Pursuant to the 1996 passage of the federal Personal Responsibility and Work Opportunity Act (Pub. L. No. 104-193, hereafter “federal PRA”), California enacted in 1997 an implementing statute termed “CalWORKs” (AB 1542, Chapter 270, Statutes of 1997). This law governs the traditional cash grant safety net for children, formerly called “Aid to Families with Dependent Children” (AFDC) and now named “Temporary Assistance to Needy Families” (TANF). AFDC was an entitlement program based on income and size of family, and the federal funding was matched by a state contribution. The new statute ends entitlement status, creates a capped federal grant, requires state contribution based on prior state spending, and imposes limitations on the receipt of federal funds. Those limitations include a maximum 60 months of aid in a lifetime, required work within two years of aid initiation, no increases for children conceived while a parent is on aid, a bar on aid (including federal food stamps) for most legal immigrants arriving in the state after the August 22, 1996 cutoff date in the federal welfare reform law, and other changes.

The federal statute left substantial discretion to states as to detailed terms of qualification, sanction, levels of assistance, etc., and the state remains free-to fund a safety net from its own resources (and beyond the federally-required match). For example, California will now provide state-funded food stamps for legal immigrant families when otherwise qualified, regardless of when they arrived in the United States.

The most controversial provisions of CalWORKs include: (1) the categorical denial of TANF grants for the children of most legal immigrants whose parents arrived after August 22, 1996; (2) the implementation of “sanctions,” including the reduction of the “parent’s share” of grant amounts for a variety of reasons; and (3) the practicality of requiring local governments to publicly employ TANF parents who do not have jobs by the year 2000 (and provide child care for most of their children). For a detailed discussion of the provisions and projected problems with the federal PRA and CalWORKs implementation, see Robert C. Fellmeth, California Children’s Budget 1998-99, Chapter 2, “Poverty” (also at www.acusd.edu/childrenissues/report).

The CalWORKs statute delegated substantial implementational authority to the state Department of Social Services (DSS), and to counties, which are delegated both the administration of the system and substantial policy choices within its framework.

Most of the state DSS regulations discussed below are exempted by language in the CalWORKs statute from the usual Administrative Procedure Act requirements for regulation adoption until December 28, 1998. These regulations were adopted on an “emergency” basis on July 1, 1998, although a few were adopted on other dates as noted (primarily during the last week in June). The emergency adoption is followed by opportunity for public comment or hearing prior to permanent adoption. These new regulations do not appear in the California Code of Regulations, but rather in DSS “Manual of Policies and Procedures” (MPP). However, since the funds administered by counties come from the state and are subject to DSS policy authority, statewide regulations are of special importance. They constitute the details which will not vary.
between counties — and make up a safety net floor for children.

Many of the DSS new regulations on CalWORKs merely alter previous regulations consistent with new legislative language when it conflicts with the old rules. Hence, in many cases the new rules conform to the new statute without further “line drawing” or clarification. This approach has the effect of delegating to counties maximum discretion to make varying individual policies. Each represents an opportunity to add details on a statewide basis that can provide a consistent minimal floor for child protection — an opportunity lost when advocates are absent to propose state standards consistent with legislative intent. The proposed regulations may be altered after their initial emergency adoption; that is the purpose of the comment period or public hearings.

A. CalWORKs Regulations: Set One (Heard September 2, 1998)

On July 17, 1998, DSS announced a public comment period until September 2, 1998, for the regulations included in “Set One” of the separate subject areas for rulemaking under CalWORKs. DSS also held a public hearing on September 2, 1998, in Sacramento. The new regulations are found in the MPP; all reference citations are to the location of the altered or new regulations. Although parts of the MPP are available on DSS website (www.dhs.ca.gov/dhh/getinfo/policyproj.html), none of the regulations in this set are yet available electronically. Upon request, DSS will forward additional information about each regulation, including a package outlining legal authority, various impact statements (e.g., effect on small business, employment, local costs), alternatives considered, cost estimates, information and new legislation summary, text language, and purpose/sampling basis for each regulation. For more information, contact DSS Office of Regulations at 916-657-2586. As of this writing, DSS has not submitted the proposed regulatory changes to OAL for approval.

(1) Drug and Felon Provisions

On June 25, 1998, DSS adopted sections 40-034, 82-832.19, 82-832.171, 82-832.20, amended sections 82-832, 82-832.21, 82-832.23, 82-832.231, and repealed sections 82-832.14 and 82-832.26 of the MPP, or an emergency basis. They became effective July 1, 1998.

