schooling; there is no licensed day care for the children of

teenage parents subject to Learnfare; or prohibitive transportation problems exist, such as problems getting to and from day care. As of 2001 (and 1999 respectively) being a teen over 16 who is not expected to graduate by age 20 or being a teen parent of a child under 6 no longer qualify as good cause for missing school. Assistance can only be reinstated after a subsequent grading period in which the student has substantially improved attendance or, if a drop-out enrolls in school or the equivalent or gets a GED. If the parent or teenage participant files an "internal fair hearings process review procedure appeal" within ten days after notice of a "Learnfare" sanction, assistance is not reduced until the appeal is resolved. § 414.1251.

Each program participant with a school-age child is required to have a conference with school officials during each semester. § 414.125(2). Participants who fail, without good cause, to have this conference are sanctioned using the same sanctions imposed for other Learnfare offenses. There is no requirement in the statute that this conference be in person. Id. The conference must be documented by the school and reported to the Department via electronic data transfer system which the Department must develop. Id.

Since sanctions for failure to have a school conference are the same as other Learnfare sanctions, these "failure to have a conference" sanctions should reduce the benefits of the specific child involved rather than reducing the adult participant's benefits. This can be an important distinction for "family capped" children who get lower benefits than other family members.

Other than Learnfare, minor children under age 16 are not subject to a work activity requirement to attend school while getting cash assistance unless they are teen parents subject to special teen parent work activity requirements. § 445.024(1)(k); § 445.024(3)(a). Teens aged 16 to 19 who are not parents are subject to work activities as cash assistance participants and their activities may include school attendance. § 445.024(1)(i),(j).

"Learnfare" first became effective in 1993 for participants in counties covered by federal waivers for the experimental Family Transition Program and became part of the regular AFDC program statewide when Fla. Stat. § 409.1855 was enacted in 1995. Learnfare became part of the WAGES Act in 1996. § 414.125. Learnfare was then temporarily repealed in 2000 with the passage of Chapter 445, Florida's Workforce Innovation Act, but was reinstated in 2001 with the enactment of § 414.1251.

G. Immunizations

Having preschool children appropriately immunized is a condition of eligibility for cash assistance. Pre-school children whose immunizations are not verified can not get assistance. If the child whose immunization has not been verified is the only child in the family, the entire family is ineligible. This requirement is waived, however, for children

who are not immunized for religious or other good cause reasons. § 414.13.

The Department must inform applicants and recipients of cash assistance of the availability of childhood immunizations through the county public health units at application and redetermination.

Although not part of regular AFDC, similar immunization provisions at § 409.938 became effective in 1993 as part of the Family Transition Program for counties covered by federal waivers.

H. Teen Parents

1. Living at Home

In order for teen parents to get cash assistance for themselves and their children they must live at home or in an adult-supervised setting and the cash assistance must be paid to an alternative payee. §§ 414.095(2)(b)4; 414.095(15)(b). The teen parent is not required to live with a parent or other adult relative or legal guardian if the Department determines that the teen has suffered or might suffer harm in that setting or if it is not in the best interest of the teen parent or teen parent's child. In such a situation, the Department must assist the teen in finding a suitable home. Pending placement, the Department may not delay payment to the teen so long as the teen is cooperating. The Department must provide counseling to the teen to make a transition from independent living to supervised living and the teen must be given some choice of living arrangements. § 414.095(15)(c).

In the AFDC program in Florida, teen parents could live on their own and still get assistance. Now, teen parents who are "minor children" (under 18 or under 19 and still in school) are subject to the above restrictions in order to get cash assistance benefits. See § 414.0252(8) and § 414.095(15)(b). Teen parents who should not live at home are assisted in finding "a suitable home, a second-chance home, a maternity home, or other appropriate adult-supervised supportive living arrangement." It is unclear whether the Department will insist on "live-in" adult supervision in order to find that an alternative home is suitable.

2. Special Activities for Teen Parents

Teen parents must participate in parenting/family classes, medical, educational, counseling, or other services that are part of a comprehensive program for teen parents. § 414.095(15)(b)3. See also § 445.024(1)(k). There

are also educational requirements for teen parents. Any teen without a high school degree or Graduate Equivalency Diploma (G.E.D.) must attend school or a program designed to prepare them to get a G.E.D. unless another "activity" is more appropriate. § 445.024(1)(i), (1)(j); see also § 445.024(3)(d) and § 414.095(15)(b)1., 3. Even teen parents of children less than 12 weeks of age and teen parents with high school diplomas may have to comply with a requirement to attend parenting classes.

3. Teen Parent Income/Resources/Payments

The income and resources of the parent with whom the teen parent resides is counted in calculating the assistance available to the teen. § 414.095(15)(b)2. Presumably, this deeming occurs whether or not the income and resources of the teenager's parents are actually available to the teen. A child's earned income is disregarded if the child is a family member and attends high school or the equivalent. § 414.095(12)(b). Generally, teen parents are only eligible for the lowest payment tier (zero shelter obligation). § 414.095(15)(b).

The exclusion of children's income and the inclusion of the parent's income and resources is the same as in the AFDC program. But Florida now departs from the AFDC program in that teen parents who contribute toward the rent can not get the higher "with shelter" payment standard. However, teens unable to live at home who are placed in "alternative" living arrangements "may include a shelter obligation." § 414.095(15)(c)2.

4. Teen Parent Time Limits

Assistance received by teen parents who are not "minors", i.e. age 18 or older who are not in school and age 19 or older (even if in school), counts toward time limitations. Teen parents who have not completed high school or who have had little work experience in the preceding year can receive cash assistance for 3 years at a time, instead of 2 years. § 414.105(1)(b). Although ordinarily limited to 36 cumulative months in any consecutive 72-month period, teen parents who "need... 24 months of eligibility beyond the receipt of a high school diploma" meet the criteria for a hardship extension of (exemption from) time limits. § 414.105(4)(d).

Assistance received by teen parents who are minor children does not count against either the lifetime or "at a time" time limits which will apply to them if they chose to get cash assistance as adults.

Cash assistance benefits received while a "minor child" (under 18 or under 19 if in school) do not count toward time limitations. § 414.105(10). Further, the total lifetime time limit of 48

cumulative months only relates to assistance received “as an adult”. § 414.105(1). Nevertheless, minor child teen parents who reside in a family with an adult who also gets assistance, appear to be subject to that adult’s “at a time” time limits (unless the teen or the adult in the house qualified for continuation of benefits under a hardship “extension”). § 414.105(4)(e). Thus, it is not clear whether the minor teen parent living with an adult-headed family that gets cash assistance can keep getting assistance once the adult parent reaches his/her 48 month lifetime time limit. § 414.105(1), (5).

5. Prevention of Teen Pregnancy

Community-wide strategies are no longer required under Workforce Florida to reduce teen pregnancy in any segment of the service area in which the birth rate for teen parents is higher than the state average. § 414.028(6). This was one of the tasks of the local WAGES coalitions which were abolished. But see the Florida Education Now and Babies Later (ENABL) program at § 411.242, the Teen Pregnancy Prevention Community Initiative at § 411.243, and Teen Pregnancy Diversion at § 445.019.

I. Child Exclusion (Family Cap)

There are financial penalties for having additional children while on welfare. § 414.115. Cash assistance is reduced by 50% for the first child born more than ten months after the family begins getting cash assistance. No assistance is available for second or subsequent children. There are no exceptions for failure of birth control.

1. When Family Cap Applies

Child exclusion applies to families who were getting assistance on August 1, 1996, and gave birth to an additional child more than ten months after August 1, 1996. Child exclusion also applies to new applicants after August 1, 1996, who have at least one child and who give birth to an additional child more than ten months after applying. § 414.115(1), (4), (5). The penalty may not apply to families who are off assistance for six or more continuous months. § 414.115(1)(b).

*Any birth to a new temporary assistance case that occurs **less than** ten months after application or re-application for cash assistance will not be subject to the family cap penalty. This means that some families who conceive a second or subsequent child soon after they applied for cash assistance may avoid the family cap penalty as long as birth occurs before the tenth month.*

It is unclear whether families who received temporary assistance in the past but who go off assistance prior to the birth of their second or subsequent child will be subject to the family cap penalty if they reapply in the future.

2. When Family Cap Does Not Apply

Firstborn children, including children in multiple births, are not subject to family cap penalties. In addition, assistance is not reduced or denied for children who are no longer living with their parents because of a legal custody transfer or the death, incarceration, incapacity, or extended institutionalization of the parent(s). The family cap also does not apply to the first-born children of teen parents even though the teen parent, before the birth of the child, was getting assistance with her family as a minor child. This provision also does not apply to children born as a result of rape or incest so long as the victim files a police report on the rape or incest within 30 days after the incident. It also does not apply to participants who establish good cause for not cooperating with child support enforcement based on rape, incest, or sexual exploitation. § 414.115(2).

Substantially similar family cap provisions had already become part of the regular AFDC program when amendments to Fla. Stat. § 409.185 were passed in 1995.

III. FINANCIAL ELIGIBILITY

Financial eligibility is determined based on the cash assistance unit, which usually includes a parent or caretaker relative and a child. The assistance unit must have very little income and almost no resources to qualify.

A. Income Eligibility

A family's gross income cannot exceed 185% of the federal poverty level. § 414.085(1). To calculate eligibility, the family's average gross earned and unearned income, less the applicable disregards, must be subtracted from the payment standard. § 414.095(13). The remainder is the grant amount. The payment standard is set out in statute at § 414.095(11). See Section III. C. Assistance Levels as well as Appendix A.

Similarly, in the AFDC program in Florida, income could not exceed 185% of the federal poverty level.

1. Definition of Income

"Income" in the cash assistance program includes:

- child support payments, including the first \$50, unless required to be excluded by federal law, § 414.085(3); and

- income considered in the Food Stamp or Medicaid Programs.

Apart from the above, the Department is explicitly required to apply the "income definitions" in the Food Stamp program at 7 C.F.R. § 273.9 "[f]or purposes of program simplification and effective program management." § 414.085. At the very least, this appears to incorporate income definitions that include but are not limited to:

- earned income, including wages; self-employment income; training allowances from certain vocational and rehabilitative programs to the extent that they are not a reimbursement; and certain VISTA income and JTPA on-the-job training earnings; and
- unearned income, including assistance payments from federal needs-based public assistance programs; annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation; social security; foster care payments; alimony; scholarships, educational grants, fellowships, and some deferred loans for education; monies which are withdrawn or dividends which are or could be received by the family from trust funds.

Further, § 414.14 requires the Department to generally "align the requirements for [cash assistance income] eligibility...with the food stamp program and medical assistance eligibility policies and procedures" by rule if conformance to federal law governing those programs "would simplify administration...or reduce errors without materially increasing the cost of the [cash assistance] program..."

It is unclear to what extent Food Stamp and/or Medicaid income provisions will be adopted in the cash assistance program, it is possible that the Department may apply Food Stamp regulations relating to exclusions for income that do not represent a gain or benefit, vendor payments, in-kind income, and loans. See 7 C.F.R. § 273.9(c).

Notwithstanding the above, income in the cash assistance program specifically does **not** include:

- income security payments including Supplemental Security Income (SSI), unless required to be included by federal law, § 414.085(2);
- an incentive payment to a participant authorized by a regional workforce board, § 414.085(4).

With the exclusion of SSI benefits from the definition of income for cash assistance purposes, the

statutory provision allowing a “special needs allowance” deduction to offset SSI income appears to be superfluous. § 414.43.

