



WELFARE AS WE KNOW IT NOW:

**What New York's New Welfare Laws Mean
for People with Criminal Records,
Substance Abuse Histories
and HIV/AIDS**

July 2000

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Legal Action Center

153 Waverly Place, New York, NY 10014

Phone: (212) 243-1313 • Fax: (212) 675-0286 • E-mail: lacinfo@lac.org

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Foreword

This manual was prepared by the Legal Action Center, a public interest law firm that has specialized in legal and policy issues relating to the criminal justice system, alcoholism and substance abuse and HIV/AIDS for over twenty-five years. The manual is designed to identify and explain key changes resulting from recently enacted federal and state welfare legislation as they affect individuals with criminal histories, histories of addiction, and HIV/AIDS.

The purpose of this manual is to serve as a guide to service providers and advocates who work with these individuals in New York. It is not intended as a comprehensive resource on the eligibility or allocation of public benefits generally in New York. It focuses exclusively on those areas of the welfare system that are most likely to affect persons with histories of involvement in the criminal justice system, histories of alcoholism or substance abuse or persons with HIV/AIDS.

While many changes have been made to federal and state welfare laws, how the new welfare rules will be put into effect through regulation and administrative policy remains an evolving process. Since the application of the new welfare laws is still developing and since practices among welfare offices often vary depending on the county or individual district, this manual offers a comprehensive overview of the legal framework that currently exists in New York and presents the structure of laws, regulations and administrative directives that create the new welfare system. Where possible, the manual highlights areas where clients and service providers can most effectively negotiate the new welfare system in order to increase the likelihood of clients being able to access and retain public benefits in light of the new changes.

The terms “public assistance,” “welfare” and “benefits” have been used interchangeably throughout the manual and refer to Family Assistance, Safety Net Assistance, and Medical Assistance, where applicable. As it is used in the text of this manual, the term “substance abuse” is meant to include both alcoholism and alcohol abuse and drug abuse and addiction.

Service providers should contact the Legal Action Center with specific questions that arise, as well as any general questions about the content of this manual. The Legal Action Center is also available for consultation in the areas of discrimination against people with criminal records, substance abuse problems, and HIV/AIDS and confidentiality of drug or alcohol abuse patient records and HIV-related information.

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Part I. Introduction and Overview of Welfare Reform

A. Federal Welfare Law Changes

On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)¹ into law, representing the most dramatic overhaul of this country's public assistance program. The new law changed the welfare system by:

- ending the federal entitlement to public assistance;
- establishing lifetime limits for the receipt of federal assistance;
- imposing new work requirements on recipients;
- promoting states' flexibility and control of their own welfare programs by channeling federal welfare funding through a new block grant called Temporary Assistance for Needy Families (TANF); and
- ending welfare eligibility for many non-citizens.

The welfare reform law also abolished Aid to Families with Dependent Children (AFDC) and replaced it with the TANF program. As a result of these significant changes, states such as New York have had to revise their own welfare programs to bring them in line with the new federal law.

B. New York State Welfare Law Changes

A year after the federal changes, Governor Pataki signed the Welfare Reform Act of 1997² on August 20, 1997. This law brought New York's welfare system into compliance with the federal welfare law and also resulted in major changes in the state's own welfare system. The Welfare Reform Act abolished New York's previous welfare programs, AFDC and Home Relief, and replaced them with two new programs: **Family Assistance** and **Safety Net Assistance**.

¹ Codified as amended in scattered sections of Titles 7, 8, 21 and 42 U.S.C.A.

² Codified in the New York Social Services Law.

**New York State Welfare
Eligibility Categories**

	Family Assistance	Safety Net Assistance
Cash Benefits	<p style="text-align: center;"><i>Five year limit</i></p> <ul style="list-style-type: none"> • families with children under the age of 18; • families with children under the age of 19 (if the child is regularly attending school); • pregnant women 	<p style="text-align: center;"><i>Two year limit</i></p> <ul style="list-style-type: none"> • adults without children; • children living apart from any adult relative; • qualified immigrants who are ineligible for Family Assistance; • non-qualified immigrants
Non-Cash Benefits	<p>(Not applicable)</p>	<p style="text-align: center;"><i>No time limit</i></p> <ul style="list-style-type: none"> • individuals and the families of people receiving drug or alcohol treatment; • families of those refusing drug screening, assessment or treatment requirements; • families in which the head of the household has reached the 5-year TANF limit

C. Family Assistance

The **Family Assistance** program provides cash benefits to the following categories of people:

- families with children under the age of 18;
- families with children under the age of 19 (if the child is regularly attending secondary school); and
- pregnant women.

The program is funded through the federal TANF block grant. This means that individuals receiving Family Assistance benefits can only do so for a period of up to five years because the federal government has established a five-year lifetime limit on the receipt of TANF benefits. Family Assistance recipients must also satisfy federal work and community service requirements. (See Part II.)

Due to federal and state restrictions, some families are barred from receiving Family Assistance. These include: certain non-citizens, those who have exceeded the five-year lifetime limit on federally-funded benefits, and others, including families in which a member is required to be in treatment for an alcohol or substance abuse problem, or refuses to comply with drug and alcohol abuse screening, assessment or treatment mandates.

The monthly grant amount that a family receives under Family Assistance remains at the same level it was under the AFDC program.

D. Safety Net Assistance

The **Safety Net Assistance** program replaced the Home Relief program in New York. The following people are eligible for Safety Net Assistance:

- adults without children;
- children living apart from any adult relative;
- individuals and families of people receiving drug or alcohol treatment (see Part IV);

- families of those refusing drug screening, assessment or treatment requirements (see Part IV);
- qualified immigrants ineligible to receive Family Assistance (see Part VI);
- non-qualified immigrants (see Part VI); and
- families in which the head of the household has reached the five-year lifetime TANF limit.

Safety Net Assistance benefits include both cash and non-cash (voucher) allocations, depending on the category. **Cash benefits** are limited to the following categories:

- adults without children;
- children living apart from any adult relative;
- qualified immigrants who are ineligible for Family Assistance; and
- non-qualified immigrants.