The scope of the Drug and Felon Provisions is substantially broader than the title suggests. Preliminarily, the regulations purport to distinguish between “sanctions” and “penalties.” The former is defined as “excluding the individual from the Assistance Unit” (AU) (the family receiving assistance) for purposes of computing welfare payments. In contrast, a “penalty” as defined, keeps the individual adult in the AU, but ignores his or her presence for purposes of computing welfare aid (exclusion from share of aid). The major difference apparently has to do with the income attribution to the AU, if a “sanction” is applied, the penalty isasco not reduced from the date the AU — which presumably would disregard his or her income for purposes of AU qualification. A penalty would act somewhat more harshly by including the penalized person’s income to the AU (which could put the AU over eligibility level), while the

apprehension of the person for further sanction or proceedings. According to the regulations notes that the trigger for exclusion is that probation or parole may have been revoked or a warrant may be issued.

Thus far, all the regulations do not clearly when the sanction ends. However, unless the basis for revocation involves acts independently leading to a sanction (e.g., welfare fraud or a drug related crime), it appears that the exclusion extends to the point where apprehension for further proceedings is accomplished.

(b) Convicted Drug Felon Supplementing CalWORKs, AB 1260 (Ashburn) (Chapter 284, Statutes of 1997) added section 11251.3 to the Welfare and Institutions Code and made ineligible for TANF assistance those persons convicted of any felony that has as an element the possession, use, or distribution of a controlled substance that has a minimum sentence of 1 year or more without time limitation on the exclusion.

The implementing regulation applies the exclusion only to those suffering conviction after December 31, 1995, or who have been involved in a facts imposition of an additional penalty for a prior offense. However, note that the “conviction” date may be many months after the occurrence of the act, which is important to prevent back dating.

Prohibition or parole revocation is more difficult to define. Note that any offense, no matter how minor, that involves a technical-condition of probation, could lead to a revocation.

The Drug and Felon Provisions regulations substantially broaden the prohibition by allowing probation or parole for any offense, including non-violent offenses (misdemeanors), to qualify. However, as the regulations read, the sanction is apparently limited to the period of time between the revocation of parole or probation by a court, and the

sent person owes payments mostly to the state and federal jurisdiction to recognize them for the family assistance (TANF) publicly provided. The previous California regulation was quite broad and allowed sanction when a parent, pregnant woman, or child receives relative "fails to cooperate" in the identification and location of the absent parent, establishment of paternity, and enforcement of the support obligation. This general language allowed counties to sanction families (impacting children) based on undefined criteria. If a mother is not certain who the father may be, is that a failure to cooperate? The revised regulation requires the parent to "assign support rights" to the state, a more limited and ascertainable requirement, and adds three further specific requirements including cooperation with district attorney requests for blood tests (DNA matching) and appearance in court (discussed below).

(2) Parent to Participate in Welfare-to-Work Program

Parents are also subject to sanction if they refuse or fail to participate in their county’s respective welfare-to-work program. This program provides an "offset" for a failure to cooperate or fact imposition of an additional penalty for a prior offense. However, note that the "conviction" date may be many months after the occurrence of the act, which is important to prevent back dating.

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(3) Child/Spousal Support Collection Assistance

The federal PRA allows states to sanction parents who fail to assist the state in the collection of child support. Usually, when custodial parents and their children are receiving TANF assistance, an ab

one parent and two children, yet another cut-down by one-third is likely to impose serious on children in need of ending. This lifetime exclusion from the AU of all persons convicted of a broad range of drug offenses — including possession — appears to conflict with federal and state child welfare policies that require the state to make "reasonable efforts" to reunify parents when the juvenile courts have assumed jurisdiction for neglected children. (A large proportion of drug abuse and/or neglect cases involve required drug rehabilitation programs that give parents an incentive to break free from addiction so their children may be reunified with them.) Under the terms of CalWORKs, such a parent who follows the court order and achieves and sobriety demonstrates through random testing no further drug use, and has his or her children returned, would then constitute a family with a TANF "offset." However, the child below levels necessary for the sustenance of the child which could theoretically lead to removal of children due to neglect (i.e., inability to provide necessary sustenance).

The regulations allegedly avoid retroactive application of the sanction, but improperly use the concept of "time-space" and "date of violation" as the cut-off point. Hence, thousands of parents who committed acts without knowledge of this lifetime consequence will be subject to its terms if convicted after the December 31, 1997 implementation date. The gap between occurrence of the act and final conviction date is often substantial, and may be partly the result of the state’s and/or
defense counsel’s desire for additional time to prepare for trial, or the happenstance of writ or other intervention in legal proceedings. If the purpose of the sanction is to discourage drug use by parents, why is it not applied to all those who commit such acts after the statute is implemented? Is the purpose of the sanction pursued by applying it to persons who acted before the provision was enacted?