“Income” should **also not** include income used to repay a prior overpayment from the same income source. For example, SSI income used to repay an SSI overpayment should not be counted as income for purposes of calculating cash assistance financial eligibility. This is true whether the overpayment is voluntarily repaid or involuntarily recouped. This provision does not, however, apply to repayments based on an intentional violation of program rules. 7 C.F.R. §§ 273.9(b), (5)(i), 273.11(k). Income also should not include "assistance received by recipients from other agencies or organizations such as public housing authorities" as described at 45 C.F.R. § 233.20(a)(3)(vii)(c). § 421.10(1)(d).

The income exclusion described at Fla. Stat. § 421.10(1)(d) (assistance received from public housing authorities is not income) incorporates by reference 45 C.F.R. § 233.20(a)(3)(vii)(c). This AFDC regulation provides for the exclusion of non-duplicative assistance from other agencies or organizations. It is unclear what impact the possible repeal of Chapter 233 of 45 C.F.R. may have on this exclusion.

2. Income Disregards

a. \$200 and One-half Earned Income Disregard

Families with members who work may be eligible for significant earned income disregards. These disregards require that the first \$200 plus one-half the remainder be deducted (disregarded) from a family's earned income when calculating financial eligibility for cash assistance. There is no limit on the number of months a family can receive the \$200 and one-half disregard. § 414.095(12)(a).

The 2001 Legislature created the Passport to Economic Progress demonstration program to be implemented no later than November 1, 2001, in Manatee and Hillsborough Counties. It encompasses, among other things, a “\$300 plus one-half of the remainder” earned income disregard. By January 1, 2003, Workforce Florida, Inc. must report on the program and issue recommendations as to whether it should be expanded to other service areas (even statewide) and whether it should be revised to improve the program.

However, not all families are eligible to have these disregards applied to their earnings. A "current participant in the program" is eligible

for earnings disregards. Also eligible are applicants who would be eligible for cash assistance without any earnings disregards. §§ 414.095(12)(a)1., (12)(a)2.

There is no disregard for any child care payment. This is true even if the Department lacks the funds to assist with child care and the recipient must pay for child care out-of-pocket to be able to continue working.

In the AFDC program, federal law provided for the first \$90 of gross earnings to be disregarded as well as \$30 plus one-third of earnings. However, the \$30 and one-third disregard could only be applied for 4 months. After 4 months, only \$30 was disregarded only for 8 more months. 45 C.F.R. § 233.20 (a)(11)(ii)(B). A child care disregard was also permitted in AFDC.

b. Child's Earned Income

All of a child's earned income must be disregarded so long as the child is 19 years old or younger and in high school or the equivalent. § 414.095(12)(b).

c. Special Needs Allowance

i. Regular special needs allowance

The purpose of the special needs allowance is to offset the out-of-pocket expenses of persons with disabilities that are not covered by Medicaid. § 414.43(2), (3). It applies to families with one or more members who get Supplemental Security Income (SSI) where such SSI income may not be disregarded due to federal law. § 414.43(2).

Unlike the former AFDC program, federal law now allows SSI recipients' income and resources to be counted by state TANF programs. However, Florida has opted not to count the SSI income of SSI recipients. § 414.085(2). The practical effect of the special needs allowance is thus dubious.

To calculate the family's cash assistance, this "allowance" is deducted from a family's gross income to arrive at the family's net monthly income. The Department is required to consult with disability advocates in setting the amount of the special needs allowances. There may be more than one standard amount. § 414.43(1), (2), (3), (5).

ii. High out-of-pocket expenses special allowance

Families with "unusually high" out-of-pocket expenses related to the disability of a family member may be eligible to receive cash assistance in an amount higher than the regular payment standard. To be eligible, the out-of-pocket expenses must be higher than 125% of the SSI maximum grant for one. § 414.43 (1)(a). No more than 10% of the families who get the regular special needs allowance may qualify for this additional allowance.

In the AFDC program, the needs of family members receiving SSI were not considered in the grant. Accordingly, neither their income nor resources counted against the rest of the family. When federal law began allowing SSI recipients' income and resources to be counted by state TANF programs, Florida created the special needs allowance concept. In view of the fact that Florida has presently opted not to count the income of such a person in calculating the family's cash assistance (§ 414.085(2)), it is unclear what practical effect the special needs allowance still has.

B. Resource Eligibility

The resource limit for cash assistance is \$2,000. The program allows the Department to develop resource policy criteria with a few exceptions. § 414.075. The resource definitions in the Food Stamp program are specifically incorporated by reference. Further, in certain situations, the Department has a responsibility to align cash assistance resource policy with that of the Food Stamp or Medicaid program. § 414.14.

The resource limit for AFDC was \$1,000. 45 C.F.R. § 233.20(a)(3).

The statute does not state what method of valuation should be used for resources. However, because of the statute's "simplification" requirements, resources will probably be evaluated in the same manner as the Food Stamp program. This means that DCF will likely count the equity value as opposed to fair market value.

The law excludes adult individuals receiving Supplemental Security Income (SSI) as household members in determining the amount of cash assistance for the rest of the assistance group. § 414.045(1)(b)3. Since adult SSI recipients are not considered household members, the resources of such persons would presumably not count against the rest of the assistance group. By policy, the Department also excludes non-adult (child) members getting SSI from the household. So neither their income nor resources are considered in determining cash assistance for the rest of the assistance group.

1. Definition of Resources

a. Cars § 414.075(2)(a)

Except as described below, cars count toward the cash assistance resource limit.

Any vehicle necessary to transport a physically disabled family member does not count. A car shall be considered necessary for this purpose "if the vehicle is specially equipped to meet the specific needs of the disabled person or the vehicle is a special type of vehicle and [sic] makes it possible to transport the disabled person." Id.

This vehicular exclusion is taken from the Food Stamp program. See 7 C.F.R. § 273.8(h)(v). An April 6, 1990, Food Stamp Program Policy Memo issued by USDA, interprets this regulation as not requiring that the vehicle have special equipment in order to be totally excluded as a resource for purposes of food stamps: "The determining factor... is the fact that a physically disabled household member requires a vehicle for transportation." Presumably, USDA's interpretation should prevail because the Florida Legislature requires that cash assistance resource definitions be aligned with those of the Food Stamp program. § 414.075.

For families **with** an adult subject to work participation requirements, licensed vehicles needed for education, training or employment with a combined value of up to \$8500 do not count. For families **without** an adult subject to work participation requirements, **one** vehicle valued at no more than \$8500 is excluded from being counted as a resource. § 414.075(2)(a).

In the AFDC program, the first \$1500 of a car's value does not count, and a recipient's car is evaluated according to its equity value, i.e. market value less encumbrances (loans). 45 C.F.R. § 233.20(a)(3)(ii). By policy, the Department continues to use the equity value of a vehicle to determine resource eligibility in the cash assistance program. In fact, the Department has aligned the vehicle valuation rules such that cars are treated the same for both food stamp and cash assistance eligibility.

b. Funds for Shelter

Funds paid to a homeless shelter which are being held for the family to pay deposits or other costs associated with moving to new shelter do not count as a resource. § 414.075(2)(b).

c. Resources Considered in the Food Stamp and Medicaid Programs

Except for the resources outlined above, the Department must apply the "resource definitions" set forth in the Food Stamp program at 7 C.F.R. § 273.8. At the very least, this appears to incorporate resource definitions that include but are not limited to:

- liquid resources, including but not limited to cash, bank accounts, stocks and bonds, IRAs, lump sums, and certain Keogh plans; and
- non-liquid resources, including but not limited to personal property, cars (as described above), and land. For cash assistance, unlike the Food Stamp program, vacation homes **do** count as an includable resource. §414.075(3).

Further, § 414.14 of the Florida Statutes requires the Department to, by rule, "align the requirements for eligibility...with the food stamp program and medical assistance eligibility policies and procedures to simplify the budgeting process and reduce errors" if this "would simplify administration of the [cash assistance] program or reduce errors without materially increasing the cost of the program."

It is unclear to what extent Food Stamp and Medicaid resource provisions will be adopted in the cash assistance program. However, it appears that the Department certainly has the authority to apply other Medicaid and Food Stamp resource provisions, such as those in the Food Stamp program that relate to jointly owned resources [7 C.F.R. § 273.8(d)] or inaccessible resources and trusts [7 C.F.R. § 273.8(e)(8)], for example.

d. Transfer of Assets Penalty

The individual and the entire assistance group in which the individual is a current member are ineligible for two years from the date the individual transfers an asset for the purpose of qualifying or maintaining eligibility for cash assistance. § 414.075(4).

As in the former AFDC program, the value of the transfer is not relevant, only the intent. Thus, unlike the Food Stamp program, the disqualification penalty applies even if the transfer is for fair market value. But consider that an asset with minimal market value was probably not transferred with the intent to affect eligibility.

Note also that the penalty follows the individual who made the transfer from one assistance group to the next, penalizing members of a new assistance group who may not have been members when the transfer occurred.

C. Assistance Levels

The Legislature establishes the cash assistance payment levels, which are set out in statute at § 414.095(11). See Appendix A. There are three different assistance levels. The highest level applies to homeless families or families with a shelter obligation greater than \$50; the middle level applies to families with a shelter obligation greater than zero but less than or equal to \$50; and the third applies to families with no shelter obligation at all. These levels comprise the Three-Tier Shelter Payment Standard. The statute does not define what counts as a shelter obligation.

Like the AFDC program, assistance levels are based on a family's obligation, not on the amount of rent or mortgage that a family actually pays. However, unlike AFDC, there are now three assistance levels instead of two.

Note that families containing a child subject to the "family cap" limitation will not get the same amount of benefits as other families of similar size having a shelter obligation at the same tier/level. Cash assistance is reduced by 50% for the first child born to a family already getting assistance. Subsequently born children get no assistance. § 414.115.

There are special payment standard rules for teen parents and "child-only" cases. Generally, teen parents are only eligible for the lowest payment tier (zero shelter obligation). § 414.095(15)(b). And the payment standard for the child in a "child-only" case is based on the "shelter obligation paid to the caretaker relative." § 414.095(5).

1. Insufficient Funds

a. For Cash Assistance

If there are insufficient funds due to an increase in the caseload as projected by the Social Services Conference, the Department will proportionally reduce the assistance payment levels. § 414.095(17).

Legislative intent here appears broad enough to allow the Department to reduce payment levels not only to compensate for inadequate funds for cash assistance but also to compensate for inadequate funds for child care and other support services for an increased caseload. Since there is a strong likelihood that child care will not be adequately funded, cash assistance payments could be at risk for deep cuts in the event of a caseload increase, for instance during a recession. However, as of early 2002, rather than increasing, Florida caseloads declined dramatically with the 1996 repeal of AFDC and enactment of TANF.

b. For Participation in Work Activities

If there are insufficient funds to allow participation in full-time

Caretaker relatives may be eligible to convert their cash assistance case to the Relative Caregiver program. § 39.5085. This program pays a higher level of benefits to children officially placed with relatives as a result of a court determination of abuse, neglect, or abandonment. See also Florida Administrative Code § 65C-24.

work activities by all non-exempt participants, the regional workforce boards have the authority to prioritize participants. § 445.024(4). Regional workforce boards must screen participants and assign priority to the following:

- for full-time work activities, one adult in a two-parent family;
- single-parent families with "older preschool children or school-age children;"
- participants with access to nonsubsidized child care;
- participants with little time remaining until their applicable time limit is reached
- participants with particular case plan requirements.

