

# CalWORKs:

A Comprehensive Guide  
to Welfare and Related  
Medi-Cal Issues for  
California Families

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**Chapter V: How to Calculate a CalWORKs Grant**

**A. The Payment Calculation Formula.**

The calculation of the CalWORKs grant is done separately from the determination of eligibility for applicants. Once a family is found to be eligible for aid under the standard described in Chapter III (i.e., the family’s gross income minus up to \$90 of earned income for each earner is less than the “need standard”), the amount of aid to be paid to the family is calculated. Reasonably anticipated income reported on the QR 7 is used to prospectively determine the family grant for the quarter.<sup>1</sup> The monthly aid amount in a quarter is determined by subtracting the family’s reasonably anticipated “net nonexempt income” (NNI) from the maximum aid payment (MAP) based upon the number of family members for whom aid is being calculated (as described in Chapter II on “The Assistance Unit and the Family”). As will be described in more detail later, reasonably anticipated “net nonexempt income” is all reasonably anticipated (“gross”) income, such as wages, unemployment insurance or child support, minus amounts that are “exempt” (not counted) or disregarded. The basic method of calculating the grant is in two steps: First, determine average monthly Net Nonexempt Income (NNI) for the quarter; then subtract that amount from the Maximum Aid Payment (MAP).<sup>2</sup>

Net Nonexempt Income (NNI) = Gross Income minus Exempt Income and Disregards

Potential CalWORKs Grant = Maximum Aid Payment (MAP) minus NNI

<sup>1</sup> MPP § 44-313.1(QR). For new applications, information on the application is used to prospectively determine benefits until the first QR 7 report is received. ACL 03-18 at 66; ACIN I-84-03, #1. See Chapter IX for more details on quarterly reporting.

<sup>2</sup> In the quarterly reporting system, prospective budgeting and income averaging rules are used to calculate grant amounts. MPP §§ 44-313.1(QR), 44-315.316. See Chapter IX for more on income averaging and Section B. 1 below for prospective budgeting.

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See the schedule in Chapter IV or the flyers in Appendix D for the amounts for each family size and the variations based on the county of residence.<sup>3</sup> A family with zero outside income receives the MAP itself. And, as described in Chapter II on the Assistance Unit (AU) and the Family, it is important to identify both the members of the AU for whom aid is being paid, and the “Family,” which may include some persons whose income is considered (e.g., stepparents, grandparents), but who are not themselves in the AU.

If the NNI is equal to or greater than the MAP, no aid is paid.<sup>4</sup> If the amount of the grant would be less than \$10, no aid is paid.<sup>5</sup> However, families denied aid because of the \$10 minimum aid rule are deemed recipients of aid for other purposes, including eligibility for Medi-Cal benefits with no share of cost.<sup>6</sup>

### **B. Budgeting -- When Does the Income Count?**

By July 1, 2004, all counties have switched from monthly reporting and retrospective budgeting to quarterly reporting, which uses prospective budgeting to calculate CalWORKs grants.<sup>7</sup>

#### **1. Prospective Budgeting.**

Under prospective budgeting, a CalWORKs family’s grant for the next payment quarter (which consists of three calendar months) is calculated using an estimate of income “reasonably anticipated” to be received by the family in the next payment quarter.<sup>8</sup> In other words, the family’s grant for a January/February/March payment quarter is based on the estimate income the family reasonably anticipates to receive during that quarter. If the family’s income fluctuates

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<sup>3</sup> There is no cost of living adjustment in the MAP for 2008-09. WIC § 11453; ACIN I-77-08.

<sup>4</sup> WIC § 11450.12(b).

<sup>5</sup> WIC § 11450.8; MPP § 44-315.5.

<sup>6</sup> WIC § 11450.8; MPP § 44-315.5.

<sup>7</sup> WIC § 11265.2(a); MPP § 44-313.1(QR); ACL 03-18 at 66. See Chapter IX for more on the quarterly reporting system.

<sup>8</sup> WIC § 11265.2(a), (b); MPP § 44-313.1(QR).

during the payment quarter, the county will use the monthly average income during that quarter to calculate the family's benefits for the quarter.<sup>9</sup>

**EXAMPLE**

Jane lives in Region 1 with her two children. The nonexempt MAP for a family of three in Region 1 is \$723 per month. She reports on her QR 7 due in September that she reasonably anticipates her income to be stable at \$500 per month for the upcoming October/November/December payment quarter. The county will use Jane's anticipated income of \$500 per month to calculate her grant for the upcoming quarter.

If Jane reasonably anticipates that her income will be \$300 in October, \$400 in November, and \$500 in December, the county will use the monthly average income of \$400 ( $\$300 + \$400 + \$500 = \$1200$ ;  $\$1200 \div 3 = \$400$ ) to calculate her grant for the upcoming quarter.