Impact of Child/Spousal Support Collection Rules: New techniques for identifying paternity (birth certificate identification) have proved highly successful since 1996, and a large number of new sanctions and mechanisms have been put in place to compel child support payment (Franchise Tax Board collection and lien statutes, license renewal denial, redaction of tax refunds, etc.), tirelessly lessening the assistance needed from custodial parents. This regulation as required, including the assignment of support rights rather than sanctions for “failure to cooperate” is a more reasonable requirement.

Impact of Failure to Participate in Welfare-to-Work Program: Although little discussed and entirely excluded from the title of the regulations, the broad terms of the “failure to meet work requirements” provision are of special concern. It is clear that jobs will not exist for the majority of TANF parents by the year 2000, and work requirements are then required under CalWORKs to provide “public employment” for all of these persons. (See detailed discussion in California Children’s Budget, 1990-99, Chapter 2, Poverty.) When child care is provided, counties will expand over double the current TANF costs for each such parent (child care costs, plus supervision of work, plus minimum wage or TANF grant amount as payment for work). No funds have been identified to meet these project costs at this amplified level. Hence, child advocates contend that the broad wording of the regulation will allow arbitrary cut-offs of parents who actually are willing to work. Moreover, the regulations leave unanswered many questions: Is a refusal to work or participate in the welfare-to-work program “without good cause” when child care is not available or provided for young children? Is it “without good cause” if a disability precludes what is demanded? Is it “without good cause” if a private training program offers more opportunity and is chosen in lieu of a county’s plan? For consistency and predictability, DSS should define the term “without good cause” in state regulations.

(2) Vendor Rent/Utility Payments

One of the most important provisions of the CalWORKs statute requires counties to provide vouchers to pay rent and utilities directly to landlords when any parent is sanctioned for more than three months. In addition, the statute allows counties the option of providing such vouchers for rent and utilities as well. Vouchers are available for 60-month period when TANF assistance reaches lifetime termination, for parents and children as well. (See AB 1542, Section 143, adding section 114512 to the Welfare and Institutions Code.) The adopted regulations provide that “Vendor payments are applicable... .[h]e CalWORKs cases in which a parent or caretaker relative is subject to sanction for a period of time known in advance to be at least three consecutive months.” (Tracking the wording of the statute, the vendor payments “shall continue until the parent or caretaker relative is no longer subject to sanction.” Section 44-307.2 specifies the mechanics of this regulation: “When the computed [TANF] grant is not sufficient to cover both rent and utilities, the county shall issue a voucher or vendor payment for the full amount of the grant. The voucher or vendor payment may be for rent, utilities, or some portion of either.” Importantly, this provision is mandatory in the statute and adopted regulation. It provides an effective floor of TANF safety net support for children equal at least to rent and utilities. If the adopted regulation allows counties to issue such vouchers on an optional basis in other circumstances, as is done in the federal program, then the time limit has been reached by an adult, or for other vendor payments for other needed items “if they deem it in the best interest of the recipient children.”

Impact on Children: The maximum TANF grant for a family of three in the Region 1 high-rent counties is just over $600 in 1998-99; it was almost $1,000 in 1998 dollars a decade ago. Median rents in these urban areas now exceed $600 per month and are increasing at an average rate of 6% per year. Utilities exceed $100 per month. Hence, a one-third cut of the parent’s share will place a typical urban family without enough money to pay rent and utilities. The rent/utility voucher requirement reinstates a minimum safety net, albeit a non-cash grant which must be expended on shelter. Given the numbers above, the assurance of compliance is lacking, the share of cash assistance allocated for all parents or caretaker relatives shall be withheld. The statute specifically describes the exclusion as a “sanction” and not a penalty (see last sentence of section 1126.9(g)).

The new regulation includes a "handbook," which importantly allows compliance without immediate action when spacing requirements between shots are scheduled for parents meeting the short deadlines above. Further, “a good faith effort applies for vaccines that often are unavailable (such as chicken pox). The “age appropriate” immunizations are those recommended by the American Academy of Pediatrics and the American Academy of Family Physicians. This list is substantial, and preschool shots include four polio, five DPT, two MMR, one chicken pox, three hepatitis B, and four influenza type B (spread out to two months, four months, six months, 12-15 months, and 15-18 months in various combinations). Verification is required for all children under the age of six. Importantly, except for the time spacing allowance above, children may be vaccinated in a welfare-to-work program, such child shall have his/her applicable share removed from the assistance grant. The county may exempt children from these requirements for “good cause.”

The adopted regulations provide that "refusal or failure to cooperate" would result in provision of documentation which when requested may result in aid reductions unless the county determines "good cause exists." Importantly, the regulations do not define “good cause” or list any situations which will qualify (such as the disability of a child, home schooling, runaway or rebellious behavior).
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"qualified business capitalization plan." CallWorks added section 509973 to the Health and Safety Code to create the "California Savings and Asset Project" to implement these somewhat different provisions, but has conditioned its implementation on a minimum of savings rate and from the welfare block grant - which have not yet been forthcoming.