Depending on the allocation or availability of resources or the work activity needs of a service district, the regional workforce boards have the authority to develop screening and prioritization procedures within service districts or within counties.

D. Persons whose Income and Resources are Considered - Filing Unit:

Some members of the family are required to be in the cash assistance filing unit. This means that their income and resources will be counted in determining financial eligibility. It also means that they will receive cash assistance benefits.

Some members of the family appear to be specifically excluded from the filing unit, i.e. adult individuals receiving Supplemental Security Income (SSI) are excluded in determining the amount of cash assistance for the rest of the assistance group. § 414.045(1)(b)3. Thus, the resources of such persons would likely also be excluded. Similarly, by policy the Department specifically excludes from the filing unit any member (whether adult or child) who gets SSI.

1. Optional members

a. Caretaker Relatives

Caretaker relatives have the option of being included in the filing unit and receiving cash assistance benefits. § 414.095(2)(b)3. Thus, caretaker relatives can decide whether or not to receive cash assistance for themselves. However, caretaker relatives who opt to receive cash assistance must both meet financial eligibility requirements and comply with work activity requirements. § 414.095(5). The case of a caretaker relative who opts **not** to get assistance for himself is called a "child only" case. § 414.045(1)(b)1., 2.

In cases in which the caretaker relative does not opt to participate, the child's eligibility will be determined based on the child's income and resources. None of the caretaker's income or resources will be counted. § 414.095(5). The payment standard to be used for the child will be based on the "shelter obligation paid to the caretaker relative." Id.

Children who are obligated to contribute more than \$50 monthly for shelter will get the most cash assistance: the highest of the three tiers. § 414.095(11). DCF has indicated that the relative's statement of the amount of the obligation is sufficient verification unless questionable. However, it is unknown how the Department will treat situations in which the caretaker states that the child's shelter obligation exceeds the caretaker's own shelter expense. For example, where the caretaker's mortgage is paid off, it is unclear whether the Department will accept the statement of a caretaker relative who says that the child is "obligated" to contribute \$51.

b. Stepparents

A stepparent whose income is below 185% of the federal poverty guidelines can opt to be included or excluded from the cash assistance grant. § 414.095(4)(a). However, if there are mutual minor children or the stepparent's income is at or over 185% of the federal poverty level for a two-person family, the needs of the stepparent **must** be included. §§ 414.095(4)(a)2., (4)(b). Also, the needs of stepparents in two-stepparent families **must** be included. § 414.095(4)(c).

For stepparents who **are** included in the cash assistance grant, all of the income and resources of stepparents who opt to be or are required to be included in the assistance unit are considered. For stepparents who **are not** included in the grant, their income and resources will not be considered.

The statute emphasizes that "any income and resources from the parent of the child shall be

included" but it is unclear if and how deeming from the stepparent to the spouse (the child's parent) will occur. § 414.095(4)(a)1. In the AFDC program, stepparent deeming was allowed.

2. Mandatory Members

Parents and the child for whom benefits are sought must be included in the filing unit. In addition, the statute states that all minor children “who live in the family” must be included in the filing unit unless they are specifically excluded. § 414.095(2)(a)5. As described above, some step-siblings and stepparents must also be included.

The requirement to include in the assistance group all minor children “who live in the family” could be read to compel the inclusion of all related children (i.e. cousins) who share a household with the minor child and parent who are requesting assistance. If the related child has income, such as from a deceased parent, which could be deemed available to the household, this could result in financial ineligibility for the parent and minor child for whom assistance is requested and actually needed. However, at present the Department’s policy only requires that siblings and half-siblings be included in the same assistance group with the minor child for whom assistance is sought.

E. Method of Payment

The statute does not require assistance to be paid only in the form of cash. Payment may be made directly to the family or to an alternative payee through subsidized employment, pay-after-performance arrangements with public or private not-for-profit agencies, state warrant, electronic assistance transfer, or voucher. § 414.095(14). Ordinarily, cash assistance benefits are “credited” or posted monthly to the family’s electronic benefits transfer (EBT) account and are usable at commercial establishments by swiping magnetically encoded EBT cards through point of sale (POS) machines which debit the EBT account for each transaction. Families may also make cash withdrawals at banking institutions’ automated teller machines (ATM).

In the AFDC program, eligible families were entitled to cash assistance and received monthly checks.

F. Overpayments

The Department must take all necessary steps to recover overpayments of public assistance, even if the overpayment results from agency error, not just client error or fraud. § 414.41(1). Intentional program violation (fraud) is defined by statute as willfully providing false information or omitting information to become or remain eligible. *Id.*

The Department must contract out (privatize) recovery of overpaid claims, both fraud and non-fraud, in the cash assistance, Food Stamps, and “AFDC” programs. §

414.36. The Department has the authority to "settle" overpayments. There must be policies and cost-effective rules for recovery and calculation of overpayments in place. § 414.41(1). When criminal prosecution is not warranted for fraud, administrative disqualification hearings will be pursued regardless of whether the program violator is currently eligible for benefits. § 414.41(1)(b). The disqualification period for intentional violation must be consistent with that imposed in the Food Stamp program. § 414.41(1)(c).

The Personal Responsibility and Work Opportunity Act of 1996 increased Food Stamp sanctions for fraud. For the first intentional program violation, a one year disqualification is imposed. For the second, a two year disqualification is imposed and, for the third, the participant is forever disqualified from the Food Stamp program. These are the disqualification penalties that will now apply to cash assistance fraud.

Recovery of Food Stamp and cash assistance overpayments may be accomplished through the Federal Income Tax Refund Offset Program, so long as the Department follows guidelines in accordance with federal rules and regulations and consistent with the Food Stamp program.

The above was part of the regular AFDC program effective July 1, 1995. § 409.2562.

"Extreme hardship" will no longer excuse repayment of an overpayment, even temporarily. However, if recovery of the entire amount of an agency-induced overpayment results in extreme hardship, the amount of the repayment may be reduced, but only when the overpayment results from agency-error. The Department must create rules defining the circumstances which constitute hardship. § 414.41(2).

The AFDC program did not allow the Department to pursue any overpayment if extreme hardship would result from forced recovery, even if the overpayment was the result of fraud. In contrast, now extreme hardship is a basis only to have the required monthly amount of repayment reduced in agency- error cases. Although hardship can not be a basis to waive repayment "in whole or in part," the agency is allowed to "settle" any kind of overpayment on a cost-effective basis. Compare § 414.41(1) with § 414.41(2).

The Department will enforce court-ordered income-deductions against liable adult participants or recipients, including family heads, for any Food Stamp, Medicaid, "AFDC", or cash assistance overpayment received as an adult. § 414.41(3).

This is new. Depending upon how it is implemented, it may conflict with Fla. Stat. § 222.11 which exempts the earnings of heads of households from legal process.

IV. PROCEDURAL ELIGIBILITY

A. Application

To apply, an applicant must submit a signed and dated application form requesting to participate in the cash assistance program. §§ 414.0252(2), 414.095(9). At the time of application, all applicants will be referred to a work activity if they are eligible to participate in cash assistance. §§ 445.024(2), 414.095(1). Applicants can get support services or child care necessary for them to participate in work activities. § 414.095(1). The family has the responsibility to provide correct and complete information about the family's circumstances which relate to eligibility. § 414.095(10)(d).

Applications may be made at DCAF offices or possibly also at the One-stops. Regional Workforce Boards, through contracts, may deliver work-related services at the One-stops.

The Workforce Innovation Act requires an automated, integrated intake-screening and eligibility process on a self-service basis for work-related services. § 445.009(5)(a)(2). The One-stop must make an initial determination of the programs for which a customer is likely to be eligible. After the initial determination a referral must be made for a more thorough eligibility determination. § 445.009 (5)(l). Nevertheless, it is not clear from these provisions whether people will be able to apply for cash assistance at One-stops.

1. Felony Drug Convictions

In Florida, persons who have been convicted of a controlled substance (drug) felony can still get cash assistance unless the felony was trafficking. To be eligible, such a individual must meet substance abuse treatment requirements. § 414.095(1).

B. Verification

The family must provide facts to the Department relevant to determining eligibility. This information must be correct and complete. In addition, the family must obtain or authorize the Department to obtain documents or information from third parties to establish eligibility. § 414.095(10)(a). Applicants must be provided 10 calendar days to provide the requested documentation or verification. Rule 65A-1.205(d). If it is difficult or impossible for the family to obtain the requested documentation for verification, the DCF caseworker must provide assistance in obtaining it. Rule 65A-1.205(d). The family must keep the Department informed about changes that could affect eligibility. § 414.095(10)(d), (e).

C. Decisions

The Department must make eligibility determinations "based on the criteria listed in...chapter [414]." § 414.095(1). Eligibility must be determined "without discrimination based on race, color, sex, age, marital status, handicap, religion, national origin, or political beliefs. § 414.095(10)(b). The application will be denied after 30 days if the applicant fails to respond to scheduled appointments **and** does not contact the Department regarding the application. § 414.095(9). DCF must act on applications within 45 days. Fla. Admin. Code Rule 65A-1.205(1)(c). See also § 409.285(1) (requiring that applications be acted on within a "reasonable time"). See also Rule 65A-1.205(d) (stating that the abandonment deadline is 30 calendar days).

D. Redetermination

"Continued eligibility" will be monitored by redetermination through periodic reviews consistent with the food stamp eligibility process. § 414.095(1). See also Rule 65A-1.205(2). However, the family has the responsibility to keep the Department informed of any changes that could affect eligibility. § 414.095(10)(e). This includes the duty to provide correct and complete information about the family's circumstances which relate to eligibility. § 414.095(10)(d).

E. Due Process

Nothing in Chapters 414 or 445 affects an applicant's or recipient's right to written notice, hearing, and judicial review of final agency action under the Florida Administrative Procedure Act at Chapter 120 of the Florida Statutes. The opportunity for hearings and appeals under Fla. Stat. § 409.285 has not been repealed.

1. Notice

a. Under Statute / Rules

The Department must "advise" the family of any reduction or termination of cash assistance or Food Stamp benefits. § 414.095(10)(c). There is no similar requirement for denial or approval. Nor is there a requirement in the statute that the notification be in writing. However, under DCF rules applicable to the cash assistance program, DCF must give written notice of intended action to discontinue, terminate or reduce assistance. Rules 65-2.042; 65-2.043(1).

There is no express duty under Chapters 414 or 445 to notify families of reductions or terminations in their support services, work activities, or child care. Notwithstanding, the APA requires agencies to give notice to persons who will be affected by the agency's proposed action. Chapter 120 of the Florida Statutes.

b. Under the APA

The APA requires agencies to give notice to persons who will be affected by agency action or the agency's proposed action.

2. Hearing Rights

a. Under Statute / Rules

Applicants for cash assistance have a right to a hearing if their application is denied in whole or in part or is not acted on within a "reasonable time."

§ 409.285(1). Recipients of cash assistance may appeal decisions to modify or cancel their assistance payment to DCF "in the "manner and form prescribed by the department." Id.

Under DCF rules applicable to the cash assistance program, an applicant or recipient has the right to a hearing over any Department "action or failure to act." Rule 65-2.044. The hearing must be requested within 90 days of the date DCF provides written notification of its action or decision. Rule 65-2.046.

The hearing decision must be rendered within 90 days of the date the hearing was requested. Rule 65-2.066(5). DCF must carry out cash assistance hearing decisions "promptly." § 409.285(2). "Promptly" is not defined.

