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CHILDREN'S REGULATORY LAW REPORTER

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– Special Release –
CalWORKs Welfare Reform Regulations

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/childrensissues/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

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between counties – and make up a safety net floor for children.

Many of the DSS new regulations to implement 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 three items in Set One below – all 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' web site (www.dhs.cahwnet.gov/getinfo/policypro.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 estimate, informative digest summary, text language, and purpose/factual 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 Fleeing Felon Provisions

On June 25, 1998, DSS adopted sections 40-034, 82-832.19, 82-832.191, 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, on an emergency basis. They became effective July 1, 1998.

The scope of the "Drug and Fleeing 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 the aid payment. In contrast, a "penalty" as defined keeps the individual adult in the AU, but ignores his or her presence for purposes of computing aid amounts (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 person sanctioned is subtracted from 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 denying the aid allocated to him or her. In practice, for the vast majority of cases, the effect of a penalty will approximate that of a sanction – with one important exception: The rent/utility voucher is available where "sanctions" are imposed (see item (2) below covering these required vouchers).

It is clear that almost all disincentives in CalWORKs are "sanctions." The regulation does categorize a "fraud penalty" or (somewhat differently) an "intentional program violation" as invoking the penalty remedy, whereas the circumstances listed below all yield the "sanction" (AU exclusion) consequence, as follows:

(a) Fleeing Felon or Parole/Probation Violator

AB 1542 added section 11486.5 to the Welfare and Institutions Code, making ineligible for TANF assistance those fleeing to avoid felony prosecution or violating a condition of parole or probation. The criteria for flight is the existence of a warrant when "the individual has or reasonably should have knowledge that he/she is being sought by law enforcement."

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

The Drug and Fleeing Felon regulations substantially broaden possible application by allowing probation or parole for "any offense," including non-felonies (misdemeanors), to qualify. However, as the regulation reads, the sanction is apparently limited to the period of time between the revocation of parole or probation by a court, and the apprehension of the person for further punishment or proceedings. Accordingly, the regulation notes that the trigger for exclusion is that "probation or parole may have been revoked or a warrant may have been issued." The regulation does not clarify when the sanction ends. However, unless the basis for revocation involves acts independently leading to 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. There is no time limitation on the exclusion. The implementing regulation applies the exclusion only to those suffering conviction after December 31, 1997, thus avoiding an *ex post facto* imposition of an additional penalty for a prior offense. However, note that the "conviction" date may be many months after the occurrence. The new statute is intended to warn and deter persons that further unlawful drug use or dealing will result in a lifetime bar of assistance for them (reduction of family assistance for them and their children).

(c) 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 absent parent owes payments mostly to the state and federal jurisdictions to recompense them for the family assistance (TANF) publicly provided. The previous California regulation was quite broad and allowed sanction when a parent, pregnant woman, or caretaker 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 recipient to "assign support rights" to the state, a more limited and ascertainable requirement, and adds three other specific requirements involving cooperation with district attorney requests for blood tests (for DNA matching) and appearance in court (discussed below).

(d) Failure 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 under CalWORKs. The regulation adopted here is broad, and allows sanction when a participant "fails or refuses without good cause to meet program requirements." Further, when there are two parents and one is a principal earner, the second parent is ineligible "unless he or she is participating in welfare-to-work activities."

Overall Impact on Children: The denial of TANF to fleeing felons is not controversial. However, the other provisions raise serious issues. In general, child advocates argue that basic safety net amounts have been cut almost 50% in real spending since 1989. (See *California Children's Budget 1998-99*, Table 2-P at 2-79.) For the typical family of one parent and two children, yet another cut-down by one-third is likely to impose serious nutritional deficits for affected children. As to the specific areas of controversy:

Impact of the Convicted Drug Felon Rules: The drug-related conviction bar from assistance has no ending period. 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 statutes which require the state to make "reasonable efforts" to reunify parents when the juvenile courts have assumed jurisdiction over abused or neglected children. (A large proportion of child abuse and/or neglect cases involve required drug rehabilitation programs to 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 this legislative intent, achieves sobriety and demonstrates though random testing no further drug use, and has his or her children returned, would then constitute a family with a TANF grant ceiling substantially below levels necessary for the sustenance of the children – which could theoretically lead to re-removal of children due to neglect (*i.e.*, inability to provide).

The regulations allegedly avoid retroactive application of the sanction, but improperly use the conviction date rather than the 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 interruption 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? How is that stated purpose furthered by applying it to persons who acted before the provision was enacted?