The DSS regulation implementing the traditional "restricted account for education" above defined the term "dependent" as one who could be claimed by the account holder as a dependent for federal income tax purposes. Money withdrawn from the restricted account must be expended for "education or vocational training" and be "within 30 calendar days of its withdrawal." Impact on Children: The rulemaking file concides that there is an extremely "footing restriction account" use historically.

B. CallWorks Regulations: Set Two (Heard September 14-15)

As with the first set of regulations described above, the second set of 13 CallWorks regulatory changes was adopted on an emergency basis (most on July 1, 1998) and was then submitted for public comment and hearings in three locations - San Francisco, Los Angeles, and San Diego.

1. Note that this provision is separate and apart from a federal "individual development account" incentive, which would allow TANF parents to keep funds in a restricted account (without exceeding the asset limit for benefits) for their own educational costs, to buy a home, or to start a small business through a

movement of Medi-Cal into a managed care format. The failure of such managed care systems to provide needed services, a lack of interest in preventive care, and an avoidance of expense-generating services in general have been well documented in such environments.

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San Francisco and Stockton in each regulation. For more information, contact DSS' Office of Regulations at 916-657-2356. As of this writing, DSS has not submitted the proposed regulatory changes to OAL for approval.

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Impact on Children of School Attendance Requirement: Child advocates agree that school attendance is crucial to the future success of children. But they contend that the school attendance requirements suffer from the same problems discussed above - inducement for school attendance should not be based on cutting basic sustenance to children below minimum shelter and food needs. Further, the "good cause" exceptions are delegated to counties without guidance, and imply very different regulations to operate in as 8 different jurisdictions within the state.

Traditional recipients of Aid to Families with Dependent Children (AFDC, now TANF) could have only limited income and assets. However, they qualified for benefits to their children and were allowed to maintain an income test basis. These permitted amounts of restricted account to certain uses - chiefly their vocational education. The CallWorks statute expands the uses permitted for such restricted accounts to allow payment of vocational or educational expenses for the parent ("account holder") and for her or his "dependent." The new regulations also increase TANF's family in paying rent on time and adequately feeding children. Detailed provisions for penalties, costs, and enforcement issues are contained in the San Joaquin, Stanislaus, and Butte Institutions Code section 11515.2. Note that this provision is separate and apart from a federal "individual development account" incentive, which would allow TANF parents to keep funds in a restricted account (without exceeding the asset limit for benefits) for their own educational costs, to buy a home, or to start a small business through a

movement of Medi-Cal into a managed care format. The failure of such managed care systems to provide needed services, a lack of interest in preventive care, and an avoidance of expense-generating services in general have been well documented in such environments.
implement this provision of AB 1542. They became effective on July 1, 1998.

Under the previous AFDC program, federal law required that principal earners applying for aid on the basis of unemployment must not have, without good cause, quit, refused, or remained unemployed or employment-related training in the 30-day period immediately prior to the beginning date of aid; and that the principal earner must not have worked less than 100 hours in the 30 days prior to eligibility for aid. These regulatory changes eliminate those requirements due to new, eligibility standards in the CalWORKs program. Additionally, the new regulations reflect CalWORKs’ requirement that each county provide diversion services as an alternative to long-term assistance, and that applicants be notified of this option. The regulations define diversion services as “... cash and in-kind services provided to a CalWORKs applicant, with the intent of diverting the applicant from long-term aid.” The county has sole discretion for determining what services would be appropriate to offer lump-sum diversion services.

Impact on Children: These regulatory changes reflect new legislative requirements but it is important to note that the availability of lump-sum diversion payments under CalWORKs is one which may help some children gain employment within 24 months. The adopted regulations track the statutory provisions discussed above. They exclude from the 60-month time limit any month when child support collection from an absent parent fully compensates for TANF grant amounts (which will be reread during the substantial difference between average child support paid ($25 per child) and TANF grant amounts (over $500 per month). Further, the CalWORKs statute authorizes a one-time lump-sum diversion payment to allow a recipient parent to obtain work or other

avoid long-term dependency. Such payments will count against the 60-month maximum based on the number of the eligible TANF grant applicable. Hence, a $1,500 diversion grant to one eligible for $500 in assistance per month will use up three of the 60 maximum months.