The Model Rules, or Uniform Rules of Procedure, at Florida Administrative Code § 28-106, generally control the conduct of administrative hearings. To apply any conflicting DCF hearing rule, the agency would have had to apply for and been granted an exception for its rule. DOC v. Saulter, 742 So. 2^d 368 (Fla. 1st DCA 1999). No exception is necessary if the Department's rule does not conflict with, or fall within, the scope of the Uniform Rules. Crawford v. DCF, 25 Fla. Law Weekly D 158 (Fla. 3^d DCA 2000), 2000 WL 27551. Caveat: the Department has not been granted an exception for Rules 65-2.044 or 65-2.066. But see section IV.E.2.b. text box for a listing of the model rules from which DCF has been excepted.

i. Review of board or panel decisions

The Department must develop rules which guarantee that a participant will have a right to a review by a supervisor or administrator of any decision made by the program or DCF boards or panels. § 414.45.

If a supervisory or administrative review operates as a final agency decision, cash assistance applicants and recipients have the right to appeal same directly to the state district courts of

appeal. § 409.285 (stating that the hearing authority used by the Department is responsible for rendering a "final administrative decision"). Fla. R. App. P. 9.030(b)(1)(C); 9.110(m).

ii. Hearing on Learnfare Sanctions

The right to a hearing is specifically required for Learnfare sanctions. § 414.1251. Prior to terminating the benefits of a child who is habitually truant or a drop-out from school, the Department must provide a notice of sanction and give the family an opportunity for an "internal fair hearings process review procedure appeal." If the participant requests a hearing within ten days after sanction notification, no sanction can be imposed until the appeal is resolved. The statute does not define an "internal fair hearings process review procedure appeal."

Learnfare hearing rights were abolished along with the repeal of the Learnfare statute by the 2000 passage of the Workforce Innovation Act, Chapter 445. When Learnfare was re-enacted by the 2001 Legislature, Learnfare hearing rights were also reinstated.

b. Under the APA

All persons whose substantial interests are determined by DCF, or "an agency," have a right to a hearing under the Florida Administrative Procedure Act at § 120.569(1). The hearing request must be filed with the agency. § 120.569(2)(a). The agency is required to grant or deny the request within 15 days. *Id.* Hearings concerning the approval, denial, termination, or reduction of cash benefits are conducted by a DCF hearing officer. § 120.80(7). The Model Rules (or Uniform Rules of Procedure) generally control the conduct of APA hearings at Fla. Administrative Code §§ 28 - 106. § 120.54(5)(a)1.

The Department has been granted an exception to the following "model" hearing rules: 28-106.104; 28-106.105; 28-106.106; 28-106.107; 28-106.109; 28-106.111; 28-106.201; and 28-106.210 (for hearings conducted by DCF pertaining to, inter alia, cash assistance amounts). In lieu of these excepted model rules, DCF hearing rules apply.

Families who request a hearing concerning their cash assistance application or case must be provided notice of the hearing at least 14 days in advance. § 120.569(2)(a). The hearing decision itself must be rendered within 90 days after the hearing is conducted. § 120.569(2)(j)(1).

Hearings to appeal decisions concerning work activities or support services should also be available under the APA to the extent such decisions are rendered by “agencies” other than the Department.

F. Policy Simplification

"To the extent possible," the income and resource eligibility requirements of Chapter 414 must be changed to conform to federal Medicaid or Food Stamp law so long as such a change would not materially increase costs and would simplify the administration of the program or simplify budgeting and reduce errors. Changes are required to be made by rule with advance written notice to the Legislature. § 414.14. However, contrary to the APA, the proposed rule shall take effect 14 days after written notice is given to the Legislature. Id.

Chapter 414 also specifically incorporates the resource and income definitions found in the Food Stamp program (at 7 C.F.R. §§ 273.8 and 273.9 respectively) to the extent those definitions are not inconsistent with the resource and income sections at §§ 414.075 and 414.085. Furthermore, the Department has authority to obtain federal waivers of Food Stamp program requirements in order to further the goals or simplify administration of the program. § 414.175(2).

V. ADMINISTRATION OF THE CASH ASSISTANCE PROGRAM

The Florida Workforce Innovation Act of 2000 abolished the former WAGES program and absorbed welfare cash assistance into a system which consolidates many federally-funded training programs. As a result, Florida's administrative scheme for TANF has changed significantly. Instead of the State WAGES Board, the new Act establishes a private not-for-profit corporation called Workforce Florida, Inc., to run the TANF program, as well as other work programs, on the state-wide level. Instead of local WAGES coalitions, the Act requires Regional Workforce Boards (RWB's) to handle much of the local administration. The Department of Children and Family Services (DCF), however, continues to play the same role it did under the old WAGES program. DCF is still responsible for the determination of financial eligibility and actual provision of cash benefits.

Of course, even though TANF recipients will be walking in the same One-Stop door as other persons seeking Workforce-related help, it remains to be seen whether consolidation of workforce programs will make any difference in the services they actually get. But Florida's new Workforce Innovation Act may make it more likely that TANF cash assistance applicants and recipients will get information about the full array of training- and education-related options available to them, including options completely outside the welfare program.

A. Workforce Florida, Inc.

Workforce Florida is the principal organization for setting workforce-related policy for the State of Florida. 445.004(2). In many ways, Workforce Florida takes the place of the State WAGES Board. It also serves as Florida's Workforce Investment Board pursuant to the requirements of the federal Workforce Investment Act (WIA). 29 U.S.C. § 2821; § 445.004(5)(a).

Workforce Florida is a private, not-for-profit corporation created by the Legislature. § 445.004. The Legislature specifically states that Workforce Florida is "not a unit or entity of the state government." § 445.004(5)(1). However, Workforce Florida is subject to the provisions relating to public records and the provisions relating to public meetings at Chapters 119 and 286 of the Florida Statutes respectively. See also 29 U.S.C. § 2821(g).

Chapter 286 of Florida Statutes is relatively unused in Legal Services advocacy and, therefore, few advocates have expertise in that area. However, Chapter 286 does potentially provide interesting legal handles. These handles include: subsection 286.011 (1), which states that "no resolution, rule of formal action shall be considered binding except as taken or made at" a public meeting; subsection § 286.011(2), which states that minutes of all public meetings must be promptly recorded; subsection § 286.011(4), which contemplates the filing of an action to enforce Chapter 286 and the availability of attorneys fees; and § 286.011(6), which prohibits holding public meetings at locations that discriminate on the basis of sex, age, race, creed, color, origin or economic status or "which operates in such a manner as to unreasonably restrict public access to such a facility."

Although Workforce Florida is administratively "housed" in the Agency for Workforce Innovation (AWI), it is not subject to the control, supervision, or direction of AWI "in any manner." To the contrary, Workforce Florida has the responsibility of providing oversight and policy direction to ensure that the Agency for Workforce Innovation administers relevant programs in compliance with approved plans. § 445.004(5)(b). And Workforce Florida's policy-making authority is significant. Workforce Florida is intended to be the principal policy organization for the State of Florida to help Floridians enter, remain in, and advance in the workplace. § 445.004(2).

Workforce Florida is responsible for "policy directions" to the Regional Workforce Boards (RWBs). § 20.50 at (1)(a).

The relevant programs over which Workforce Florida has policy oversight include but are not limited to : programs authorized under Title 1 of WIA; programs authorized under the Wagner Peysner Act; Welfare-to-Work grants administered by the Federal Department of Labor; activities

authorized under Title II of the Trade Act and the Trade Adjustment Assistance Program; activities authorized under 38 U.S.C., Chapter 41 for job counseling, training and placement of veterans; employment and training activities carried out under the Community Services Block Grant; HUD employment and training activities; welfare transition services (i.e., all workforce services); displaced homemaker programs; the Florida Bonding Program; the Food Stamps Employment and Training Program; the Quick Response Training Program; and Offender placement services. § 45.004(5)(b). Workforce Florida’s legislative authority to develop comprehensive education and training policies can assist, among others, those getting public assistance. § 445.004(6).

Workforce Florida must develop a strategic plan for workforce in conjunction with state and local partners. § 445.006. Workforce Florida has the responsibility for contracting with public and private entities to carry out the Act. § 445.004(5)(c). All contracts must include “specific performance expectations and deliverables.” *Id.*

1. Composition of Workforce Florida Board

The Governor makes appointments to the Board of Directors of Workforce Florida, primarily from business-related entities. In addition, the appointments must include the Governor himself, two members of the Florida Senate, two members of the Florida House, and five representatives of organized labor. See 29 U.S.C. § 2821 (b); § 445.004 (3). Board membership must also include at least one member who is a current or former recipient of services associated with the cash assistance program or other services provided by One-stops. The “importance of minority, gender and geographic representation” must be considered when making board appointments. §445.004(3)(a). Terms are for 2 years. Providers of “workforce services” may not be appointed to the Board of Directors, § 445.004 (3)(f). Further, the majority of Board members must be representatives of business. 29 U.S.C. § 2821 (b)(1)(C)(i). The chairperson of the Board must be selected by the Governor from one of the appointed members representing business interests. 29 U.S.C. § 2821 ((c). Meetings are at least quarterly. § 445.004(4)(b). Minutes of formal meetings must be “made available” upon request. 29 U.S.C. § 2821 (g).

Neither federal nor State law set a ceiling on the number of appointments and it makes sense to advocate for appointments of client-friendly persons on the Board.

a. Councils

Workforce Florida must have 3 “standing councils” pursuant to § 445.005, identical to the substantive committees of the RWBs. Councils shall be composed of persons appointed by the Chair of Workforce Florida from the Board of Directors as well as from individuals outside Workforce Florida who possess “relevant experience or expertise in the subject area of the council.” § 445.005(1)(b). The majority of membership on the Councils must be members of the Board of Directors of Workforce Florida. They must meet at least quarterly. § 445.005(1)(d). The standing councils are as follows:

First Jobs/First Wages Council

First Jobs/First Wages is Florida’s strategy to promote successful entry into the workforce through education and workplace experiences that lead to self-sufficiency and career advancement. § 445.004(10)(a). First Jobs/First Wages must develop strategies for promoting the successful entry of individuals (including young people and adults working for the first time) into the workforce. § 445.005(2). First Jobs/First Wages serves as the state’s youth council for purposes of the Federal WIA. Id.

Better Jobs/Better Wages Council

Better Jobs/Better Wages is Florida’s strategy for assisting employers in upgrading the skills of their employees and for assisting incumbent workers in improving their performance in their current jobs or acquiring the education or training to get a better job at a better wage. § 445.004(10)(b). Better Jobs/Better Wages is required to develop strategies for promoting the ability of adult workers to build careers by obtaining and retaining jobs with potential for advancement. § 445.005(3). The mission of the council includes developing strategies that promote the ability of participants in the welfare transition program to succeed in the workforce and avoid a return to dependence on cash assistance.

High Skills/High Wages Council

High Skills/High Wages is Florida’s strategy for aligning education and training programs with high-paying, high-demand jobs that advance individuals’ careers, build a more skilled workforce and attract and expand job-creating businesses. § 445.004(10)(c); § 445.005(4).

B. Regional Workforce Boards

Regional Workforce Boards (RWBs) are critical to how TANF is

implemented locally. RWBs are akin to the abolished local WAGES coalitions. However, the statute gives RWBs significantly greater policy-making authority than the WAGES Act gave to local WAGES coalitions. The responsibilities of RWBs include strategic planning, policy development, and oversight of the local system, including choosing local managers to operate One-stop delivery system centers. § 445.003(1)(e). RWBs may also appoint “local committees” to obtain technical assistance on important matters such as issues affecting older workers. § 445.007(6). RWBs, however, must not themselves provide intake, assessment, eligibility determinations, or other direct services. § 445.007(5).