Impact of Child/Spousal Support Collection Rule: 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 tax lien status, license renewal denial, redirection of tax refunds, etc.), thus lessening the assistance needed from custodial parents. This regulation as revised (now requiring a specific 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 regulation, 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 required two-year mark. Counties are then required under CalWORKs to provide "public employment" for all of these persons. (See detailed discussion in *California Children's Budget 1998-99*, Chapter 2, Poverty.) When child care is provided, counties will expend 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 aid cut-offs of parents who actually are willing to work. Moreover, the regulation leaves 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) Voucher Rent/Utility Payments

On June 29, 1998, DSS adopted sections 40-033 and 40-307, and amended sections 44-303.3 and 44-304.6 of the MPP, on an emergency basis. They became effective July 1, 1998.

One of the most important provisions of the CalWORKs statute requires counties to provide vouchers to pay rent and utilities directly to vendors when any parent is sanctioned for more than three months. In addition, the statute allows counties the option of providing such vouchers for other purposes (*e.g.*, after the 60-month period when TANF assistance reaches lifetime termination, for parents and children as well). (See AB 1542, Section 143, adding section 11453.2 to the Welfare and Institutions Code.)

The adopted regulations provide that "Vendor payments are applicable . . . [i]n 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. In addition, the adopted regulation allows counties to issue such vouchers on an optional basis in other circumstances, including cases when the 60-month 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 as the economic recovery continues. 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 these vouchers is among the most critical protections for children in the CalWORKs statute. The implementing regulations repeat the statute's terms, limiting the voucher to the pre-sanction grant amount consistent with its intent. DSS' cost estimates to implement this requirement ($1.7 million in 1998-99) appear to be substantially understated. Nor has its existence caused the Department of Finance to adjust properly its anticipated savings from sanction implementation – savings which will not occur if this safety net protection is implemented as the law requires. Child advocates contend that the key implementers – counties – have little idea how they will implement this required provision, have not budgeted for it, and will likely require writ of mandate court enforcement to compel compliance.

(3) Child Immunization and School Attendance Requirements

On May 28, 1998, DSS adopted section 40-028 and amended sections 40-105, 40-131, 40-181, and 42-101 of the MPP, on an emergency basis. They became effective on June 1, 1998.

(a) Child Immunization

AB 1542 added section 11265.8 to the Welfare and Institutions Code, which requires all TANF recipients to provide documentation that all preschool children have received all "age appropriate" immunizations. Those already eligible for Medi-Cal must comply within 45 days, and those newly enrolled have 30 days in which to comply. The statute provides that if there is a "lack of reasonable access to immunization services," a 30-day extension may be granted. When compliance is lacking, the share of cash aid 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 11265.8(a)).

The new regulation includes a "handbook," which importantly allows compliance without immunization when spacing requirements between shots preclude parents from 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 at 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, the regulations specify exceptions only when a health professional states in writing that a child should not be immunized (presumably for a medical reason), or when the parent submits an affidavit stating a personal and/or religious objection to immunization. More likely justifications – such as the unavailability of vaccine or immunization services – are not included. However, section 40-105.4(g)'s "failure to cooperate" language may provide some basis for such exceptions, providing that assistance reductions will be applied when the situation "does not qualify for an exemption *or have good cause* . . . ." The lack of specificity as to what might constitute good cause beyond those factors enumerated above may leave substantial discretion to county authorities.

The regulation shifts nomenclature and describes the aid reduction to families who do not comply as a "penalty" in setting forth how aid would be calculated. In addition, although using the term "penalty" (rather than the correct term "sanction"), it calculates a reduction scenario (using hypotheticals) more severe than the "sanction" definition (see discussion above).

(b) School Attendance

California's CalWORKs statute also added section 11253.5 to the Welfare and Institutions Code to require all children from 6 to 17 years of age in an AU to attend school. Parents must provide the county with school documentation showing school attendance and, "if it is determined by the county" that any such child "is not regularly attending school," all adults in the AU shall lose their allocable assistance. If a child 16 years or older is not regularly attending school or participating in a welfare-to-work program, such child shall have his or her allocable 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" in providing documentation 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

youth, etc.), but simply provide that "the county shall determine what constitutes good cause . . ." (section 40-105.5(f)).