If the family receives less income than reasonably anticipated, the family can report this information mid-quarter so that its aid may be increased.<sup>10</sup>

**C. Deductions From Earned Income and Net Nonexempt Income (NNI).**

The estimate amount of income a family reasonably anticipates to receive in the upcoming quarter will be counted against the Maximum Aid Payment (MAP) in the determination of its aid. However, not all reasonably anticipated income is counted in computing the aid the family will receive. Some income is "disregarded," or exempted, from the calculation, so that it does not reduce a family's aid dollar-for-dollar. Income disregards are designed to encourage CalWORKs recipients to work or find other sources of income by allowing a family's net financial situation to improve when it secures favored kinds of income. The family's anticipated average monthly gross income minus the amounts disregarded equals

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<sup>9</sup> MPP § 44-315.316(QR). See Chapter IX for a discussion on reasonably anticipated income and Section C. 6 in this chapter on income averaging rules.

<sup>10</sup> WIC § 11265.3(d)(3); MPP § 44-316.312(a)(QR); ACL 03-18 at 41-47. See Chapter IX for more on voluntary mid-quarter reports.

its “net nonexempt income,” or NNI. Once the NNI is determined, it is subtracted from the MAP to arrive at the monthly aid amount for the family.<sup>11</sup> This aid amount is “frozen,” remaining the same during a QR payment quarter, and is adjusted mid-quarter in only limited circumstances.<sup>12</sup>

**1. Earned Income.**

“Earned income” from wages or work is treated differently, and more favorably, than “unearned income.” *For earned income, the family’s first \$225, plus 50% of the remainder, is disregarded.*<sup>13</sup> The remaining “NNI” is then subtracted from the MAP for the number of family members included in the computation (AU members plus specified non-AU members, if any).<sup>14</sup> Assuming no unearned income, the remainder is the amount of aid to be paid to the family.

There are thus *four steps in computing grants for families with earned income only*:

1. Determine the monthly average of the family’s reasonably anticipated gross earned income for the upcoming quarter.<sup>15</sup>
2. Subtract \$225 from the monthly average gross earned income.

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<sup>11</sup> WIC § 11450(a); MPP §§ 44-315.13, 44-315.35, 44-315.38. Remember also, that the “family” may include non-AU members, whose income will be considered and for whom income disregards will be allowed. See Chapter II, “The Assistance Unit and the Family.” First, aid is calculated for the family, including the non-AU members. Then, the resulting “potential grant amount” is compared to the MAP plus special needs for the AU members only. The aid based on the family calculation cannot exceed the MAP for the AU members. The family receives the lower of these two amounts. MPP § 44-315.38.

<sup>12</sup> WIC § 11265.2(d); MPP §§ 44-207.23(QR), 44-316.3(QR); ACL 03-18 at 2-3. See Chapter IX for a discussion on quarterly reporting.

<sup>13</sup> WIC § 11451.5; MPP § 44-111.23.

<sup>14</sup> MPP §§ 44-315.35, 44-315.38. For a discussion of the treatment of the income of non-AU family members, see Chapter II.

<sup>15</sup> If the reasonably anticipated income varies from month to month, counties must average the income for the QR payment quarter and use this monthly average. MPP § 44-315.316(QR). If the income is weekly or bi-weekly, counties must compute the income into a monthly total by using 4.33 for weekly and 2.167 for bi-weekly. MPP § 44-315.315(QR) (b); ACL 03-18 at 24, ACL 04-19. See Chapter IX for a discussion on income averaging in the quarterly reporting system.

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3.        Divide the remainder by 2 (50% disregard).
4.        Subtract that result from the MAP for the number of people for whom aid is being computed.

The \$225 plus 50% disregard in CalWORKs replaces the \$90 work expense allowance, the \$30 plus one-third work incentive disregard, and the “fill-the-gap” budgeting method under AFDC.<sup>16</sup> Note that the family is still entitled to the income disregards even if the quarterly income report (QR 7 form) is submitted late (after the 11<sup>th</sup> of the month).<sup>17</sup>

The CalWORKs method of grant computation is considerably simpler than that used in the former AFDC system, although for most families with earned income, it is likely to result in less total income.<sup>18</sup>

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<sup>16</sup>        MPP § 44-111.23. Note also that the former \$175 and \$200 child care disregards have been repealed. Child care costs are no longer deducted from a CalWORKs recipient’s income, but instead paid directly to the provider. Educ. Code §§ 8350 *et seq*; MPP §§ 47-220 through 47-260. Finally, there is no longer any available disregard or care payments for non-child dependents, e.g., disabled adults. Former MPP § 44-113.217 is repealed. For more information on child care, see Chapter VII.

<sup>17</sup>        ACL 97-67. Former MPP § 44-111.232(c) is repealed. Under prior federal AFDC law, if the monthly income report was submitted after the 11<sup>th</sup> of the month, the family was not entitled to earned income disregards in the grant computation. That law was repealed by the Personal Responsibility Act and CalWORKs. *See* former 42 USC § 602(a)(8)(B)(i)(III). The new state disregard provision, WIC § 11451.5, is not conditioned on the filing of a timely income report.

<sup>18</sup>        This is because CalWORKs abolishes the “fill-the-gap” budgeting system in which net income was subtracted from the AFDC Need Standard.

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If Jane has two children and anticipates earning \$600 per month in the upcoming quarter, the calculation of NNI is as follows: (Note that since Jane’s income is the same every month during the quarter, there is no need to calculate the monthly average income.)