Although RWBs replace local WAGES coalitions, the scope of their authority is much broader than just the welfare program. RWBs are responsible for local implementation of all the workforce programs consolidated under Florida’s Workforce Innovation Act.

Workforce Florida limits regional workforce boards to one per each designated service delivery area. § 445.007 (1). Among other duties, RWBs have the responsibility for developing a local plan. See 29 U.S.C. § 2833. To be chartered as the local RWB, the RWB’s plan must be consistent with Florida’s workforce strategy. § 445.004(11). “Local decision making and control” are important components for inclusion in a charter application to be the local RWB. § 445.004(11).). Among other things, each RWB’s plan must:

- Specify methods for allocating resources and programs in a way that eliminates unnecessary duplication;
- Meet the demands of the existing job market;
- Ensure access to quality workforce development services for all Floridians;
- Prohibit the creation of a waiting list or other indication of an unserved population;
- Serve as many people as possible within available resources; and
- Maximize successful outcomes. § 445.004(11).

In addition to developing a Local Plan, RWBs also have the obligation to oversee the One-stop delivery system. § 445.007(4)(d). RWBs must designate all local service delivery providers and are prohibited by statute from transferring this authority to a third party. § 445.007 (5). RWBs have the responsibility to contract for a fiscal agent and administrative entity. § 445.007(4)(b). All contracts entered into by the RWBs must include “specific performance expectations and deliverables.” § 445.007(11).

The “chief elected official” of each local area is responsible for appointing members to the RWB. 29 U.S.C. § 2832 (c). Membership on the board must include one representative from a certificate-conferring nonpublic post-secondary educational institute that is an authorized individual training account (ITA)

provider within the region; one representative from a degree-conferring nonpublic post-secondary education institution that is an ITA within the region; and three representatives from organized labor. Chapter 445 expressly encourages RWB's to include persons who are current or former recipients of services associated with the cash assistance program or other services provided by One-stops as board or committee members. The Act requires that minority and gender representation be considered when making appointments to the RWB. § 445.007(1).

Each RWB must establish three substantive committees identified below consisting of at least five members each. "Minority and gender representation" must be considered in making appointments to the committees. § 445.007(10). The three committees are:

High Skills/High Wages Committee. § 445.007(7)

High Skills/High Wages is Florida's strategy for aligning education and training programs with high-paying, high-demand jobs that advance individuals' careers, build a more skilled workforce and attract and expand job-creating businesses. § 445.004(10)(c).

Better Jobs/Better Wages Committee. § 445.007(8)

Better Jobs/Better Wages is Florida's strategy for assisting employers in upgrading the skills of their employees and for assisting incumbent workers in improving their performance in their current jobs or acquiring the education or training to get a better job at a better wage. § 445.004(10)(b).

One of the goals of Better Jobs/Better Wages includes developing strategies that promote the ability of participants in the welfare transition (i.e. cash assistance) program to succeed in the workforce and avoid a return to dependence on cash assistance. § 445.005(3).

First Jobs/First Wages Committee § 445.007(9)

First Jobs/First Wages is Florida's strategy to promote successful entry into the workforce through education and workplace experience that lead to self-sufficiency and career advancement. § 445.004(10)(a).

C. Agency for Workforce Innovation

The Agency for Workforce Innovation ("AWI" or "the Agency") is the administrative agency designated to receive federal workforce development grants. § 20.50(b)(2); § 445.003(3)(b). The purpose of the Agency is to contract with Workforce Florida to "ensure that the State appropriately administers plans and policies of Workforce Florida, Inc." § 20.50. The Agency is within the Department of Management Services ("DMS"). § 20.50. However, the Agency is not subject to control, supervision, or direction by DMS. § 20.50(b)(2).

While the Agency has the authority to issue “program and fiscal instructions” to Regional Workforce Boards (RWBs) pursuant to Workforce Florida plans and policies, only Workforce Florida is responsible for “policy directions” to the RWBs. § 20.50 at (1)(a). In sum, the Agency has little or no statutory authority over TANF-related policy and practice. Instead, the Agency functions primarily as a clearinghouse for different streams of federal funds, including some TANF funding, for the programs consolidated in the Act.

D. One-Stops

1. Purpose and Structure of the One-Stop

The One-stop delivery system (the “One-stops”) is the state’s primary customer-service strategy for offering every Floridian access to employment services, including, but not limited to, TANF-related work, training and education services. Access may be through service sites, telephone or computer networks. § 445.009(1).

Florida’s Workforce Innovation Act requires an automated, integrated intake screening and eligibility process on a self-service basis. 445.009(5)(a)(2).

The One-stop delivery system is overseen by the Regional Workforce Boards (RWBs). § 445.007(4)(d). RWBs are responsible for designating a One-stop delivery system operator. § 445.009(2)(b). The One-stop operator, who has overall authority for directing the staff of the workforce system, must be approved by Workforce Florida, Inc. § 445.009(2)(b).

Additionally, Workforce Florida and the Agency for Workforce Innovation must coordinate a One-Stop Electronic Network for service delivery made up of One-stop delivery centers and other public and private partners § 445.009(8). The Network co-ordinates data bases of, among others, Unemployment Compensation; Job Service; the FLORIDA System and components related to TANF, Food Stamps, and Medicaid; Workers Compensation; Student Financial Assistance; and enrollment in post-secondary education. § 445.009(8)(b).

The state Office for Workforce Information Services within AWI is responsible for implementing and maintaining information systems required for the effective operation of the One-stop delivery system. § 20.50(2)(c). Nevertheless, it is unclear whether persons may apply for TANF cash assistance at One-stops.

The One-stop delivery system is authorized to use private sector staffing services firms to provide workforce services. § 445.009(9). Programs whose services are delivered through One-Stops are called partners. Partners could be

involved in delivering any one of three types of services which must be offered at One-stops: **core** services, which must be available to everyone; **intensive** services, which are more in-depth and available to a somewhat restricted group of persons; and **training** services, which are available to a limited group based on statutory criteria. Recipients take part in each service in chronological succession.

The Office of Workforce Services (OWS) within AWI is responsible for delivering many work-related services through the One-stop delivery system. Of particular interest is the specific requirement that OWS assure that participants in welfare transition programs receive case management (according to federal Workforce Investment Act this includes job and career counseling during program participation and after job placement), diversion, support services (includes transportation, child care, dependent care, housing, and needs-related payments pursuant to federal Workforce Investment Act), Medicaid and other transitional services. § 20.50(2)(a). Further, OWS is responsible for financial management.

2. Services of the One-Stop

One-stops make an initial determination of the programs for which a customer is likely to be eligible. Subsequent to such determination, a referral must be made for a “more thorough eligibility determination at the first point of contact.” § 445.009(5)(1).

Services to be provided by the one-stops include job search, referral and placement; career counseling and educational planning; consumer reports on service providers; recruitment and eligibility determination; support services, including child care and transportation assistance to gain employment; employability skills training; adult education and basic skills training; technical training leading to a certification and degree; claim filing for UC services; and temporary income, health, nutritional, and housing assistance. § 445.009(1)(a)-(k). The one-stop services are designated as core, intensive, or training. If funds allocated to a local area for certain adult intensive employment and training activities are limited, priority must be given under federal law to recipients of public assistance and other low-income individuals. 29 U.S.C. § 2864 (d)(4)(e).

a. Core Services

Core services must be made available at public libraries, public and private educational institutions, community centers, kiosks, neighborhood facilities and satellite one-stop delivery system sites. § 445.009(5)(c). In addition, “core services” are to be provided electronically and “through the Internet” to the extent possible. § 445.009(4), (5)(c).

Under federal law at 29 U.S.C. § 2864(d)(2), core services at a minimum include:

- 1) eligibility determination;
- 2) outreach, intake and orientation;
- 3) initial assessment of skills, aptitudes, abilities and need for support services;
- 4) job search, placement and, where appropriate, career counseling;
- 5) provision of labor market statistics information;
- 6) provisions of performance information and program cost information on certain providers of services;
- 7) provision of information regarding how the local area is performing;
- 8) provision of accurate information relating to the availability of supportive services in the local area and referral to such services;
- 9) provision of information concerning filing of claims for Unemployment Compensation; and
- 10) assistance in establishing eligibility for welfare-to-work activities, financial aid assistance for training and education not funded under the federal WIA, and follow-up services, including, as appropriate, counseling regarding the workplace for participants in WIA activities who are placed in unsubsidized employment.

b. Intensive Services

“Intensive Services” under federal law at 29 U.S.C. § 2864(d)(3) may include comprehensive and specialized assessment of skill and service needs. Persons who are eligible for intensive services under federal law at 29 U.S.C. § 2864(d)(3) are adults and dislocated workers who are 1) unemployed and unable to obtain employment through core services and 2) have been determined by a One-stop to need more intensive services to obtain employment.

c. Training Services

“Training services” under federal law at 29 U.S.C. § 2864(d)(4) (D) may include:

- 1) Occupational skills training;
- 2) On the job training;
- 3) Programs combining workplace training with related instruction, which may include cooperative education;
- 4) Training programs operated by the private sector; and
- 5) Skill upgrading and retraining.

Persons who are eligible for training services under federal law at 29 U.S.C. § 2864(d)(4) are adults and dislocated workers

who: 1) have met eligibility requirements for intensive services but who have been unable to obtain or retain employment through such services; 2) after an interview, evaluation or assessment and case management have been determined by the One-stop operator or partner to be in need of training services and to have the skills and qualifications to successfully participant in the selected training program; 3) select training programs that are directly linked to employment opportunities in the local area or another area in which the adult or dislocated worker is willing to move; 4) are unable to obtain any other grant assistance for such services or require assistance beyond the assistance provided by other grant assistance programs; and 5) are determined eligible in accordance with a prior system, if any.

Training services will be provided through Individual Training Accounts (ITAs). 29 U.S.C. § 2864(d)(4)(G).

In Florida , both intensive services and training must be provided through Intensive Service Accounts and Individual Training Accounts which operate more or less like using vouchers at pre-approved providers. § 445.009(6). Notwithstanding, there are several exceptions to the mandatory use of ITAs. 29 U.S.C. § 2864(d)(4)(G). Advocates may want to monitor the RWB's use of exceptions to assure that exceptions are minimal.

ITAs must be expended on programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference and other programs approved by Workforce Florida. § 445.009(7). The “fair market purchase price” that will be paid for approved training programs through ITAs must be established by RWBs, in consultation with training providers. § 445.009(6)(b). Training services provided though ITAs must be performance based, with successful job placement triggering the full payment. § 445.009(6)(e).

Each participant will be provided information about eligible training providers and allowed to choose the one that best suits the recipient's needs. The cost of the training will be paid out of the ITA. In theory, ITAs allow recipients more choice in selecting training providers. In Florida, eligible participants have the right to make “informed decisions, choosing the qualified training program that best meets their needs.” § 445.003(1)(b), Fla. Stat. Similarly, federal law likewise requires that training services “be provided in a manner that maximizes consumer choice in the selection of an eligible provider of...[training] services.” 29 U.S.C. § 2864(d)(4)(F), (G) (i).