Impact on Children of Child Immunization Requirement: As noted above, the implementing regulation attempts to recharacterize the sanction of parental aid exclusion as a "penalty" rather than a "sanction." Some child advocates fear that this recharacterization may be intended not only to facilitate the reduction, but also to avoid the application of the voucher safety net discussed in (2) above. Child advocates, including the sponsor of the voucher provision (the Children's Advocacy Institute), contend that the intent of the voucher requirement was to provide an assured safety net for child shelter regardless of the acts of parents, and that this intent would be directly violated by such an interpretation.

The regulations allow for leeway only when shot spacing is medically required, there are religious objections, or a health professional states in writing that vaccination is not advisable. They make no specific allowance for other reasons which may well not be within the control of the parent – and TANF families must rely on the undefined "good cause" exception. This undefined leeway may allow for radically different policies between counties, or even between administrators.

More generally, child advocates support strongly the immunization of children. However, failure to immunize is not always the fault of the parent, but may involve difficulties in receiving required services – particularly given the large number of shots required – and copayments increasingly demanded. *See, e.g.*, the current 28-page Healthy Families application form, and the 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 an environment, compelling immunization by sanctioning families (impacting the children) with basic safety net cuts is harmful to children, and will often prove inequitable.

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, allowing very different regulations to operate in 58 different jurisdictions within the state.

B. CalWORKs Regulations: Set Two (Heard September 14-23)

As with the first set of regulations described above, the second set of 13 CalWORKs 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: Orange, Sacramento, and San Jose. 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' web site (www.dhs.cahwnet.gov/getinfo/policypro.html), of those found in this set only Chapter 20 regulations are currently available electronically. DSS will forward upon request 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 estimate, informative digest summary, text language, and purpose/factual 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) CalWORKs Restricted Accounts

On June 1, 1998, DSS adopted section 40-029 and amended section 89-130 of the MPP, on an emergency basis, to implement the CalWORKs statute's expansion of restricted accounts. The regulatory changes became effective on July 1, 1998.

Traditional recipients of Aid to Families with Dependent Children (AFDC, now TANF) could have only limited income and assets. However, they qualified for benefits for their children and were allowed to maintain some assets beyond permitted amounts if restricted to certain uses – chiefly their vocational education. The CalWORKs statute expands the uses permitted for such restricted accounts to allow payment of vocational or educational expenses for the parent ("account holder") and for his or her "dependents" (see Welfare and Institutions Code section 11155.2).

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 education costs, to buy a home, or to start a small business through a "qualified business capitalization plan." CalWORKs added section 50897.3 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 federal funds separate and apart 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" for such a dependent "within 30 calendar days of its withdrawal."

Impact on Children: The rulemaking file concedes that there is an extremely "low incidence of restricted account" use historically. The newly-proposed federal "individual development account," not yet implemented, is even less likely to be used. Child advocates argue that allowing the impoverished to create special accounts for upward mobility is largely moot given reductions in safety net support, rent increases, and limited employment. Data indicate prevalent difficulty among TANF families in paying rent on time and adequately feeding children. Detailed provisions for personal investment accounts assuage the guilt of public officials who are simultaneously reducing the safety net for children – by promoting the fiction that it is not lack of employment, low minimum wages, lack of public education investment, child care costs, single parenthood, or lack of child support that impede upward mobility, but a personal failure to set up an account (save) and move into self-sufficiency.

Within this limited context, the proposed regulations adopt a broad definition of "education," striking "postsecondary" education and allowing any education or vocational training "expenses" (which could extend beyond tuition), and allow such investment to extend to "dependents" as broadly defined in the Internal Revenue Code. This could include persons of any age who live in the household and rely upon the income of the account holder for living expenses, and also children who are away from home but at school and rely on the account holder for most of their financial support.

(2) Cal-Learn for 19-Year-Olds

On June 17, 1998, DSS amended sections 42-762 through 42-769 of the MPP, on an emergency basis, to implement AB 1542, which allows an otherwise eligible parent or pregnant woman who is 19 years of age to continue to participate in the Cal-Learn program on a voluntary basis. These regulatory changes became effective on July 1, 1998.

The Cal-Learn program provides financial incentives, as well as support services and case management, to assist teen parents to stay in or return to high school. Previously, a teen parent or pregnant woman could only participate in Cal-Learn until age 19. Now, an otherwise eligible teen may continue in Cal-Learn until reaching age 20.

Impact on Children: This is an important change for young parents seeking to better prepare themselves for independence and employment.