There is a two-year limit on the receipt of cash benefits through Safety Net Assistance. After the two years have accrued, recipients are limited to receiving non-cash Safety Net Assistance voucher benefits.

Non-cash benefits are available to those other Safety Net Assistance eligible categories who are not entitled to receive cash benefits:

- individuals and the families of people receiving drug or alcohol treatment;
- families of those refusing drug screening, assessment or treatment requirements; and
- families in which the head of the household has reached the five-year TANF limit.

There is no time limit on the receipt of non-cash Safety Net Assistance benefits. Benefit levels remain the same as they were under the Home Relief Program.

Under the voucher program, recipients of non-cash benefits will get a small amount of cash (“Personal Needs Allowance”) equal to 20% of the individual’s total grant. Portions of the grant for shelter and utilities are paid directly to the landlord and power company. What is remaining from the grant is distributed through an Electronic Benefit Transfer (EBT) system. Recipients can purchase goods with their EBT cards at specified stores that honor the EBT cards.

E. Time Limits

One of the primary goals of federal welfare reform was to encourage self-sufficiency by limiting the amount of time individuals could receive federal TANF assistance to five years. This means that individuals can only receive Family Assistance benefits for a period of five years in a lifetime. The five year limit began to toll for people as of December 2, 1996. However, in New York, when the five-year period ends, individuals who were receiving Family Assistance can apply for non-cash Safety Net Assistance.

To determine whether someone has exceeded the five-year lifetime limit, the government will consider the following:

- any amount of time the individual received benefits in another state (provided it was assistance funded by a federal TANF program);
- any dollar received in a month (even if it was a pro-rated amount that the individual received in the second half of the month);
- any amount of time spent on Safety Net Assistance; and
- any amount of time when benefits are being recouped or sanctioned because of the recipient’s failure to comply with one of the program’s guidelines.

Time spent as a minor who is not the head of a household or married to the head of a household will not count towards the five-year lifetime limit.

It is imperative for clients to recognize that these periods will be considered in determining the five-year limit. In addition, if a client who has exhausted the five-year lifetime limit on federal benefits plans to move to another state, he or she should be aware that he or she may not be eligible to receive public assistance in his or her new home.

Example: *Client A begins receiving Safety Net Assistance on January 20, 1997. She becomes pregnant in January 1998 and applies for Family Assistance. Provided she remains otherwise eligible for Family Assistance, she can receive Family Assistance for 47 more months during her lifetime before reaching the five-year limit on federally-funded benefits. The 13 months in which she received Safety Net Assistance count toward her lifetime limit, including the first month of receipt of benefits, even though she did not begin receiving those benefits until the 20th day of the month.*

When A exhausts her five-year limit, she may apply for non-cash Safety Net benefits and receive them indefinitely in New York. However, should she move to another state that only provides federal benefits, she and her family will be ineligible to receive public assistance.

F. Medicaid

In addition to changing the requirements and responsibilities for the receipt of public assistance, federal and state welfare reform laws also “de-linked” Medicaid eligibility from welfare eligibility. Unlike federal public assistance, Medicaid remains an entitlement, which means that anyone who meets the income and other eligibility standards has a right to obtain Medicaid coverage. In the past, both public assistance and Medicaid applications were processed simultaneously in welfare offices since both programs used the same eligibility criteria. Now that federal welfare is not an entitlement, there is no longer an automatic assumption by welfare officials that applicants for welfare benefits are necessarily applying for Medicaid as well. Applications for both programs are processed separately. Medicaid applicants must be sure to indicate on their public assistance applications that they are interested in receiving Medicaid benefits. For further information on Medicaid applications, please contact the Community Food Resource Center or the Community Service Society. (See Part IX for these organizations’ phone numbers.)

Part II. What Work Requirements Do the New Welfare Laws Mandate?

Aside from time limits, one of the most important changes resulting from the federal and state welfare laws are requirements that, for many people on public assistance, link the receipt of welfare benefits to work. The federal government has established new work requirements for most recipients to qualify for benefits; states must also meet strict requirements regarding the percentage of clients in work activities to receive federal welfare funds. In turn, New York will require most Family and Safety Net Assistance recipients to work or participate in a workfare or community service program and will pass along to counties any sanctions it may receive from the federal government for not having sufficient percentages of its public assistance recipients performing work activities.

A. Work Requirements

To meet these guidelines, recipients of benefits must fulfill weekly work requirements and perform activities that fall within the categories of allowable work. Recipients are required to begin working “as soon as practicable” (SOC. SERV. LAW § 335-b(5)); at the latest, Family Assistance recipients must begin fulfilling their work requirements within two years of receiving benefits (or sooner) and can be required to perform community service within two months. Furthermore, parents of young children must now begin working once their children reach the age of one.

The specific hourly work requirements as well as the types of activities that count as work to satisfy a recipient’s work requirements are broken down in the following table, by category of eligibility.

**New York State Welfare
Work Requirements**

	Weekly Work Requirements	Countable Work Activities
Single Parents with Dependent Children	Recipients must work 30 hours per week.	<ul style="list-style-type: none"> • Unsubsidized employment • Subsidized private or public sector employment • Work experience in the public or non-profit sector • On-the-job training • Job search and job readiness assistance* • Community service • Vocational educational training up to 12 months • Job skills directly related to employment
Households without Dependent Children	Recipients must work 35 hours per week.	<ul style="list-style-type: none"> • Unsubsidized employment • Subsidized private or public sector employment • Work experience in the public or non-profit sector • On-the-job training
Two-Parent Households with Dependent Children	One parent must work 35 hours per week; the other parent must work at least 20 hours per week <i>if the household receives federally-funded child care.</i>	<ul style="list-style-type: none"> • Unsubsidized employment • Subsidized private or public sector employment • Work experience in the public or non-profit sector • On-the-job training • Job search and job readiness assistance* • Community service • Vocational educational training up to 12 months • Job skills directly related to employment • Education directly related to employment if the person lacks a high school diploma • Satisfactory attendance in secondary school or GED program • Providing child care to someone doing community service • Job search and job readiness beyond the federal time limit of six weeks • Educational activities including high school or equivalent, basic education, ESL, up to two years of post-secondary education that is directly related to employment in a two-year college, trade or business school

* Limits of six weeks of which only four can be consecutive.