Funds may be used for support services for those engaged in training so long as support services are not available through other programs. 29 U.S.C. § 2864 (e)(2). Support services include transportation, child care, dependent care, housing and needs-related payments. 29 U.S.C. § 2801(46). Needs-related payments are available for unemployed persons who are not eligible for or ceased to qualify for Unemployment Compensation (UC). The level of payments cannot exceed the greater of the applicable level of UC or the poverty line. 29 U.S.C. § 2864(e)(3)(C).

VI. WORK REQUIREMENTS

A. Countable Work Activities

All non-exempt participants in the Welfare Transition cash assistance program must engage in work activities. But not just any work activity will count. To count, the activity must be one of the following:

- Unsubsidized employment, which is employment that is not directly supplemented by federal or state funds. § 445.024(1)(a). It includes paid apprenticeship and cooperative education activities. Id.
- Subsidized private-sector employment, which includes Work Supplementation, on-the-job training (OJT), "incentive payments" to employers, and special tax credits and bonuses for employers. § 445.024(1)(b).

In Work Supplementation, the employer, who receives a subsidy for hiring a Welfare Transition recipient, is expected to retain the recipient as a regular employee without receiving a subsidy. Work supplementation may not exceed 6 months. § 445.024(1)(b)1.

OJT includes paid employment in which the employer or an educational institute in conjunction with the employer provides training needed for the participant to acquire the skills necessary for a position. OJT employers are expected to retain participants as regular employees. Employers who "exhibit [] a pattern" of failing to provide participants with continued employment after the subsidy ends may not be able to continue to receive subsidies for other participants. § 445.024(1)(b)2.

Likewise, agreements to provide incentive payments may not be continued with employees who "exhibit [] a pattern" of failing to provide continued employment after the incentive payment ends. § 445.024(1)(b)3.

A training bonus is available to employers who hire cash assistance participants if the job pays enough to make the participant ineligible for cash assistance. Id. at 5

- Subsidized public-sector employment, in which the participant works for a governmental agency and receives the same benefits as non-subsidized employees but the job is directly supplemented by state or federal funds. § 445.024(1)(c). **Work study activities administered by an educational institute qualify as subsidized public-sector employment. Id.**
- Community service work experience, in which participants receive temporary cash assistance "in the form of wages which when combined with the value of food stamps awarded to the participants is proportional to the amount of time worked." Work is in the form of a job at a public or private not-for-profit agency. Participants in community service do not receive a pay check; rather, they continue to get their cash assistance. In the Welfare Transition program, "community service," "community work," and workfare" are synonymous. § 445.024(1)(d).

Community service work is appropriate for participants who need to increase employability by improving interpersonal skills, job retention skills, stress management, and job solving and by learning to attain a balance between job and personal responsibilities. It is intended to assess compliance before the participant is referred to a more costly component, maintain work activity status while the participant awaits placement into paid employment or training, fulfill a clinical practicum or internship requirement related to employment, or provide work-based mentoring. Id. Work-study may meet this requirement.

- Work experience, which must combine a job training activity in a public or private not-for-profit agency with education and training related to an employment goal. The work activity must be "intensely supervised and structured." § 445.024(1)(e)
- Job-search/Job-readiness. Job search cannot be the primary work activity except to the extent permitted under federal law. § 445.024(1)(f).
- Vocational education or training, which may be the sole activity for up to 12 months when the participant has demonstrated compliance with other phases of program participation and the education or training is likely to result in employment at a higher wage. However, this 12 month restriction does not include remediation of basic skills, including English language proficiency, if such remediation is necessary to enable a participant to benefits from a career education program. In addition, vocational education or training may also be combined with other activities to upgrade skills or prepare for a higher paying occupational area for a participant who is working. Vocational education/training

is restricted to the extent permitted under federal law. § 445.024(1)(g).

- Job-skills training, which includes customized training to meet specific employer/industry needs. It includes literacy instruction in the workplace, English proficiency instruction or instruction in Spanish or other languages if necessary to enable a participant to perform in a specific job or training program. § 445.024(1)(h). An entrance assessment test may be required.
- Education related to employment, which are education services designed to prepare a participant for an occupation. This is for participants 19 years of age or younger who do not have a high school education or equivalency diploma. These services are coordinated with school-to-work activities provided under Fla. Stat. § 229.595. § 445.024(1)(i).
- Extended education and training. This allows regional workforce boards to assign participants to educational activities that do not otherwise count as work activities so long as the coalitions are exceeding the overall work participation rate requirements. § 445.024(1)(l).
- School attendance, which applies to participants 19 years of age or younger who have not completed a high school degree and do not have an equivalency diploma. However, if it is determined that an activity other than school or an equivalency program is more appropriate, the participant may be assigned to that activity. § 445.024(1)(j).
- GED participation and literacy education for participants (including adults over age 19) who do not have a high school diploma or equivalency. English language proficiency training may be included if such training is necessary to get a high school or equivalency diploma. § 445.024(1)(m).
- Teen parent services. § 445.024(1)(k); or
- Child care provider. This allows child care provided to the children of someone participating in the community work service program to count as work for the caregiver. § 445.014 (1)(n).

Unlike the AFDC program, the Welfare Transition cash assistance program limits the availability of education as an acceptable activity except for certain teenagers absent creative use of allowable training and vocational education activities for adults.

B. Other Ways to Get Education and Training

Advocates may be able to find innovative ways to characterize education or training so that the activity qualifies as a countable "work activity." See supra

at VI. A. However, even if the education or training does not qualify, the participant may still be able to enroll in non-countable education or training, and get necessary support services, so long as the participant continues to also participate in work activities at the requisite number of hours.

1. Transitional E & T for Current Participants

This includes transitional education or training, which former participants can use to obtain training or education, potentially even post-secondary education. To qualify, the participant must be working or actively seeking employment. The training or education must be job-related but may include training to improve job skills in a participant's existing area of employment or may include training to prepare a participant in another occupation. § 445.030. If the activity does not count toward the participation rate, the participant can probably be required to take part in another countable work activity while participating in education or training. Even if the transitional education or training does not count toward the participation rate, the participant may still get child care or other support services for the transitional activity. *Id.* at (2). See also section VI.K.2.

2. Adult General Education Program/Career Education Program

Welfare transition program funds may be used, when available, to support the efforts of a participant in an adult general education program or a career education program. This activity is only authorized for participants who are already meeting their work requirements. § 445.024(2)(b).

3. Literacy Skills

A participant in a work activity may be required to attend literacy instruction so that they can obtain or retain employment. The hours of literacy when combined with the work activity may not exceed 40 hours weekly. § 445.024 (2)(a).

4. Extended E & T

A regional workforce board can get approval of Workforce Florida, Inc., to allow participants to be in school or training, without requiring additional work, as long as the regional workforce board is exceeding its overall federal work participation rate requirements. §445.024 (1)(l).

5. Retention Incentive Training Accounts (RITAs)

RITAs pay for tuition, fees, transportation, child care, etc., at the discretion of the regional workforce board, to allow working participants to get post-

secondary education leading to a better job. §445.022.

C. Worker Protections

All participants in work activities are now subject to the "same health, safety, and nondiscrimination standards established under federal, state and local laws that otherwise apply to other individuals engaged in similar activities" who are not participants in the program. § 445.024(6).

1. Minimum Wage

The work of a participant placed in community service work must be proportional to the value of the participant's combined cash assistance plus Food Stamps. § 414.024(1)(d).

Although the term "proportional" is not defined, Legislative intent probably is for participants to work off their grant at the rate of the federal minimum wage.

D. Participation Requirements

Nonexempt individuals must participate for the maximum number of hours allowable under federal law. However, no participant is required to work more than 40 hours per week. § 445.024(2). Thus, if the federal work requirement is less than 40 hours weekly, the participant must work at the full federal requirement; yet, if the federal requirement is more than 40, the participant need not work more than 40 hours weekly. § 445.024(2). The only exception is for community service work experience participants.

Participants may also be required to attend a course of instruction designed to increase literacy skills to a level necessary for obtaining or retaining employment. § 445.024 (2) (a). However, the instruction plus the work activity cannot require more than 40 hours per week. Id.

1. Exception for Community Service Work Experience Participants

The maximum number of hours that a community service work experience participant can be required to work is the greater of the number of hours resulting from dividing the amount of public assistance (cash and Food Stamps) by the federal minimum wage and then dividing that amount by the number of people in the household, or the minimum required to meet federal participation requirements. Like other participants, participants in community service work experience cannot be required to work more than 40 hours per week in any event. § 445.024(2).

Note that under guidelines issued by the United States Department of Labor on May 22, 1997, states are only allowed to count Food Stamps as a means to meet minimum wage for a TANF recipient if the recipient is participating in Food Stamp work supplementation or Food Stamp Workfare.

E. Exemption from Work Requirements

Pursuant to § 445.024(3), the following people are exempt from work requirements:

- minor children under the age of 16 (however, such children will be subject to Learnfare);
- an individual who is receiving SSI or SSDI;

This particular exemption may adversely affect disabled immigrants, who are not eligible for SSI benefits because of federal welfare reform restrictions yet remain eligible for cash assistance. These immigrants are subject to work requirements, even though they are disabled, because they are not actually receiving SSI. Of course, it is entirely possible, that they will be able to establish good cause for nonparticipation in work.

- adults who are not included in the calculation of child-only cases;
- one custodial parent with a child less than three months old, except that the parent may have to attend parenting classes. Parents less than 19 who do not have a high school diploma may be required to attend school or other educational activities.
- most persons who are exempt from time limits;

F. Sanctions for Failure to Comply with Work Requirements

Participants must be notified, either orally or in writing, that they are subject to sanctioning for noncompliance with work activities. Participants must also be counseled as to the consequences if noncompliant and, if appropriate, referred for necessary services. § 414.065(1).

Sanctions follow a progressive scheme:

- first noncompliance -- entire family loses all cash assistance for at least 10 days (and in some cases food stamps for one month) or until the noncompliant individual complies;
- second noncompliance -- entire family loses all cash assistance for one month

(and in some cases food stamps for three months) or until the individual who failed to comply does so, whichever is later. Upon compliance, benefits will be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

- third noncompliance -- entire family loses all cash assistance for three months (and, in some cases, food stamps for six months), or until the individual who failed to comply does so, whichever is later. Benefits will be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

Extended compliance "wipes the slate clean." If a participant has been fully compliant for at least six months, the participant "shall be reinstated as being in full compliance with program requirements for purposes of sanctions." Id. at (1)(b).

In the AFDC program, food stamps were not reduced for violations of AFDC rules -- only cash assistance was suspended.

G. Protection of Children in Families being Sanctioned

For the second or third sanctions, the Department may continue to provide assistance for children under the age of 16 through a protective payee. Assistance includes both cash assistance and food stamps. If the Department is unable to designate a qualified protective payee or authorized representative, the Department is required to refer the family for chapter 39 "protective intervention." § 414.065(2).

H. Exceptions to Noncompliance Penalties (Good Cause)

If the noncompliant individual has good cause for failure to participate in work activities, sanctions will not be imposed. § 414.065(4). Under the statute, good cause includes:

- for a single parent, the unavailability of suitable, affordable, appropriate child care for a child less than six years old.
- domestic violence treatment or remediation. Such individuals will be required to comply with an alternative plan that prepares them for self-sufficiency while providing for their safety and the safety of their dependents. Participants who fail to comply with the alternative plan are subject to work requirement sanctions.
- medical incapacity. If medical incapacity exists, the individual should be "excepted" "for a specified period." However, the incapacitated individual will be required to comply with the course of treatment necessary to resume participation

and/or participate in a work activity consistent with the individual's limitations. Medical incapacity must be verified by a physician.