Impact on Children: Most TANF recipients able to find work are employed on a part-time basis. However, the CalWORKs statute and regulations apply the 60-month (and other) time limit without distinguishing between those who work 20 or more hours a week and those who do not work at all—diminishing the incentive for part-time work, which is often necessary to develop a more advantageous career track. Experts believe that approximately 50% to 40% of current TANF parents will not obtain jobs within the 60-month maximum period. It is unclear what will happen to children when the maximum limit is reached (for the family will occur in 2002). CalWORKs and the implementing regulations imply that the state may continue to make payments to the family, but would not eliminate the “adult share.” Hence, the TANF grant for a family of two unemployed parents and two children will be cut in half. Child advocates note that the “adult share” reduction is an emptying fiction; landlords do not reduce rents if parents agree to sleep on the sidewalk, and such draconian reductions on the one hand will suffer from an expenditure power from 1989 to present will have a dramatic effect on involved children. Grant amounts generally will be substantially less than existing rent amounts. Further, since the limit is not considered a “sanction,” the rent/utillities voucher safety net discussed above will not be triggered. It is unclear whether

and how children cut to these extraordinarily low safety net levels will be monitored for removal and foster care placement to assure adequate nutrition. The regulations are silent as to mitigating measures to protect affected children.

(6) Grant Structure and Aid Payments

AB 1542 added Welfare and Institutions Code sections 114520, 114525, and 114551, which require DSS to establish a new grant computation formula including discharges (deductions) for disability-based unearned and earned income. On June 29, 1998, DSS adopted section 44-316 and amended sections 44-350, 44-101, 44-102, 44-111, 44-113, 44-133, 44-206, 44-207, 44-415, and 44-101 of the MPP, an emergency basis, to implement the changes. They became effective on July 1, 1998.

Under the previous AFDC program, the regulations included separate calculations and amounts depending on the nature of the overpayment (e.g., excess property, excess income, county error). The regulatory changes eliminate those separate calculations, and stipulate that counties may reduce grants by no more than 5% of the Maximum Aid Payment (MAP) amount for the latter and 0% for the former. The new rules simplify the administrative process and limit the penalty to a family when the administrative agency is responsible for an overpayment, so it may be rapidly handled, rather than assessed immediately.

(7) Child Care

On June 29, 1998, DSS adopted sections 47-100, 47-101, 47-110, 47-200, 47-201, 47-220, 47-230, 47-240, 47-260, 47-300, 47-301, 47-320, 47-400, 47-401, 47-420, and 47-440, and repealed sections 14-107, 40-107, 107, 40-107, 107, 40-117, 147-131, 140-500 to 44-500, 47-101 to 47-190 (non-inclusive), and 870-700 to 879-700 (non-inclusive) of the MPP, an emergency basis, to implement changes in child care provided under the CalWORKs program. The regulatory changes became effective on the same date. The CalWORKs statute substantially reorganized child care subsidies. The previous separate

Previously, there were multiple discharges; now, the regulations allow a discharge of the first $225 of disability-based unearned or earned income as well as 50% of any remaining earned income. If the disability-based unearned income exceeds the $225 disregard, the difference is included as earned income, and 50% of the overpayment is exempt income; if it is less than the $225, the remainder of the disregard is deducted from any earned income the family has. The Western Center argued that there was no provision in the CalWORKs statute repealing the existing disregard as to expenses for the care of incapacitated persons; therefore, the 50% disregard as it is related to be reinstated.

Section 44-101.7 clarifies the meaning of earned and unearned income. CalWORKs, an emergency basis, to implement the changes. They became effective on July 1, 1998.

The previous regulations included multiple references to the AFDC program, which no longer exists. These have been changed from "AFDC" aid payments to "cash" aid payments, and are simply termed "overpayments." However, the proposed regulations also establish a new grant computation formula including discharges for disability-based unearned and earned income. In written comments to DSS, the Western Center on Law and Poverty, Inc., (Western Center) raised a number of concerns relating to the new definitions of earned and unearned income. The Western Center argued that there is no basis to deduct public service employment earnings from the definition of earned income, and the exclusion of private disability insurance in unearned income.

(7) Overpayment

Recoupment

AB 1542 requires DSS to revamp its previous policy for recouping overpayments to aid recipients. On June 26, 1998, DSS adopted the regulations section 40-030 and amended sections 44-330 and 44-332 of the MPP, an emergency basis, to implement this provision of AB 1542. They became effective on July 1, 1998.
programs replaced included: GAIN child care (AFDC recipients participating in the previous GAIN work training), Non-GAIN Education and Training (NET) child care (for those receiving private but approved employment training), CalLearn child care (primarily pregnant school age mothers), Supplemental Child Care (vouchers), Transitional Child Care (child care for the first year after leaving welfare rolls), the California Alternative Assistance Program, At-Risk child care (child care for parents who would fall back onto welfare without child care assistance), and earned income disregards programs (to maintain subsidy not-withstanding some earned income to encourage part-time employment).