B. Employment Plans

Under the law, Family Assistance recipients are required to undergo an employability assessment by the Office of Employment Services. The purpose of this process is to assess applicants' basic skills proficiency, child care and other supportive services needs, prior work experience, training and vocational interests, and family circumstances, including any special needs of a child. The initial assessment is supposed to occur within 90 days of being deemed eligible for receiving benefits, though an individual can be assigned to work activities even before the assessment is completed. Based on this assessment, the local welfare department will develop an employability plan, which establishes the services that will be provided by the local welfare office and the activities in which the recipient will be required to participate. For example, an employability plan could require a recipient to attend literacy training or substance abuse treatment.

Assessments and employability plans for Safety Net recipients must be done within a reasonable period of time, which cannot exceed one year after benefits are applied for.

Clients should request copies of assessments and employability plans in the event problems arise regarding work assignments and activities. Clients who do not comply with the assessment process are subject to having their benefits sanctioned.

Local welfare officials must also address the transportation needs of recipients in order to ensure they can get to and from work. Districts are required to make a diligent effort to assist individuals with transportation needs and to make a reasonable effort to assign the individual to an appropriate work activity at a site as close as possible to the individual's home.

C. Sanctions for Failure to Comply with Work Requirements

The benefits of individuals who fail to comply without good cause with the work requirements established by the new welfare laws will be subject to sanctions. (SOC. SERV. LAW § 342.) Good cause has been defined as circumstances beyond the individual's control, including illness of the recipient or another household member, and a household emergency. (12 NYCRR § 1300.12.) Good cause also includes the inability to find available and

appropriate child care if the parent has a child under the age of 13. Benefits will be reduced on a pro-rated basis equal to the individual's portion of the household grant.

The public assistance benefits of recipients with dependent children will be sanctioned in the following manner for failing to comply with work requirements:

- **1st failure:** until recipient complies with work requirements.
- **2nd failure:** 90 days and then until willing to comply with the work requirements.
- **3rd and all other failures:** 180 days and then until willing to comply with the work requirements.

Recipients without dependent children are subject to more stringent sanctions for the failure to comply with work requirements:

- **1st failure:** 90 days or until compliance, whichever is longer.
- **2nd failure:** 150 days or until compliance, whichever is longer.
- **3rd and all other failures:** 180 days or until compliance, whichever is longer.

Recipients whose benefits are sanctioned because of a failure to comply with work requirements are entitled to receive notification of such action, the reasons for the action, as well as notice that they have the right to a fair hearing to dispute the sanctions.

Example: *Client B is a single mother of four children. Her monthly Family Assistance grant is \$800.70. If she fails to comply with her work requirements without good cause, her family's monthly grant will be reduced by \$160.14 until she complies with her work requirements. The reduced amount represents 20% or one-fifth of the total household grant since her household consists of five members.*

If this was B's second sanction, the family's grant would be reduced for a minimum of 90 days.

**New York State Welfare
Sanctions for Failure to
Comply with Work Requirements**

	1st Failure	2nd Failure	3rd and Other Failures
Recipients with Dependent Children	Until recipient complies with work requirements	90 days and then until willing to comply with work requirements	180 days and then until willing to comply with work requirements
Recipients without Dependent Children	90 days or until compliance, whichever is longer	150 days or until compliance, whichever is longer	180 days or until compliance, whichever is longer

D. Who is Exempt from Work Requirements?

The following categories of people do not have to fulfill work requirements in order to receive benefits:

- children under the age of 16;
- children under the age of 19 if they are attending secondary, vocational or technical school full-time;
- persons who must stay home to care for a sick or incapacitated member of the family (this is considered to be “community service”);
- pregnant women beginning 30 days prior to the date of delivery;
- persons who are ill, incapacitated, or over the age of 60; and
- persons who are considered disabled.

E. Child Care

Clients who are receiving Family Assistance and who have children under the age of 13 are guaranteed child care if they need it to participate in work activities. A household is not supposed to be sanctioned if child care is necessary and the parent cannot comply with work activities because of the lack of child care or because the child care options provided are inappropriate.

When individuals are assessed by the Office of Employment Services for their skills, work experience and special needs, they will also be assessed for their child care needs. The local welfare department must provide recipients with an updated list of available child care. Clients are entitled to choose between the options and to receive help in finding child care. If a client requests help in finding child care, the welfare caseworker must provide at least two child care options, one of which must be licensed or registered child care. If the options presented are not appropriate, clients must be excused from work assignments without being sanctioned until an appropriate child care opening is found. Factors determining whether a child care option is appropriate may include securing child care with a provider who speaks the same language as the parent or is in reasonable proximity to the parent's workplace or the child's home and school, and finding child care at an early childhood center in particular circumstances. If your client's benefits are sanctioned for failing to meet work requirements and the failure resulted from the lack of appropriate child care, you should encourage him or her to immediately file for a fair hearing as the standard for determining whether an individual's benefits are sanctioned is fairly subjective.

While clients should be excused from work assignments without being sanctioned if an appropriate child care option is not found, the new welfare laws require clients to continue looking for appropriate child care if they want to avoid sanctions. In addition, clients must be prepared to report on where they have applied for child care if the Office of Employment Services requests that information. Clients should be encouraged to keep track of the child care options they explore where there were no available openings, as well as those that were inappropriate and the reasons why.

Child care will not necessarily end when your client stops receiving welfare benefits.

Subsidized child care should be available for individuals who find jobs and no longer receive public assistance for a period of one year. If your client requires child care after his or her benefits have ceased, you should check with the Office of Employment Services or a welfare advocacy organization such as the Welfare Reform Network to determine whether he or she is still eligible for subsidized child care.