(3) Elimination of Late Monthly Reporting Penalties

AB 1542 required DSS to adjust regulations that denied earned income disregards (deductions) as a penalty for late submission of the Monthly Income and Eligibility Report, which welfare recipients are required to file. On June 25, 1998, DSS adopted sections 40-032 and 81-215, amended sections 40-109.25, 40-115.2, 40-161, 40-171.2, 41-400, 41-401 and 41-440, and repealed sections 40-169, 41-441, 41-442 and 89-105 of the MPP, on an emergency basis, to implement this provision of AB 1542. They became effective on July 1, 1998.

Under the previous AFDC program, welfare recipients who filed late forms were precluded from using allowable income disregards unless good cause could be established for failing to submit a timely report of earnings. These regulatory changes eliminate that penalty.

Impact on Children: Denying children the total welfare grant to which the family was entitled due to a parent's late filing of a required report was an injustice which changes in federal and state law now remedy.

(4) Deprivation and Diversion Assistance

AB 1542 required DSS to adjust certain eligibility requirements for welfare assistance and to provide diversion services as an alternative to long-term assistance. On June 25, 1998, DSS adopted sections 40-032 and 81-215, amended sections 40-109.25, 40-115.2, 40-161, 40-171.2, 41-400, 41-401 and 41-440, and repealed sections 40-169, 41-441, 41-442 and 89-105 of the MPP, on an emergency basis, to

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 terminated employment 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 or noncash payments or services provided to a CalWORKs applicant, with the intent of diverting the applicant from long-term aid." The county has sole discretion for determining when it 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 families to resolve an unexpected problem quickly, rather than receive public aid for a longer period.

(5) Time Limit Requirements

On June 29, 1998, DSS adopted section 40-035 and amended sections 42-301, 42-302, and 82-832 of the MPP, on an emergency basis, to implement new time limit requirements for CalWORKs recipients. They became effective on July 1, 1998.

Pursuant to the federal PRA, CalWORKs provides for a lifetime maximum of 60 months of TANF assistance. Although federal funds are cut off for the entire family after 60 months of aid, CalWORKs does not apply the cut-off to children within the family, allowing children to receive their proportionate share after the 60-month period, from state revenue sources if necessary. Certain persons are exempt from the 60-month limitation: those parents reaching 60 years of age, or when welfare-to-work participation is precluded due to an incapacitated person in the home that requires care from the parent, or foster care duties, or because the parent is personally disabled so as to preclude regular employment.

In addition, the federal PRA requires able-bodied adults to find employment within 24 months. All such recipients must be working 20 hours per week if they are single parents, and 35 hours per week for an adult in a two-parent family. Federal law requires each state to demonstrate increasing percentages of recipients working increasing numbers of hours over the next five years.

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 rare given 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 large diversion payment to allow a recipient parent to obtain work or to otherwise avoid longer-term dependency. Such payments will count against the 60-month maximum based on the amount 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 30% 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 time limit is reached (for many, this will occur in 2002). CalWORKs and the implementing regulations imply that the state may continue to make payments for affected children, but 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 a misleading fiction; landlords do not reduce rents if parents agree to sleep on the sidewalk, and such draconian reductions on top of the 50% cut in grant amount spending 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/utilities 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 11450.12, 11450.5, and 11451.5, which require DSS to establish a new grant computation formula including disregards (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, 44-315, 44-402, and 89-201 of the MPP, on 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 payment to "cash" aid payment, and are simply terminology changes. However, the proposed regulations also establish a new grant computation formula including disregards 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 delete public service employment earnings from the definition of earned income, nor to limit the exclusion of private disability insurance in unearned income.

Previously, there were multiple disregards; now, the regulations allow a disregard 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 added to the family's non-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 $175 disregard as it related to incapacitated persons should be retained.

Section 44-101.7 clarifies the meaning of earned and unearned income to comply with new law which defines earned income and disability-based unearned income. The disability-based unearned income will be used in determining the family's income disregards which will then determine the family's cash aid payment.

Impact on Children: These regulations are implemented to comply with new Welfare and Institutions Code sections adopted as part of CalWORKs legislation. They create a less refined system based on the $225 ceiling for a previous system, which was more complex, but which varied more sensitively to the needs of different disabled groups. Some children in affected families will suffer family income reductions under the new rules, although the effect is unclear at this point.

(7) Overpayment Recoupment

AB 1542 requires DSS to revamp its previous policy for recouping overpayments to aid recipients. On June 26, 1998, DSS adopted section 40-030 and amended sections 44-350 and 44-352 of the MPP, on an emergency basis, to implement this provision of AB 1542. 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 AU for agency-caused overpayments and 10% of the MAP amount for all other overpayments.