The new CalWORKs child care program supplanting all of these is a three-stage system. Stage One Child Care is administered by the counties and provides child care for TANF parents as they register for the welfare-to-work program in each county. Stage Two and Stage Three are administered by the Department of Education, through contracts with Alternative Payment Providers (APP). Stage Two Child Care begins when the county determines that the family meets state earnings and economic factors for TANF and the other states provide "adequate child care" to allow TANF parents to obtain employment. This mandate provides the sanction of recipient families "with earnings exceeding $100 per month", all recipient parents are eligible for...

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the previous six months. This regulation changes the review of income eligibility (its calculation) from monthly to four-month intervals reducing administrative costs. A client report of a change in income or in family size will trigger an eligibility review when it is made. The six-month periodic review applies to Stage One Child Care only, and that Stage One Child Care is designed for a six-month period in the normal course in any event.

Family size calculations include all persons living in the home who are legally responsible to support children receiving child care, and any children of those persons. California child care subsidies require family income below "75% of the federal poverty index," which is above the poverty line for most families -- except for those with many children (e.g., four or more). However, that line will be above the poverty line for a single parent with two children or more children. Historically, these families have not qualified when the 75% limit applied, because unlike the poverty line, it does not adjust for the family's size. Prior to the CalWORKs statute, the new regulations waive this requirement to allow all families receiving TANF assistance and subject to CalWORKs work requirements to receive assistance for Stage One services. A very small percentage of families with incomes below 75% of state child care standards have received subsidized child care at present.

The CalWORKs statute and regulations maintain the current Resource and Referral Network system which operates a hotline to help parents find available spaces. The new regulations also define "eligible providers" of child care, expanding somewhat those able to provide care for Stage One Child Care. Providers must be over 18 years of age and have a license or "be exempt" under existing regulations, which allows for substantial county discretion in allowing exemption. Such child care may include church-provided child care, etc.; the regulation follows the CalWORKs statute in providing that parents have discretion to choose their own child care provider (when licensed or exempt, and excluding any member of the assisted family).

In general, alternative payments provide reimbursement to child care providers equal to a percentage of the mean market charge for a given service. Surveys annually determine these charges for infants, preschool children, and for part-time child care for those in school. The maximum payment rate for Stage One is no more than 1.5 market standard deviations above the mean cost of care for the region. This is slightly below the average price charged for that type of child care (by the times of the first and part time) based on annual surveys conducted by the state. That maximum is reduced to no more than the non-price charged to the general public by the places being paid. Payments are waived when there are two or fewer child care providers able to provide care (e.g., only one infant care provider in extremely rural counties). If the actual price is above the maximum allowed, the parent must pay the difference. In addition, the parent may have to pay a "family fee" to the provider, not covered by the public subsidy. There are no family fees when a child is in the child welfare system (has been pulled from a home due to neglect or abuse).

Time of child care will cover a period when a parent is participating in county-approved activities, working, or commuting. At the county's option, an ill child can be served by an alternative provider as necessary. Child care will not be provided for a child who attends school during school hours, but child care may be provided for four hours of "excused absences" (illness, quarantine, court appearances, family emergencies). Finally, payment may be made when a provider has a "fix rate" policy for specified hours of care, even if not all those hours are required or used.

Impact on Children: Increased amounts of funding have been appropriated for CalWORKs-related child care. However, very little of it will be spent because it is not matched by funds from the federal government. The program created by the CalWORKs statute and its implementing regulations (see discussion of time limits above), Funds are not needed unless recipients have jobs, and although the economic recovery and other factors have reduced TANF rolls in the state, the vast majority of TANF parents remain unemployed and hence ineligible for child care assistance. It will be two to seven years before the enormous funding for Stage Three will be needed to prevent the fall-back to TANF, increase work and off aid for more than two years. Although advertised as a "seamless system" in the adopted regulations, the statute and regulations create child care assistance. It operates through training for work and into employment for two years. After two years, assistance is problematic. But few new employees receive subsidies, and the $7,000 to $12,000 (the amount needed for child care for the benchmark of two children) in take-home pay to afford that care. For those at minimum wage, or even 20% above minimum wage, child care expenses at the market rate would not leave sufficient income to pay rent or to provide adequate child care assistance, even if current child care increases...
are sufficient to pay costs for parents initially entering the welfare-to-work system during 1998 and part of 1999, there are no plans to provide the dramatic increase that will be required to serve all those subject to requirements during the year 2000—when the county is required to provide public employment to all unemployed non- exempt parents at the 18- to 24-month mark.

(9) Trustline Registry

AB 1542 repealed all DSS child care programs, and created a CalWORKs three-stage child care system to be operated jointly by DSS and CDE (see (8) above, Child Care). On June 29, 1998, DSS adopted sections 47-600, 47-601, 47-602, 47-610, 47-620, 47-630, and 47-640, and amended sections 80-310 of the MPP, on an emergency basis, to refine the Trustline Registry (Trustline) system and health and safety regulations, to bring them into compliance with the new law. The regulatory changes became effective on June 29, 1998.