Example: *Client C is a single mother receiving Family Assistance. In order to fulfill her workfare assignments, she must find child care for her three-year-old daughter, who up until now has never been left with anyone but her mother. The only child care options the Office of Employment Services has offered her are in local family day care homes that do not provide developmental education. Since C's assessment plan indicates that her child requires child care that would include early childhood development, C should be excused from engaging in her work requirements until she can find appropriate child care in a day care center that could meet her daughter's early childhood needs. If she is not excused, C should request a meeting with her welfare caseworker, and if necessary, file a request for a fair hearing. (See Part VIII, below, on Fair Hearings.)*

Part III. How Welfare Reform Affects People with Criminal Records

A. The Lifetime Bar for Individuals with Drug Felony Convictions

The federal welfare law permanently bars anyone with a drug-related felony conviction from receiving federal cash assistance and Food Stamps during his or her lifetime unless a state “opts out” (see below), as New York did. (21 U.S.C.A. § 862a.) Drug-related felonies are considered to be those involving the use, possession or distribution of illegal substances. The ban applies to conduct that occurred after August 22, 1996 (the effective date of the federal welfare law), which means that if your client was arrested prior to that date and then subsequently convicted after August 22, 1996, he or she would not be subject to the law.

The federal law does not require the states to conduct investigations or obtain criminal history information in order to determine whether an individual has been convicted of a drug-related felony. Investigation into an individual’s criminal history is done through self-reporting by the applicant him/herself.

Under the federal law, states were given an opportunity to opt out of or modify the drug felon bar by passing legislation making it clear that the state was choosing not to adopt the ban, or to modify its application (such as exempting individuals with drug felony convictions who have undergone drug treatment). The Appendix provides a comprehensive list of states’ responses to the drug felon ban. The drug felon ban does not apply to Medicaid or to non-federal assistance that a state may provide through its own general assistance program.

New York was among those states that chose to fully opt out of the lifetime bar on the receipt of public assistance for individuals with drug felony convictions. In New York, persons with drug felony convictions remain fully eligible for Family Assistance and Safety Net Assistance. However, it is important to inform clients of these laws in the event that they move out of New York or live in a neighboring state. If they move to a state that has adopted the drug felon ban and they have a drug felony conviction, they will not be eligible for federal cash assistance and Food Stamps, regardless of the circumstances.

Example: *Client D was charged with possession of a controlled substance and was convicted of a felony in New York in September 1997. She is currently participating in an alternative-to-incarceration program in satisfaction of her criminal justice sanction. D informs her service provider that upon finishing the program she intends to return to Pennsylvania where she grew up. Her service provider should warn her that Pennsylvania has adopted the drug felon ban and that the ban will apply to her if she moves back to Pennsylvania even though her conviction occurred in New York.*

B. Sanctions for Individuals Fleeing Custody and Parole or Probation Violators

The federal welfare law stipulates that states are prohibited from providing public assistance and Food Stamps to individuals who are “violating a condition of probation or parole.” (42 U.S.C.A. § 608 (a)(9)(A)(ii).) While the federal law was clear about denying benefits to those violating probation or parole, the law failed to address two very important issues which directly affect how this provision of the law is implemented: (1) what constitutes a violation of probation or parole that would trigger the benefit ban (or at what point is an individual “violating” the terms of his or her release); and (2) when does the period of ineligibility begin and end.

Whereas the federal law left these two questions unanswered, the New York welfare law specifically clarifies them by defining what constitutes a violation and how long the period of ineligibility lasts. Specifically, an individual is considered to be violating parole or probation only if (1) he or she is currently fleeing probation or parole supervision and a warrant is outstanding or (2) he or she has been found by judicial determination to have violated probation or by administrative adjudication by the Division of Parole to have violated parole. (SOC. SERV. LAW § 131(14).) This means that a client will not be sanctioned in New York until a warrant is outstanding or a court or administrative hearing has determined he or she has violated the terms of probation or parole. Probation or parole violations which are not identified by a court or administrative hearing will not result in the sanction of benefits.

Regarding the period of benefit ineligibility, the New York law indicates that the ban ends as soon as the violator returns to compliance. When a recipient returns to compliance

with the terms of his or her probation or parole, benefits should be restored, though the recipient will need to submit verification of compliance, reapply for assistance and wait 45 days until he or she will receive his or her benefits again.

Example: *Client E is an individual on probation living in a halfway house for recovering substance abusers. He breaches a condition of his release by missing an appointment with his probation officer (PO). His PO responds by issuing an outstanding warrant. Two weeks later, he goes to his PO and turns himself in at a court hearing. Given his continued compliance and treatment schedule, the court decides to restore him to probation rather than order him to return to prison. Under New York's welfare law, he should be ineligible for public assistance from the time the warrant was issued until the time the court restored him to probation. Once E has been restored to probation, he will become eligible for public assistance again.*

Part IV. How Welfare Reform Affects Individuals with Substance Abuse Problems

New York has established policies aimed at identifying, assessing and mandating alcoholism and/or substance abuse treatment for public assistance recipients who cannot work due to their addictions. This section describes these new procedures and requirements and explains the sanctions that can result if clients fail to comply with them.

A. Drug and Alcohol Screening and Assessment

New York now requires that every adult applying for public assistance and every recipient being recertified to continue to receive benefits be screened for indications of alcohol or drug dependence. (SOC. SERV. LAW § 132(4).) The screen consists of a nine-item, yes/no questionnaire that asks clients whether they have experienced health, work, legal or social problems related to alcohol or drug use. The screen is administered by welfare caseworkers during the application process. The screen is not a urine drug test; New York does not mandate universal urinalysis testing of welfare applicants. Based on the applicant's or recipient's response – answering “yes” to two of the nine questions, or other indications in the client's appearance or demeanor, including missing a workfare assignment – the caseworker may decide that the client requires a referral for a formal drug or alcohol assessment.