Impact on Children: 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 repaid gradually, rather than assessed immediately.

(8) 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 40-107, 40-107.14, 40-107.141, 40-173.18, 44-500 to 44-509, 47-101 to 47-190 (non-inclusive), and 89-700 to 89-740 (non-inclusive) of the MPP, on 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

programs replaced included: GAIN child care (AFDC recipients participating in the previous GAIN employment training), Non-GAIN Education and Training (NET) (child care for those receiving private but approved employment training), Cal-Learn 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 disregard programs (to maintain subsidy notwithstanding 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 the recipient is stable (either exempt from work requirements or transitioning off of aid due to employment or other income). Stage Three Child Care begins when a funded space is available for a CalWORKs parent, a parent is subject to a diversion benefit, or a parent is a former CalWORKs client. The federal PRA requires that states provide "adequate child care" to allow TANF parents to obtain employment. This mandate precludes the sanction of recipient families without such provision. Hence, all recipient parents are eligible for Stage One Child Care. Stage Two Child Care, for those who obtain employment, is limited to two years of assured child care (previous transitional child care was limited to one year post-employment and off aid). Stage Three Child Care is discretionary and is dependent upon child care appropriations; it includes assistance for those parents achieving qualified employment. Since child care costs for two children can consume almost all of the take home pay of a new worker, the ability of parents to remain off of assistance may be highly dependent on third stage funding. For full discussion, see *California Children's Budget 1998-99*, Chapter 6, Child Care.

These regulatory changes govern Stage One Child Care, and the beginning of Stage Two. The regulations generally track the statute. They require assistance to be limited for children who are under 11 years of age. Providers may receive payment for those children over 11 years of age when disability requires child care supervision (based on the written statement of a physician or licensed or certified psychologist, or the child's receipt of SSI/SSP), or when the child is a ward of the court based on delinquency or neglect. If funds allow, counties may provide child care to children up to the age of 13.

Child care is available for every "client" (parent) when he or she is participating in an approved welfare-to-work activity and there is no other family member living in the home able to provide care. The regulations have an ambiguous provision on child care for those being sanctioned or penalized. The regulation appears to include Stage One clients who are being penalized for reasons other than failure to participate in required CalWORKs activities, as long as they are participating in county-approved activities. Presumably, this allows child care continuation when parents obtain private training or are otherwise seeking work in good faith through programs complying with county criteria. This regulation appears to be a reflection of earlier litigation which prohibited the denial of child care benefits to AFDC parents because they were in private industry training for employment rather than in the publicly provided GAIN training program (*i.e.*, the NET category of previous AFDC-related child care above).

The regulations explicitly limit Stage Two Child Care to two years after a parent ceases to be on cash aid (TANF). However, the regulations allow flexibility to counties, ". . . if funding is not available in Stage Two or Stage Three, the (parent) may receive services in Stage One." Hence, the county has the option of taking those in Stage Three, who are at risk of falling back onto welfare without child care, and providing them with Stage One child care services if resources allow. This flexibility does not produce more overall child care funding, but in effect allows child care to be provided when state or local officials have miscalculated the relative amounts allocable to Stages One through Three, respectively.

Two parent families may receive child care even though they do not meet the full 55-hour per week combined work requirement – if otherwise qualified. This means that child care may be provided when two parents each work half-time, but at the same time. This is an important provision given the prevalence of part-time work among currently employed TANF parents.

The new regulations determine qualifying income every six months, with the next six months of income based on projections from the previous six months. This regulation changes the review of income eligibility (its calculation) from monthly to six-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 to last 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 state median income," 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 families with five or more children. Historically, these families have not qualified when the 75% limit applied, because unlike the poverty line, it does not adjust for family size. Consistent with 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 median income receive 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 *et al.*; the regulation follows the CalWORKs statute in providing that parents have discretion to choose their child care provider (when licensed or exempt, and excluding any member of the assisted family).