Trustline, a computer-based registry, provides for criminal re- cords referrals to be made for child abuse report checks for child care providers who are exempt from licensing requirements (generally, school or public recreation programs), and who care for children eligible for Stage One CalWORKs child care programs. The proposed permanent regulations would add licensing and other requirements for CalWORKs license-exempt child care providers. License-exempt providers must complete Trustline applications within 28 calendar days (county may establish reasonable, shorter time periods), from the first day that CalWORKs child care benefits are provided. Further, providers in a private residence must complete a Health and Safety Self-Certification with the parent of the child or children to be placed in care. The same time period applies as for Trustline. Close relatives as defined in the regulation are exempt from both requirements.

Impact on Children: These changes implement some important safeguards for children in child care programs that are license-exempt.

(10) Child Support

The CalWORKs statute requires custodial parents to cooperate in the state’s effort to collect child support from the non-custodial parent — usually absent biological fathers. On June 24, 1998, DSS amended sections 82-502, 82-510, 82-512, and 82-514 and repealed section 82-516 of the MPP, on an emergency basis, to implement the new law. The regulatory changes became effective on July 1, 1998.

The new regulations are more specific as to what constitutes “cooperation” with the state’s effort to collect child support from an absent parent. A custodial parent must report the local office of child support services (LOCSS) (the local child support agency), or other authorized agency, if it is aware that the non-custodial parent is not residing in the home or is not supporting the child. The purchaser of the child support services (the GAL) must ensure that the non-custodial parent is in fact supporting the child. The GAL must investigate any delinquency report, submit to a child support hearing to determine the amount of the fine, and if the GAL determines that the non-custodial parent has not paid the fine, the GAL must report the non-payment to the Trustline Registry (Trustline) system.

Impact on Children: These changes impose some changes in the Trustline Registry system and child support regulations, to bring them into compliance with the new law. The regulatory changes became effective on July 1, 1998.

(11) CalWORKs Property Limits

DSS proposes these regulatory changes to implement corporate changes in the Welfare and Institutions Code resulting from AB 1542. On June 29, 1998, DSS amended sections 42-203, 42-205, 42-207, 42-211, 42-213, 42-215, and 42-221 of the MPP, on an emergency basis, to set new property limits and rules for transfer of assets under CalWORKs. To implement the new law, the regulatory changes became effective on July 1, 1998.

The new regulations give counties the authority to determine personal property and vehicles to be included in the income disregarded for eligibility which may be retained under the Food Stamp regulations. They also set a period of ineligibility that results when an aid recipient disposes property that is not sold for its fair market value, rather than exceed the property limits for the month.

Impact on Children: There are two serious problems with these changes as mandated under CalWORKs. First, the elimination of the conviction requirement for fraud is easier to assess the fraud penalty — even in a first offense or when there truly may be a misrepresentation on the part of the applicant/re-client. More egregious, however, is the nature of the “one-strike” penalty. Once DSS imposes the “one-strike” permanent penalty, a family no longer qualifies for aid — regardless of the need of innocent children who rely on that aid for food and shelter.

(12) Fraud Penalties

AB 1542 made major changes in so-called fraud penalties for aid recipients. On June 26, 1998, DSS adopted section 20-001, and amended sections 20-001 to 20-408 (non-inclusive), 48-103, 48-181, 80-101, 82-620, and 82-832, of the MPP, on an emergency basis, to implement the mandated changes. They became effective on July 1, 1998. A non-substantive error in section 82-832 was corrected in a July 1 filing and also effective immediately.

The proposed regulations change the fraud penalties for individuals in the CalWORKs program who have committed certain acts considered to be fraudulent. The harshness of the new penalties is a “one-strike” provision which permanently disqualifies the recipient regardless of whether it is the individual’s first offense. Other changes include increased automatic penalties of two to five years with no aid, and elimination of the conviction requirement for specified fraudulent acts. Previously, the penalties were more general in nature, and required a fraud conviction to be assessed. The penalties were based on repeated occurrences.

Impact on Children: There are two serious problems with these changes as mandated under CalWORKs. First, the elimination of the conviction requirement for fraud is easier to assess the fraud penalty — even in a first offense or when there truly may be a misrepresentation on the part of the applicant/re-client. More egregious, however, is the nature of the “one-strike” penalty. Once DSS imposes the “one-strike” permanent penalty, a family no longer qualifies for aid — regardless of the need of innocent children who rely on that aid for food and shelter.


On June 26, 1998, DSS adopted sections 42-702 to 42-780 (non-inclusive), 42-800 to 42-812, 42-1001 to 42-102, amended sections 42-710 to 42-797 (non-inclusive), and repealed sections 42-711 to 42-809 (non-inclusive) of the MPP, on an emergency basis, to implement CalWORKs-mandated changes. The regulatory changes became effective on July 1, 1998.