The formal assessment must be performed by an alcohol and/or substance abuse professional credentialed by the Office of Alcoholism and Substance Abuse Services. The assessment consists of a detailed set of questions that is designed to evaluate whether the client: (1) has a current alcohol or drug abuse problem; (2) has an alcohol or drug abuse problem that prevents her or him from working; and if so, (3) what is the appropriate modality of alcohol or drug abuse treatment to which the client should be sent. The assessment may include urinalysis.

B. Mandated Treatment

If the assessment process reveals that an individual is abusing or dependent on alcohol or drugs but is able to work, the individual will be required to participate in work activities.

He or she may be required to attend treatment as a part of his or her employment plan.

If the assessment indicates the person is unable to work because he or she needs alcoholism or substance abuse treatment or if a person has been court-ordered to participate in alcoholism or substance abuse treatment, welfare officials can require the client to enter treatment as a condition of receiving benefits if treatment is available. If a client's court-ordered treatment differs from the treatment ordered by the local welfare office, service providers should inform the client's welfare officer of the mandate ordered by the court. Local welfare offices must give priority to the court-ordered treatment mandate.

If mandated into treatment, the recipient must be referred to a treatment program that has been state licensed or certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) or operated by the United States Department of Veterans Affairs. The new welfare regulations require treatment programs to develop individual treatment plans which include an expected date of availability for work-related activities and to provide a copy of treatment plans to the local district responsible for payment. At a minimum of every three months, the program must provide a treatment progress report on every individual receiving public assistance to the local welfare officials, which includes an evaluation of the client's ability to work. Some districts have instituted policies under which it is presumed that a client who has been mandated into treatment will be able to participate in work after 90 days.

Example: *Client F is currently participating in a drug treatment program. The county's welfare office has determined that F is now able to work and must participate in the county's work experience program as a condition of receiving his public assistance. F and his social worker do not feel he is yet able to do so. F should file a request for a fair hearing with "aid continuing" to challenge the determination made by the welfare office. In addition, his social worker should provide documentation to the welfare office indicating the reasons why he is not yet able to work while still participating in the treatment program.*

In the event that an individual who is a single-parent recipient of public assistance requires residential treatment, the law directs welfare officials to make "diligent" efforts to refer the recipient to a treatment program that would allow the family to remain together.

C. Sanctions for Non-Participation or Non-Completion of Screening, Assessment, or Treatment Requirements

Individuals who fail to participate in the screening, assessment or treatment process without good cause are subject to public assistance sanctions. Depending on their aid category, they may also be subject to Medicaid sanctions. Safety Net applicants and recipients who are single or childless couples between 21 and 64 years of age and not certified blind, disabled, or pregnant will have their Medicaid cut off if they fail to comply with the screening, assessment and treatment requirements without good cause. Individuals receiving Family Assistance are not subject to Medicaid sanctions for failing to comply with these requirements.

The new welfare regulations define “good cause” to be “verified unforeseen circumstances,” including illness or death in the family. (18 NYCRR § 351.2(i)(2)(iv).) Alternatively, when the local welfare office, the treatment facility and the recipient agree that the recipient is in need of a different treatment program and the recipient has enrolled in the more appropriate rehabilitation program, the recipient will be considered to be complying with the treatment requirements established by the local welfare office.

Example: *Client G has been referred by the local welfare office to an outpatient treatment program to treat her substance abuse addiction. G is aware of a different program, which she believes is more intensive and thus more likely to contribute to her successfully treating her addiction. She cannot switch programs on her own. Rather, she must talk to her service provider as well as the caseworker handling her case at the local welfare office to avoid having her benefits sanctioned. If the welfare office refuses to agree, G should request a fair hearing with “aid continuing” to refute the decision preventing her from moving to a more suitable treatment program.*

If good cause is not shown and an individual fails to comply with screening, assessment or treatment requirements, his or her benefits will be sanctioned for the following periods:

- **1st failure:** 45 days or until the failure ends, whichever is longer.
- **2nd failure:** 120 days or until the failure ends, whichever is longer.
- **3rd and all other failures:** 180 days or until the failure ends, whichever is longer.

To lift the public assistance sanction prior to the end of the sanction period (and regain non-cash Safety Net Assistance), non-compliant individuals must enter or return to residential treatment. To regain Medicaid coverage before the sanction period is over, the sanctioned beneficiary must participate in the level of care recommended by the local social services district. However, the individual must reapply for Medicaid in order to receive it.

Example: *Client H has been mandated into intensive alcoholism outpatient rehabilitation. In response to her failing to attend the program, her benefits are sanctioned and she loses her Safety Net Assistance and Medicaid. After H re-enters intensive outpatient rehabilitation, if that is still the recommended level of care, she will have her Medicaid sanction lifted. However, H will continue to be ineligible for Safety Net Assistance until the entire sanction period ends since she has returned to outpatient, rather than residential, treatment.*

Only the individual who fails to comply with screening, assessment or treatment will be sanctioned. The sanctioned person's family may still qualify for non-cash Safety Net Assistance if the household otherwise meets the program requirements. Also, individuals who are referred to treatment, but cannot participate because treatment is not available, remain eligible for non-cash Safety Net Assistance and Medicaid, as do their households.

Example: *Client I and her family are recipients of non-cash Safety Net Assistance because I was assessed to have a substance abuse problem. As a condition of receiving her benefits, she is required to participate in a residential substance abuse treatment program. I stays in treatment for four months, but then drops out of the program.*

As a result, I's benefits are sanctioned for 45 days or until she returns to compliance. Her family continues to receive non-cash Safety Net Assistance and Medicaid. After three weeks, I re-enters her residential program. Since she has returned to residential treatment, she is eligible to receive benefits prior to the completion of the 45-day sanction period, but she must inform social services officials that she has returned to residential treatment and her recommended level of care; otherwise her reapplication will not be processed.