- need to become or remain involved in outpatient mental health or substance abuse counseling or other treatment. The individual may be exempt for up to five hours per week, not to exceed 100 hours per year.
- applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Individuals who provide verification of a pending disability application may be exempted from work activity requirements. Such persons can also get extensions to their time limits until they get a final decision on their disability application. However, they “must continue to meet all program requirements assigned to the participant based on medical ability to comply.” § 414.105(11).
- temporary inability to participate due to circumstances beyond the individual's control. This includes caring for a disabled family member when the need for care has been verified and no alternate care is available. The Department of Children and Family Services (DCF) is given the authority to define by rule other situations that constitute good cause.

I. Domestic Violence

1. Domestic Violence Plan

Workforce Florida, Inc. must develop a strategic plan for services for victims of domestic violence receiving cash assistance. § 445.006(6)(a) 5. This plan is a critical source of information on virtually all domestic violence-related services, policies and procedures in each service region.

2. Right to Information on and Referral to Organizations

All applicants and recipients of cash assistance must be given information about the counseling and supportive services available from certified domestic violence and other organizations. If requested, they must be referred to such organizations in a manner that protects their confidentiality. § 414.095(10)(g).

3. Work Requirements

Victims of domestic violence must be excused from work requirements if compliance “would make it probable that the individual would be unable to escape domestic violence.” § 414.065(4)(b). However, they will be required to comply with an “alternative requirement plan.” Such a plan is supposed to “prepare the individual for self-sufficiency while providing for the safety of the

individual and the individual's dependents." Id.

Likewise, prior victims of domestic violence must also be exempted from work requirements "for a specified period" if they are unable to comply "due to mental or physical impairment related to past incidents of domestic violence." § 414.065(4)(c). However, they, too, will be required to comply with an "alternative requirement plan. "Such a plan is supposed to prepare the individual for self-sufficiency while providing for the safety of the individual and the individual's dependents." Id. The plan must include either "counseling" or a "course of treatment necessary for the individual to resume participation" as verified as necessary by a licensed physician. Id.

Participants who fail to comply with the alternative requirement plan will be subject to work penalty sanction. § 414.065(4)(b)-(c).

4. Relocation Assistance Program

See Section VII (C).

5. Diversion Program for Victims of Domestic Violence

See Section VII (D).

6. Cooperation with Child Support Enforcement

Parents or caretakers have good cause for failure to cooperate with either establishment of paternity or enforcement of a support order if cooperation "could" subject them to a risk of domestic violence. § 414.095(15)(d).

J. Support Services

1. Generally

If there are sufficient resources, cash assistance participants must be provided support services they need in order to comply with a work activity. Support services include, but are not limited to, transportation expenses and the cost of books, tools, uniforms, and fees. Support services can also include counseling for personal, family, or substance abuse problems. § 445.025.

If there are not sufficient resources, support services can be prioritized or otherwise limited. Lack of necessary support services may be a factor in determining whether a participant has good cause for not participating in a work activity. But lack of necessary support services does not "toll" time limits nor does it automatically constitute good cause for not participating in a work activity.

Id.

The Agency for Workforce Innovation (AWI) is responsible for ensuring that participants receive support services. § 20.50(2)(a).

a. Medicaid

As a rule of thumb, all families who are financially eligible for cash assistance are also eligible for Medicaid. But Medicaid is now “de-linked” from cash assistance, so the fact that a family is ineligible for cash assistance solely due to time limits or sanctions will not affect their Medicaid eligibility.

b. Transportation

Transportation expenses may be provided when help is needed to comply with any work activity or employment requirements including transportation to and from child care. It can include vehicle repairs, vehicle registration fees, driver’s license fees, and liability insurance for up to six months. § 445.025(1)(a). Payment in cash, tokens, or by reimbursement can be provided to cover public transportation, van pools, ride-sharing, donated motor vehicle programs, and other innovative strategies to expand transportation options. § 445.025(1).

c. Child Care

Child care is available for any child of a participant so long as the participant needs the care and has an obligation to pay for it. Fla. Admin. Code R. 65A-4.218.

Under § 411.01(6), subsidized child care for welfare recipients is primarily available for preschool age children. However, in practice, Welfare Transition cash assistance recipients have historically been able to get necessary child care for children up to the age of 13. This is probably because the federal Child Care and Development Fund (CCDF) allows coverage for children up to 13 years old. 45 C.F.R. § 98.20.

Child care is not "guaranteed," even for working participants. In fact, in the Welfare Transition cash assistance program, child care, like all TANF support services, is available only to the extent resources are available. § 445.025. Further, participants must contribute to the cost of child care under a fee schedule. § 411.01(5)(d)3.a. See Also 42 U.S.C. §9858c (c).

Chapter 445 additionally provides for dependent care for special

needs children between the ages of 13 and 17. Dependent care for disabled children aged 13 and older may continue for two years after the working parents eligibility for cash assistance ends. § 445.023.

K. Transitional Services

When cash assistance participants become ineligible for cash assistance for whatever reason, the case manager must take steps to ensure that they receive transitional services and benefits. § 445.028. For employed participants who leave due to a sanction, the worker must inform them about transitional services and how to access them. For participants who become ineligible for other reasons, the case manager must also attempt to contact them about transitional services. However, in those cases, this attempt must occur **prior** to closure of the case management file. § 445.028(1). See also § 414.065(1). In addition, DCF and Workforce Florida, Inc. must develop informational material, including posters and brochures, to better inform former participants about transitional services. § 445.028(3).

1. Transitional Child Care

Transitional child care is available for two years for: persons who opt not to get cash assistance; persons who have left the Welfare Transition program due to employment or receipt of increased child support; and persons who have received diversion services. Income must not exceed 200% of the federal poverty level. The child care must be needed to accept, keep, or look for a job or to upgrade job skills. §§ 445.023(4), 445.030, 445.032; Fla. Admin. Code Rules 65A-4.212(11), 65A-4.218(3).

2. Transitional Education and Training

Former participants who are working or actively seeking employment can get job-related transitional support services for the purpose of continuing training or upgrading skills, education, or training for up to two years. For example, child care and other support services may be provided while former participants upgrade their skills, even though they are also getting child care or support services to enable them to work at their regular job. If funds are not sufficient, transitional services can be prioritized or otherwise limited. § 445.030.

3. Transitional Medical Benefits

Families whose earnings make them ineligible for cash assistance remain eligible for Medicaid for six months regardless of income. In addition, they can also get an additional six months after that so long as their average gross earnings

are not greater than 185% of the federal poverty level. They do not have to reapply. They must be notified of these terms when terminated from cash assistance. § 445.029. There must be a minor child in the family in order for Transitional Medicaid eligibility to continue to be available for the entire 12 months.

4. Transitional Transportation

Former cash assistance recipients are eligible for transitional transportation for up to two years. The former recipient must need the transportation to maintain and sustain employment or education. Assistance may be in the form of a voucher, direct payment, or the purchase of a car valued at no more than \$8,500. § 445.031. Assistance can also include any kind of transportation help allowable as a regular support service. *Id.* and *see* § 445.025(1).

In practice, few, if any, of the Regional Workforce Boards are purchasing cars for former recipients.

VII. DIVERSION

Diversion is an alternative to ongoing assistance. The Welfare Transition program allows for several different kinds of in-kind and lump sum payments to alleviate a temporary financial emergency or to assist certain defined populations with particular special needs. § 445.017.

Diversion was not part of AFDC.

Needy families can get diversion assistance without having time limits count against them. Fla. Admin. Code R. 65A-4.212(10).

A. Up-front Diversion

If a voucher, in-kind benefit, or cash (for example to repair the car) will help the family focus on employment and prevent ongoing reliance on welfare, then an amount up to \$1000 can be paid to the family if they agree in writing not to reapply for cash assistance for three months. Each applicant family will be screened to see if diversion is appropriate in lieu of regular monthly assistance. Families who get up-front diversion assistance must be "likely" to meet all diversion services eligibility criteria. § 445.017.

If the diverted family has an emergency and is forced to reapply for cash assistance within three months, the diversion payment the family received will be prorated and subtracted from their regular assistance payment for eight months. § 445.017(5).

The statutory requirement that applicants be "likely" to meet eligibility criteria gives the Department flexibility to promptly divert families. Of course, it is possible that a streamlined process could allow some ineligible families to get diversion funds.

B. Cash Assistance Severance Benefits

Employed persons in the cash assistance Welfare Transition Program may qualify for cash severance benefits. Eligible persons are those who have been getting cash assistance for six consecutive months, who expect to remain employed at least six months, and who choose to receive a one-time lump sum payment in lieu of ongoing monthly assistance. § 445.026(1)-(6). Individuals may get a one-time lump-sum of up to \$1000. Only the month in which the payment is made will count against time limits. A participant that chooses this payment will be terminated from cash assistance. Eligibility for Medicaid, food stamps, and child care will continue subject to the eligibility requirements of those programs. § 445.026(6).

Families that accept this severance payment must sign an agreement not to reapply for cash assistance for six months. Emergency circumstances constitute an exception to the agreement not to reapply. Workforce Florida, Inc., must define emergency circumstances by rule. In the event of an emergency, the family must repay the severance payment from their monthly benefits. The repayment can be pro-rata deducted over an eight-month period. § 445.026(6).

C. Relocation Assistance

Families may get assistance to move where relocation will contribute to the ability of the family to achieve self-sufficiency. § 445.021. This assistance is available for current participants as well as applicants who would likely be eligible for diversion services. § 445.021(2)(a). There must be a basis for believing that relocation will help. For example, relocation assistance may be appropriate where: the family is unlikely to achieve independence in the current community of residence; the applicant has secured a job in another community; the family has a support network in another community; or the applicant is a victim of domestic violence who would be less likely to experience further incidents if she moved. § 445.021(2)(b).

Among the steps that must be taken by the Department in administering this benefit is the establishment of a relocation plan and a determination that the community to which the family moves has the capacity to provide needed services and employment opportunities. § 445.021(2)(c)-(d).

The amount of the relocation payment is not specified by statute but will be set by rule. § 445.021. Families who relocate with this assistance for reasons other than domestic violence must sign an agreement not to reapply for cash assistance for six months. If a demonstrated emergency forces the family to reapply, repayment of the

relocation assistance must be pro-rata subtracted from the family's monthly assistance. § 445.021(3). However, families getting relocation assistance are eligible for diversion or transitional benefits. § 445.021(c).

D. Domestic Violence Diversion

This program provides a one-time payment and services to domestic violence victims to enable them to make the transition to independence. § 414.157. To be eligible, the applicant family must contain a pregnant woman or one or more minor children living with a caretaker relative or parent. § 414.157(2)(a). These families are presumed to be needy even if they do not meet other cash assistance financial eligibility requirements. § 414.157(3). The services and payments received under this section are not considered "assistance" under federal law (i.e., no federal time limits or work requirements go along with receipt of domestic violence diversion). § 414.157(2)(b). The amount of the one-time payment cannot exceed \$1000. § 414.157(4). Applicants who get domestic violence diversion can still be eligible for other TANF services or assistance. § 414.157(5).