In general, alternative payments provide recompense to child care providers equal to a percentage of the mean market charge in a region. 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 (infant, full-time, part-time) based on annual surveys conducted by the state. That maximum is reduced to no more than the normal price charged to the general public by the provider being paid. Pay limits 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" based on income to offset part of 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 during "excused absences" (illness, quarantine, court appearances, family emergencies). Finally, payment may be made when a provider has a "flat 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 over time with the demand 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 assistance of those employed 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 that operates through training for work and into employment for two years. After two years, assistance is problematic. But few new employees receive a sudden wage increase of $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 nutrition. Hence, 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 section 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 record clearance and substantiated 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 Trustline and health and safety requirements for CalWORKs license-exempt child care providers. License-exempt providers must complete Trustline applications within 28 calendar days (counties 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 82-508, 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 appear at the local office of the district attorney (DA), submit to genetic testing when paternity is in issue, and serve as a witness as required by the DA. In addition to its greater specificity, the determination of non-cooperation is not made by county welfare, but by the district attorney. Cooperation may not be required if "not in the best interests of the child." In cases of possible non-cooperation, the implementing regulations here require the aid applicant (custodial parent) to demonstrate that cooperation will "increase the risk" of physical, sexual, or emotional harm. The new regulation adds "sexual" and alters the standard from "result in serious" to an easier requirement of "risk enhancement." Mere belief of risk increase is not sufficient and increased "emotional harm" is not sufficient unless it creates an "emotional impairment that substantially affects the individual's functioning." There is an escape valve provision that allows non-cooperation when it is contrary to the best interests of the child "for any other reason," as determined by the DA.

Supporting evidence can include court documents, official records, a written statement from a licensed adoption agency, etc. Importantly, a statement under penalty of perjury by the applicant/recipient can constitute supporting evidence under the new regulations. However, if a determination of non-cooperation (without qualifying exemption) is made, the grant amount is reduced by 25%. If there are two adults receiving assistance who refuse to cooperate (*e.g.*, a teen parent and her mother), the reduced grant may be reduced by another 25%.

Impact on Children: The new regulations make the cooperation requirements more specific, and expand the evidence which can support exemption – all important to the well-being of the children in the home. However, the new regulations place total reliance on the decision of the local DA's office to impose a substantial 25% reduction in aid. There are two problems with that reliance. First, on the specific role of judging "exemptions," many exemptions are claimed by women because of the alleged violent nature of absent fathers. The woman may believe that identifying the father would lead to his reentry into her life under possible circumstances of drug use, child molestation, or domestic violence. The DA's office has an interest in apprehending criminals. That interest may conflict with the calculation of child impact when the absent father is sought by law enforcement. Second, and of more general concern, the DA receives incentive payments based on the level of child support collected. That economic interest may interfere with an objective judgment of "best interests of a child" in measuring exemption, or in fairly deciding whether cooperation has occurred.

(11) CalWORKs Property Limits

DSS proposes these regulatory changes to implement corresponding 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. 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 evaluating property which may be retained under the Food Stamp regulations. They also set a period of ineligibility that results when an aid recipient disposes of property for less than its fair market value, rather than exceed the property limits for the month.

Impact on Children: As with other CalWORKs-mandated changes, these regulations move significant decision-making authority to the county level. To the extent this decentralization makes government more flexible, it could benefit children and their families as they attempt to meet the requirements of CalWORKs.

(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), 40-105, 40-181, 80-301, 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 found to have committed certain acts considered to be fraudulent. The harshest 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 from 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 increased 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 means it is easier to assess the fraud penalty – even in a first offense or when there truly may be a misunderstanding on the part of the applicant/re-cipient. 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.

(13) Welfare-to-Work Provisions

On June 26, 1998, DSS adopted sections 42-702 to 42-780 (non-inclusive), 42-800 to 42-812, 42-1001 to 42-1012, 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 child 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 are intended 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 state-determined detail. Instead, 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" – generally training or job search activity. Employment must be obtained within 18 months – possibly extendable to 24 months. That extension, and other dispensation, depends 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 "informal resolution" and/or a "formal 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 section 42-701.2(e).)

(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 welfare-to-work includes lack of support services (chiefly transportation), cases when the parent recipient is a victim of domestic violence, and cases when child care is not available for a child 10 years or younger. The regulations do not specify that lack of a 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 future federal precedent so deciding. Based on the initial welfare-to-work "assessment," 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 50% 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 consistent 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 is the interpretation the Wilson administration has stated it will advance. Initial counties have followed suit. Hence, if this "work fare" approach is taken, the recipients will lose the substantial $2,000 to $3,600 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 whether a wage at federal but below state minimum wage will allow employment status qualifying for the EITC. The issue of EITC application is not academic; the amount is substantial for affected families, and under the current state approach, California will be leaving many millions of federal dollars otherwise available to the poorest children of the working poor, and intended for them, on the table. For further discussion, see the *California Children's Budget 1998-99*, Chapter 2, Poverty.

CHILDREN'S REGULATORY LAW REPORTER

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