Part V. How Welfare Reform Affects People with HIV and AIDS

The Welfare Reform Act contains a number of provisions that affect how persons with HIV/AIDS (and other persons with disabilities) and their families receive assistance and how work requirements and sanctions are applied.

A. Receipt of Cash Benefits

HIV-infected individuals and their families (as well as other persons who are unable to work due to a disability) are eligible to receive on-going cash assistance; the two-year limit on the availability of Safety Net Assistance in the form of cash benefits does not apply to recipients with HIV/AIDS. Despite an HIV-infected recipient's ability to work, he or she is eligible for continuing cash assistance without time limits since the law deems disabled persons as automatically eligible for cash benefits. However, recipients infected with HIV are not exempt from the welfare provisions dealing with substance abuse, though, some districts may not be applying these requirements to people with HIV/AIDS.

B. Work Requirements for Persons with HIV/AIDS

Persons with HIV/AIDS are automatically eligible for the state's new disability program (see Part VII, below); however, this does not mean that public assistance recipients with HIV/AIDS are automatically exempt from work requirements. Under the state's Welfare Reform Act, a recipient with HIV will be classified as either disabled – and therefore unable to work and exempt from work requirements – or “work limited” (able to engage in limited work assignments). If a person with HIV/AIDS is determined to be work limited, he or she can be required to work, but his or her work assignment must be made in accordance with his or her physical limitations.

Example: *Client J is an individual with HIV who has been determined to be work limited. He may be assigned to a work experience program, but he should not be assigned tasks that might jeopardize his health, such as cleaning restrooms. If J is assigned to such tasks, he should request a meeting with his welfare caseworker and if necessary, file a request for a fair hearing to dispute the assignment.*

The process through which recipients are determined to be disabled or through which recipients gain “work limited” classification (and medically appropriate work assignments) is discussed in greater detail in Part VII.

C. Work Sanctions for Persons with HIV/AIDS

HIV-infected recipients who fail to comply with work requirements are now subject to public assistance sanctions. This is a change from earlier provisions in state welfare law, which exempted persons with HIV/AIDS who were noncompliant with workfare from having their benefits sanctioned. Now, a recipient with HIV who misses or is late to a work assignment may lose his or her benefits for a period of time (depending on whether he or she has been sanctioned before), unless the recipient can show that he or she did not comply with the work assignment due to good cause, such as a health problem. (See Part II, Section C, for a discussion of the duration of sanctions and Part VIII for an explanation of how to challenge benefits decisions through fair hearings.) Recipients who are sanctioned for not complying with workfare retain Medicaid eligibility.

Part VI. How Welfare Reform Affects Immigrants

Some of the strictest changes made to the welfare law affect immigrants' ability to obtain public assistance.

A. Eligibility Requirements

The new law essentially creates two important distinctions which determine whether and when an immigrant is eligible for public assistance. The first distinction differentiates “qualified immigrants” (a category created by the new welfare laws) from unqualified immigrants.

The new welfare laws define “qualified immigrants” to include the following people:

- Legal permanent residents (people who hold “green cards”);
- Refugees;
- Asylees;
- People granted withholding of deportation;
- People who have been paroled into the United States for at least one year;
- Cuban-Haitian immigrants;
- Amerasians;
- Certain battered spouses or children; and
- People granted conditional entry.

All other immigrants are considered to be “unqualified” and are ineligible for federal welfare benefits. This means undocumented immigrants, people with non-immigrant status (such as individuals on student and work visas) and PRUCOLS (persons residing under color of law).

The second distinction distinguishes immigrants who arrived before August 22, 1996, from those who arrived on or after that date. The following chart outlines how public assistance eligibility is affected by an immigrant’s date of arrival.

**New York State Welfare
Immigrant Eligibility**

Immigrants who arrived before 8/22/96	<p style="text-align: center;">Qualified Immigrants:</p> <ul style="list-style-type: none"> • Eligible for Family Assistance with 5 year limit; • Eligible for Safety Net Assistance 	<p style="text-align: center;">Unqualified Immigrants:</p> <ul style="list-style-type: none"> • Ineligible for all benefits, except for PRUCOLS who are eligible for Safety Net Assistance
Immigrants who arrived on or after 8/22/96	<p style="text-align: center;">Qualified Immigrants:</p> <ul style="list-style-type: none"> • Banned for first 5 years in U.S. from receiving Family Assistance* • After 5 year ban, may apply for Family Assistance • Eligible for Safety Net Assistance after 12 months of residency • Eligible for Emergency Family Assistance upon arrival 	<p style="text-align: center;">Unqualified Immigrants:</p> <ul style="list-style-type: none"> • Ineligible for all benefits, except for PRUCOLS who are eligible for Safety Net Assistance if they arrived in the U.S. on or before August 20, 1997

* Exceptions to the five year ban are refugees and asylees; immigrants who have had their deportation withheld; a qualified alien who is on active duty in the U.S. armed forces, or honorably discharged veterans, their spouses, widows and dependent children.

Example: *Client K arrived in the United States on August 23, 1997, and immediately obtained legal permanent residency status. She is not eligible for Family Assistance because of the five-year ban. Provided she meets other eligibility requirements, though she can begin receiving Safety Net Assistance beginning on August 23, 1998, twelve months after obtaining residency in the United States. During the first year she resides in the United States, K is only eligible for Emergency Family Assistance to deal with crisis situations which threaten her family such as fire, flood, or other catastrophes.*

B. Affidavit of Support

The new welfare law also changed the rules of sponsorship required by new immigrants. Each immigrant admitted to the United States must show that he or she is not likely to become a public charge. In order to do this, immigrants must have a sponsor sign a legally binding agreement called an “affidavit of support” promising to provide assistance to the immigrant if the need arises. To be a sponsor, a person must (1) be a citizen, national or legal permanent resident; (2) reside in the United States; (3) be over 18 years of age; and (4) demonstrate that his or her income is at least 125% of the federal poverty line.