E. Diversion to Strengthen Florida Families

Services and one-time payments are available to families striving to avoid welfare dependency, achieve self-sufficiency, and care for children in their own or relative's homes. § 445.018. To be eligible, the applicant family must contain a pregnant woman or one or more minor children living with a caretaker relative or parent. § 445.018(2)(a). Additionally, the family must meet the following criteria: at risk of abuse, neglect or threatened harm; homeless or living in a homeless shelter; or fit the Healthy Families Florida assessment. These families are presumed to be needy even if they do not meet other cash assistance financial eligibility requirements. § 445.018(5). The services and payments received under this section are not considered "assistance" under federal law (i.e., no federal time limits or work requirements go along with receipt of this type diversion). § 445.018(3). Families must sign an agreement not to apply for cash assistance for six months absent an emergency. § 445.018(4). Applicants who get this type diversion can still be eligible for other TANF services or assistance. § 445.018(5).

F. Diversion for Families at Risk of Substance Abuse or Mental Illness

Services and one-time payments are available to families striving to stabilize, avoid welfare dependency, and achieve self-sufficiency so that their children can be cared for in their own homes or the homes of relatives. § 414.1585. To be eligible, the applicant family must contain a pregnant woman or one or more minor children living with a caretaker relative or parent. § 414.1585(2)(a). Additionally, the family must meet the following criteria: one or more family members are impaired or at risk of substance abuse or mental illness. § 414.15(b). These families are presumed to be needy even if they do not meet other cash assistance financial eligibility requirements. § 414.1585(3).

The services and payments received under this section are not considered “assistance” under federal law (i.e., no federal time limits or work requirements go along with receipt of this type diversion payment). § 414.1585(2)(c). Additional criteria relating to services and client need as well as the amount of the one-time payment can be set by rule. § 414.1585(4). Applicants who get this type diversion can still be eligible for other TANF services or assistance. § 414.1585(5).

G. Teen Parent Pregnancy Prevention Diversion

The purpose of this program is to provide services to reduce and avoid welfare dependency by reducing teen pregnancy, reducing the incidence of multiple pregnancies to teens, and assisting teens in completing education programs. § 445.019. Teens who are at risk of getting pregnant or who already have one child are eligible for this program. § 445.019(1). The services received under this section are limited to those which are not considered “assistance” under federal law (i.e., those services to which federal time limits and work requirements do not attach). § 445.019(2). Teens who get this type diversion can still be eligible for other TANF services or assistance. § 445.019(3).

Teen pregnancy diversion does not involve cash payments, only services.

VIII. EMERGENCY [HOUSING] ASSISTANCE PROGRAM

The Emergency Assistance program is for families totally without shelter or facing the loss of shelter due to disaster, accident, or eviction for nonpayment of rent (so long as the nonpayment is not the result of willful negligence). § 414.16(1), (2). This program works separately or in conjunction with diversion assistance.

To be eligible under § 414.16(3) for this program the family must:

- have at least one minor child living with a parent or caretaker relative;
- have adjusted gross income not exceeding the standard for cash assistance participation for that size family;
- not have liquid assets that could meet the emergency;
- demonstrate that income and resources limited its ability to avoid the emergency;
- not have suffered a loss of income due to participation in a strike or as a result of

voluntary termination of employment without good cause;

- not get more than one emergency assistance payment in any 12-month period nor more than three annual consecutive payments;
- accept payment in the form of a one-party check payable to the landlord, mortgage-holder, or housing vendor;
- accept payment which is limited to the amount of one month's rent, mortgage payment, or cost for emergency housing and related expenses not to exceed a maximum established by the Legislature; and
- not abuse the program.

If the Department pays a security deposit under this program, the landlord must refund to the Department the amount of the deposit left after subtracting for damages as allowed by the lease. The Department can withhold from the family's future cash assistance the cost of excess damages over and above normal wear and tear. § 414.16(4).

While emergency assistance existed under AFDC, the AFDC program did not require that the family repay the Department for damages to a dwelling for which the Department had paid the security deposit. And, under AFDC, there was no 3-year limit to participation.

IX. TIME LIMITS

A. Two - Three Years

Cash assistance is time limited. For most families, there is a 24-month time limit in any 60 consecutive month period (five consecutive years). However, previous "long-term" recipients or custodial parents under age 24 with poor job skills or limited education are subject to a slightly longer time period. For those families, the time limit will be 36 months out of any 72 consecutive month period (six consecutive years).

Notwithstanding, there is a lifetime limit of 48 months of assistance for all adult recipients unless the recipient is not subject to time limits as described below or is granted an extension to (exemption from) time limits. § 414.105.

Time limits generally begin with the first month of receipt of assistance after the effective date of welfare reform (i.e., October 1996). Time limits continue to run during periods of sanctions. Some Floridians have been getting time-limited assistance because they were part of experimental waiver programs in some counties under AFDC's Family Transition Act. Months of assistance received under these time-limited family transition projects count toward the cumulative 48-month lifetime limits for cash assistance benefits. §§ 414.105(8), (9).

For people who move to Florida from another state, the number of months in which TANF assistance was received in any other state will count toward Florida's cumulative lifetime 48 month benefit limit. § 414.105(7).

Time limits are, of course, a new requirement under welfare reform. Although Florida used time-limited benefits in a few AFDC waiver counties (under the Family Transition Act), time limits were never part of the regular AFDC program.

B. What Happens When Time Limits End

People who are within six months of reaching the end of their 24-month time limit will be interviewed to assess their employability. A referral for services to facilitate employment will be made if appropriate. § 414.105(13).

A child in a family that has reached the end of its 24 or 36-month time limit may be recommended for extension of eligibility. If a review of the family situation indicates that the child would be likely to be placed in emergency or foster care if assistance for the child ended, then the child's assistance can be extended. The child's continued benefits must be provided through a protective payee. § 414.105(4)(e). Note that a **child** should not, however, be subject to a 4-year lifetime limit. § 414.105(1).

C. Persons not Subject to Time Limits

1. Age/Disability Exemptions

Benefits received while a recipient is a minor child do not count toward time limitations. Further, "child only" cases are not time limited. § 414.105(10). A "child only" case is one where the child lives with a specified relative who does not get assistance, such as a grandmother or aunt. Children only cases also include citizen children of illegal or ineligible immigrants as long as the family otherwise meets all eligibility criteria. § 414.095 (3)(a).

A person more than 18 could potentially get an additional lifetime limit of 48 months of assistance in his/her own right as an adult parent, even though she or he may have also received the benefit of assistance to his/her family when she or he was less than 18.

A person who is totally responsible for the care of a disabled family member is not subject to time limits. § 414.105(12).

Persons receiving SSI or SSDI benefits are also not subject to time limitations. § 414.105(11).

This particular exemption could adversely affect disabled immigrants, who are ineligible for SSI benefits because of federal welfare reform restrictions yet remain eligible for welfare. These immigrants are subject to time limits, even though they are disabled and cannot work, because they are not actually receiving SSI. They may, however, qualify for a hardship exemption (see below).

Persons applying for SSI or SSDI can be granted an extension of time limits until they receive a final determination on their application. However, if the disability application is ultimately denied, any period during which the individual got cash assistance counts against the recipient's 48-month lifetime time limit. Id.

2. Hardship Exemptions

a. Percent of Caseload

The Department may exempt a limited number of people from the time limits on the basis of "hardship." Twenty percent (20%) of the average monthly caseload may be exempt from time limits. § 414.105(4).

b. Criteria § 414.105(4)(a)-(e), (5).

In part, the criterion for hardship exemption requires that there have been diligent participation in activities. In practice, diligence has been defined as having only one sanction within the previous 18 months. The "diligence" must be combined with one of the following:

- an inability to obtain employment;
- extraordinary barriers to employment; or
- a need by a teen parent for 24 months of eligibility beyond the receipt of a high school diploma or equivalent. § 414.105(1)-(4).

Alternative criteria (without "diligence") for hardship exemptions include:

- significant barriers to employment combined with a need for additional time; and
- a recommendation for a minor child in crisis.

Finally, in addition to the above, a victim of domestic violence may be granted a hardship exemption to time limits if the effects of the domestic violence delayed or interrupted participation in the cash assistance program.

c. Procedure

The Department and Workforce Florida, Inc., are required to develop procedures for reviewing and approving hardship exemptions. The law allows these determinations to be made by a review panel consisting of members from the community. § 414.105(6). Appeal of such a panel decision will be through a supervisory review. § 414.45.

Fla. Stat. 409.285 (Opportunity for hearing and appeal), which was not repealed during welfare reform, does not enlarge upon the panel review process. It states that an applicant or recipient has a right to appeal to DCF "in the manner and form prescribed by the department." It further states that the hearing authority may be a panel of Department officials. However, because § 409.285 says the hearing authority is responsible for a "final administrative decision," there should continue to be a right of review in the state district courts of appeal from such a panel decision, just as there was from AFDC hearing officer decisions. See also Fla. R. App. P. 9.030(b)(1)(C); 9.110(m).

In practice, the Department provides the opportunity for a traditional fair hearing, as opposed to supervisory review, to appeal hardship exemption denials.

3. Extensions to Time Limits

Participants not exempt from work who participate in mental health or substance abuse treatment may earn one month of extended cash assistance eligibility beyond their time limit up to a maximum of 12 additional months for each month of full compliance with treatment. The credit is awarded upon completion of treatment and can only be awarded once during any 48-month time limit. § 414.105(3).

Participants not exempt from work may earn one month of extended cash assistance eligibility beyond their time limit up to a maximum of 12 additional months for each month in which the participant fully complied with work activities through subsidized or unsubsidized employment in the public or private sector. § 414.105(2).

X. FRAUD

A. Pre-Eligibility Screening

To identify cases which have the potential for fraud or error, each applicant for cash assistance will be "screened." The Department must develop an error-prone or fraud-prone "case profile" against which each applicant will be compared. If the

applicant meets the profile, the applicant will be subject to pre-eligibility fraud screening as a means of reducing misspent funds and preventing fraud. § 414.095(16). Applicants for other public assistance including Medicaid and food stamps will likewise be screened. § 414.39(10).

This requirement was not formally part of the AFDC, Food Stamp or Medicaid programs.

B. Recipient Fraud

In the Welfare Transition program, the Department has the authority to withhold financial assistance if it "obtains evidence that may indicate fraud on the part of the recipient." § 414.122. However, the Department must first provide notice that withholding will occur. This notice must be a "statement" accompanying the recipient's next financial assistance payment that the following payment will be withheld because of evidence of fraud unless the recipient meets with a "financial assistance program supervisor" by a certain date to "discuss and resolve the matter." The date for the meeting must be within ten days after the date of this statement. § 414.122. The Department is required to "make every effort" to resolve the matter "within a time frame that will not cause payment to be withheld from an eligible recipient." Id.

XI. EVALUATION

There is an evaluation component to the cash assistance Welfare Transition program to determine the impact of time limits, sanctions, and other welfare reform measures. For example, the evaluation must examine the number of participants in work experience assignments (Workfare) who get regular jobs, how long the job is held, the salary, and whether the family got any public assistance while they worked. The evaluation must solicit public comment and must publicize the comment process, especially in the low-income community. The input of consumers (clients), community-based organizations, service providers, and employers are specifically required. § 445.033.

XII. THREE-TIER SHELTER PAYMENT STANDARD

Appendix A			
Family Size	Zero Shelter Obligation	Greater than Zero Less than or Equal to \$50	Greater than \$50 Shelter Obligation
1	\$95	\$153	\$180
2	\$158	\$205	\$241
3	\$198	\$258	\$303
4	\$254	\$309	\$364
5	\$289	\$362	\$426
6	\$346	\$414	\$487
7	\$392	\$467	\$549
8	\$438	\$519	\$610
9	\$485	\$570	\$671
10	\$534	\$623	\$733

11	\$582	\$676	\$795
12	\$630	\$728	\$857
13	\$678	\$781	\$919

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