CalWORKs abolishes the previous Greater Avenues to Independence (GAIN) program, which provided training and care to a small part of the TANF parent population. The new regulations implement the welfare-to-work provisions of CalWORKs that replace GAIN. They intend to expand welfare-to-work activity from the 10% to 20% of parents participating in GAIN to a remarkable 80% (all parents not among the maximum 20% allowed by federal law for exemption).

The new regulations take up 104 pages. They repeat the terms of the statute without a great deal of analysis to add. The details are delegated to county decisionmaking in most areas. However, several provisions are important, as discussed below.

The CalWORKs statute provides that all non-exempt TANF parents (80%) must register for welfare-to-work “participation” — usually by registering for and/or attending job search activity. Employment must be obtained within 18 months — possibly extendable to 24 months. That extension, and other dispensations, depend upon a county determination that “no job is available” for a parent whose family is being assisted by TANF. It is unclear
whether the county must certify that there are insufficient jobs available county-wide, or whether it is a determination as to each individual, and what criteria may be applied.

At the 18-month to 24-month mark — and when employment has not been obtained — the county must provide either public employment or “community service” for at least two years. The definition of that requirement is important. The provision of that work “must not displace” existing employment. The regulations provide for an extensive and new “employee displacement grievance process” involving “informed resolution” and/or a “hearing” before a DSS administrative law judge.

Similarly, the new regulations provide for administrative adjudication when sanctions are sought for program non-compliance. The steps include a “notice of action,” with an appointment with the local welfare office for a “cause determination.” The regulations do not provide for a process which appears to meet minimum applicable due process requirements. It creates a system with a final decision rendered by the agency bringing the allegations of non-compliance. A theoretical but vaguely worded right to a “state hearing” is provided and may be pursued in lieu of the “grievance procedures” set up at the county level.

The most critical definitions in the new regulations include:

(1) “Community Service” is employment by local nonprofits, and is defined as “a training activity that is temporary and transitional and provides participants with basic job skills that can lead to employment…”

(2) “Employment” (as in “public employment”) is defined as “work that is compensated at least at the applicable state or federal minimum wage.” (See sections 42-791.2(c))

(3) “No job is currently available” means that the recipient has taken and continues to take all the steps to apply for appropriate positions and has not refused an offer of employment without good cause. Good cause for not participating in the welfare-to-work includes lack of support services (child care transportation), cases when the parent recipient is a victim of domestic violence, and cases where child care is not available for a child 10 years or younger. The regulations do not specify that lack of child care subsidy for a parent with inadequate income qualifies as “inadequate,” but that appears to be implied from the language used.

Federal law allows an exemption from work requirements for 20% of families receiving-TANF, based on “hardship” criteria. It is unclear whether federal law will allow the addition of abused spouses beyond that 20%, and the regulations specify that California will follow the federal precedent on deciding based on the initial welfare-to-work “assistance,” mental health or drug rehabilitation services may be immediately initiated.

Impact on Children: The sanctions applicable for failure to cooperate will include elimination of the parent’s “share” of the TANF grant. Note that despite the sanction fiction that grants are divided between adults and children, it is a family grant required to pay rent to shelter and food to feed the children within the family. A two-parent unemployed family with two children will have its grant cut in half under these welfare-to-work provisions. The benchmark mother and two children will suffer a one-third cut in TANF assistance. These reductions will occur on top of a 20% reduction in TANF (previously AFDC) grant spending power since 1989. However, these amounts may be offset to some extent by the rent/utility voucher provision of CalWORKS (if implemented consistently with the statute and regulations discussed above).

The definitions applicable to the community service or public employment requirement of TANF are also problematic. The Community Service definition requires that employment under that category not be “make work” but that it be closely supervised, and lead to basic job skills that can lead to employment. It is unclear that positions even close to the number necessary in the year 2000 will be available — particularly those which will measurably and demonstrably build “job skills” for employment. The regulations are silent on whether that employment must be at minimum wage. Arguably, the definition of employment may require it. However, “community service” may be construed as a separate and coextensive category payable only by the TANF grant due the family in the normal course (usually 20% to 30% less than the minimum wage). This interpretation is the Wilson administration has stated it will advance. Initial counties have followed suit. Hence, if this “work first” approach is taken, the recipients will lose the substantial $2,000 to $3,000 per year from the federal Earned Income Tax Credit (EITC), which requires “employment” paid at least minimum wage. The federal Department of Labor has indicated that minimum wage may be required in all cases; the regulations allow the state to apply the federal minimum wage and not the higher California minimum wage amount if a court sustains that position. It is unclear