An immigrant’s eligibility for federal public benefits, including Family Assistance, will be determined by considering or “deeming” the sponsor’s income on to the immigrant. In other words, for purposes of calculating the income eligibility of an immigrant, the government will look to the income level of the immigrant’s sponsor. Because “qualified” immigrants are barred from receiving Family Assistance for their first five years in the country, deeming will not start until they are eligible to apply for such benefits. Eligibility for Safety Net Assistance is not subject to the deeming rules.

C. Medicaid

Eligibility for Medicaid has also been restricted by the new welfare laws. Legal permanent residents who arrived before August 22, 1996, refugees, asylees and immigrants who have had their deportation withheld are all eligible for Medicaid. Legal permanent residents who arrived on or after August 22, 1996 are barred from applying for Medicaid for their first five years in the United States.

C. Reporting Requirements

Another substantial change made by the new welfare laws is the addition of reporting requirements by the Immigration and Naturalization Service (INS). The federal welfare law requires agencies that administer TANF funds (Family Assistance) to report quarterly to the INS the names and addresses of individuals they know are unlawfully in the United States. (42 U.S.C.A. § 1437y.) Monitoring these reporting requirements has thus far not been one of the top priorities of the INS. In addition, New York City has initiated a lawsuit alleging that

the reporting requirements are illegal. Furthermore, nonprofit charitable organizations are exempted from the reporting requirements in a recently enacted immigration law, so service providers should not be responsible for contacting the INS about a client's immigration status.

Part VII. The Disability Program

The Welfare Reform Act established a new process to determine whether a welfare recipient cannot work because of a disability or if she or he requires a modified work assignment.

A. Disabled and “Work Limited” Classifications

Recipients who qualify under the disability program are classified as either disabled or “work-limited.” Under the law, welfare officials are required to consider whether an applicant or recipient has a physical or mental impairment or medical condition that would interfere with his or her ability to participate in work. If an individual is found to be disabled, he or she is exempt from work requirements. Persons who are determined to be work limited can be required to work, but the work assignment must be consistent with his or her limitations.

Persons with serious and persistent mental illness or who are HIV-infected are automatically considered disabled or work limited without having to go through the disability program eligibility determination process.

If person is determined to be “work limited,” the recipient may only be assigned to work activities that are compatible with his or her physical or mental disabilities or are consistent with the individual’s treatment plan, as prescribed by the Office of Disability Determinations-certified practitioner or the individual’s treating health care provider. The local welfare office may also assign work limited individuals work or community service if it is satisfied that the individual can perform the work and that it will help the person become self-sufficient. Local welfare officials must inform a work limited recipient’s supervisor of his or her work limitations. Work limited persons may also have their work limited status re-evaluated by the local welfare office.

Persons who welfare officials consider to be disabled but who have the potential to “be restored to self-sufficiency through rehabilitation” can be required to: (1) comply with an examination to determine when they can recover from their disability; (2) undergo medical

care to address their mental or physical impairment; and (3) participate in vocational rehabilitation and training if it is required.

B. How Recipients Qualify Under the Disability Program

If an individual tells his or her welfare office about a medical condition that would impede his or her ability to work, welfare officials must provide the individual with notice that he or she has ten days to submit medical documentation to support the disability claim. Documents must include a specific diagnosis supported by appropriate tests and evaluations, as well as medical prescriptions. In addition, the documents must spell out what kinds of work limitations the individual has because of the disability. Welfare officials may then decide to:

- (1) accept the medical documents and determine the person cannot work or is work limited; or
- (2) decide the documentation received by the individual is not sufficient and require the person to be examined by a health care practitioner certified by the Office of Disability Determinations.

Local welfare officials may also decide to refer the applicant to a health care practitioner certified by the Office of Disability Determinations before receiving medical documentation. In the event that an applicant is referred to a health care practitioner before submitting his or her documents, he or she must make an effort to bring the documents to the examination. If he or she cannot bring the documents to the examination, he or she must submit the documents to the Office of Disability Determination-certified practitioner within four days after the examination. Failing to provide these documents within the specified time period requires the applicant to demonstrate good cause. The health care practitioner will review the medical documents, make a specific diagnosis, give an opinion, report on new conditions found, and decide if the individual is (a) disabled and unable to work for a specific period of time; (b) not disabled but work limited for a specific period of time; or (c) neither disabled nor work limited. Throughout the examination and documentation process, applicants are considered exempt from work.

The local welfare office (or the local social services health care practitioner) has sole discretion in determining whether submitted documentation is sufficient and whether the

applicant is disabled or work limited. The local welfare office must notify the applicant of its decision in writing. Applicants then have ten days within which to file a request for a fair hearing if they wish to contest the decision. (See Part VIII, below, for a full discussion of requesting and undertaking a fair hearing.)

Provided the fair hearing is requested within ten days, the person will not be assigned to work activities, unless he or she agrees to do so in a manner that is consistent with the work limitations that result from his or her medical condition. If welfare officials believe that an individual is applying to the disability program without medical basis or has intentionally misrepresented his or her condition, they may impose benefit sanctions.

PART VIII. Requesting A Fair Hearing When Your Client's Benefits Have Been Denied or Sanctioned

If an individual client believes he or she has been unfairly denied benefits or sanctioned inappropriately, he or she should request a fair hearing to formally challenge the decision. Before local welfare officials can close or sanction a case or reduce benefits, an individual must receive timely written notice informing him or her of the specific reasons for the action. Inadequate notice can be a sufficient basis for an administrative law judge to overturn a decision.

A. When Can a Client Request a Fair Hearing?

Fair hearings can be requested to contest the denial of benefits, the termination of benefits, sanctions, employability status, work assignments, and any other action or decision made by welfare officials. In order to be granted a fair hearing, an individual must request one within 60 days of the action by local welfare officials. Since the issues that can be raised at a fair hearing are limited to those presented in the original complaint, clients should describe the reasons for requesting a fair hearing as broadly as possible.

B. How to Request a Fair Hearing

Clients can request fair hearings in writing, in person, or by phoning the New York State Department of Family Assistance:

NYS Department of Family Assistance
Fair Hearing Section
80 Centre Street
New York, NY 10013
(212) 417-6550, (212) 417-3614, or (800) 342-3334

Clients can also request fair hearings by writing:

Office of Administrative Hearings
NYS Department of Family Assistance
P.O. Box 1930
Albany, NY 12201
FAX: (518) 473-6735

It is very important that clients requesting fair hearings keep copies of any correspondence they make regarding their fair hearing request, including any letters requesting their appeal as well as any documentation they include in their letters to support their claims.

C. Your Client's Rights

1. Right to Continue Receiving Benefits

Individuals who have requested fair hearings have the right to continue receiving their benefits while waiting for their fair hearings to occur and for decisions to be made. To be eligible for the continued receipt of benefits, clients must request their fair hearings before the date their benefits are to be terminated or sanctioned. When asking for their fair hearing, clients should indicate they want "aid continuing."

Ordinarily, clients will receive notices from the district informing them that their benefits are being discontinued or reduced and instructing them they have ten days from the postmarked date on the notice in which to request a fair hearing and refute the agency's intended actions. In order to continue receiving their benefits during the period between receiving the notice and the fair hearing decision, clients must respond to the agency's notice promptly. Failure to do so will enable the agency to cut off clients' benefits during the waiting period. After the fair hearing decision has been made, any benefits received during the waiting period may be recovered by the welfare office if the individual loses the fair hearing.

2. Right to See Documents

Before the fair hearing, your client has the right to see all documents in his or her file, as well as all the documents local welfare officials intend to use at the fair hearing to support their decision or action. If the welfare office fails to send your client these documents, your client can request that the administrative law judge overseeing the case require the welfare department to do so. Your client must be given the opportunity to review these documents before the hearing.

3. Right to an Interpreter

Applicants and recipients also have the right to an interpreter at a fair hearing. Interpreters should be requested before the hearing, unless the language requirement is Spanish, since Spanish interpreters are always available.

4. Right to Representation

Individuals who request fair hearings have the right to be represented, though the government is not obligated to pay for representation. A number of non-profit and legal services organizations provide representation at fair hearings to individuals in New York City, including the Legal Aid Society, the Legal Services Corporation, and the Urban Justice Center. (See Part IX for contact information.) Persons who live in counties outside New York City should contact their local legal services organization for assistance and representation. Individuals whose benefits have been denied or sanctioned because of criminal records, substance abuse or HIV/AIDS should contact the Legal Action Center to receive legal advice and representation.

5. Right to Reimbursement and Child Care

Individuals requesting fair hearings as well as witnesses are entitled to be reimbursed for transportation and child care expenses resulting from appearing at fair hearings.

D. The Fair Hearing Itself

During the fair hearing, both local welfare officials and your client will be given the opportunity to present statements and documents to an administrative law judge. Witnesses can be presented as well.

1. Burdens of Proof

Local welfare officials have the burden of proving with substantial evidence that their decision is correct when the decision has to do with terminating, reducing or sanctioning benefits. Alternatively, when the decision has to do with the denial and eligibility of benefits

or the level of benefits, the applicant or recipient has the burden of showing that the local welfare officials' decision was incorrect.

While the same rules which govern civil trials do not apply to fair hearings, administrative law judges are instructed to be fair, to base their decisions on solid evidence, and to indicate the basis upon which their decisions are made.

2. The Fair Hearing Decision

The administrative law judge presiding over the fair hearing can reach a decision about the matter at the hearing itself or wait and decide later. Decisions must be made in writing and indicate the basis upon which the decision has been made, including all relevant findings of fact and applicable laws, regulations, and approved policy. If your client is not successful through the fair hearing process, he or she can file a lawsuit in court within four months to challenge the adverse decision. Clients should contact their local legal services office for representation in such an action.

PART IX: Whom to Contact for Additional Information on Public Assistance

If you or any of your clients have specific questions about the receipt of public assistance, you or they can contact the government agency responsible for the decision. The difficulty in reaching someone over the phone may encourage clients to contact one of the many advocacy organizations in New York that work exclusively on issues related to welfare. Many of these organizations have websites with useful information, as well.

A. Government Agencies

- New York State Office of Temporary and Disability Assistance (800) 342-3009
- New York State Department of Family Assistance Fair Hearing Section (800) 342-3334

B. Community Advocacy Organizations

Organizations providing assistance and advocacy to public assistance recipients

- Community Service Society (212) 614-5552
- Community Foods Resource Center (212) 894-3394
- Federation of Protestant Welfare Agencies (212) 777-4800
- Greater Upstate Law Project (518) 462-6831
- Welfare Reform Network (212) 777-4800
- Western New York Law Center (716) 855-0203

Organizations providing information on HIV/AIDS and disability concerns

- Housing Works (212) 645-8111
- Gay Men's Health Crisis (212) 367-1000

Organizations providing information on immigrants' access to public assistance

- New York Immigration Coalition (212) 627-2227
- New York Immigration Hotline (718) 899-4000

Appendix

State Responses to the Drug Felon Ban: Bars to Public Assistance and Food Stamps for Individuals with Drug Felony Convictions (as of May 2000)

States that Have Denied Benefits Entirely (24)

Alabama	Kansas	New Mexico
Alaska	Kentucky	North Dakota
Arizona	Maine	Pennsylvania
California	Massachusetts	South Dakota
Delaware	Mississippi	Tennessee
Georgia	Missouri	Virginia
Idaho	Montana	West Virginia
Indiana	Nebraska	Wyoming

States that Have Modified the Ban (18%)

Arkansas	Louisiana	Rhode Island
Colorado	Maryland	South Carolina
Florida	Minnesota	Texas
Hawaii	Nevada	Utah
Illinois	New Jersey	Washington
Iowa	North Carolina	Wisconsin

States that Have Opted Out Entirely (8)

Connecticut	New York	Oregon
Michigan	Ohio	Vermont
New Hampshire	Oklahoma	(District of Columbia)