Earnings	\$ 600
Minus \$225	- \$ 225
Subtotal	\$ 375
Minus 50%	- \$187.50
Equals NNI	\$187.50

The calculation of the CalWORKs grant is as follows. Earnings are added to show total family income.

Region 1 Nonexempt MAP for 3	\$723
Minus NNI	-\$187 <sup>19</sup>
Equals CalWORKs grant for each month of the quarter	\$536
Plus monthly earnings	\$600
Equals total monthly income for the quarter	\$1136

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<sup>19</sup> While the result of the calculation is \$187.50, the NNI amounts are rounded down to the nearest dollar, even if is calculated to be an amount over 50 cents. WIC § 11017; MPP § 44-315.34; ACIN I-54-03, #9. The cents should be dropped after adding all types of income and determining the final NNI. ACIN I-54-03, #9.

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If Jane lives with her husband and their two children, and her husband reasonably anticipates earning \$325 per month in the upcoming quarter, the calculation would be as follows:

Earnings	\$925 (\$600+\$325)
Minus \$225	-\$225
Subtotal	\$700
Minus 50%	-\$350
Equals NNI	\$350
MAP for 4 (Region 1)	\$862
Minus NNI	-\$350
Equals CalWORKs grant for each month of the quarter	\$512
Plus monthly earnings	\$900
Equals total monthly income for the quarter	\$1412

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Jane and her two children live in Region 1. Jane’s income varies from month to month and reasonably anticipates receiving \$400 in October, \$500 in November, and \$435 in December. The average monthly income for the October/November/December payment quarter will be used to calculate Jane’s monthly income.

Monthly average for reasonably anticipated income for October/November/December payment quarter	\$445 (\$400 + \$500 + \$435 = \$1335; \$1335 ÷ 3 = \$445)
Minus \$225 earned income disregard	-\$225
Subtotal	\$220
Minus 50% earned income disregard	-\$110
Equals NNI	\$110
Nonexempt MAP for 3 (Region 1)	\$723
Minus NNI	-\$110
Equals CalWORKs grant for each month in the October/November/December quarter	\$613
Family’s total income in October (\$613 CalWORKs grant + \$400 earnings)	\$1013
Family’s total income in November (\$613 CalWORKs grant + \$500 earnings)	\$1113
Family’s total income in December (\$613 CalWORKs grant + \$435 earnings)	\$1048

**2. Self-Employment Income.**

Self employed recipients can have their reasonably anticipated business expenses deducted *before* the \$225 and 50% disregard is applied to reasonably anticipated net earnings.<sup>20</sup> Applicants and recipients can choose whether to exclude either (1) 40% of gross receipts; or (2) reasonably anticipated expenses, to the same extent allowed in the Food Stamp program.<sup>21</sup> After these expenses are deducted, income averaging rule is used to determine the monthly average net earnings. The earned income disregard is then applied to the monthly average net earnings.

**D. Treatment of Unearned Income.**

Often families have reasonably anticipated income that is “unearned,” such as Social Security benefits or unemployment insurance benefits. *Unearned income will be counted against the MAP dollar-for-dollar.* Unearned income includes unemployment insurance benefits, Social Security survivor or retirement benefits, and gifts from family, friends, or others.<sup>22</sup>

**E. Deductions from Disability-Based Income.**

Some families have disability-based income, which get up to \$225 deduction.<sup>23</sup> “Disability-based income” consists of Social Security disability benefits (*not* Social Security retirement or survivor’s benefits), state disability insurance benefits (SDI), private disability insurance benefits, Temporary Workers’ Compensation benefits (TWC), and Temporary

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<sup>20</sup> WIC § 11155.3(b), (c); MPP § 44-113.212(QR).

<sup>21</sup> WIC § 11155.3(c); MPP § 44-113.212(QR). The Food Stamp rule is at MPP § 63-503.41 and 7 CFR § 273.11(a)(2)(i).

<sup>22</sup> MPP § 63-502.14. Note that some gifts are exempt income. See Chapter III for more on exempt income.

<sup>23</sup> WIC § 11451.5(a)(1); MPP §§ 44-111.231, 44-113.217. Under prior law, unearned income was deducted from the AFDC Need Standard rather than the MAP. This allowed the advantage of “fill-the-gap” budgeting to apply to unearned income, avoiding a dollar-for-dollar reduction in benefits.

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Disability Indemnity benefits (TDI).<sup>24</sup> Disability income also includes Social Security dependents benefits received by a child because of a parent's disability.<sup>25</sup> Supplemental Security Income (SSI) recipients are excluded from the AU and family, and their income is not counted.<sup>26</sup>

Disability-based income is disregarded up to \$225 per month.<sup>27</sup> If a family has a total of less than \$225 in disability-based income, then earned income can be disregarded until the combined total of disability and earned income is over \$225, after which the remaining earned income is disregarded at the 50% rate.<sup>28</sup> If the family's total disability-based income is greater than \$225, only \$225 is disregarded, and any earned income is disregarded at the 50% rate.<sup>29</sup> Income not disregarded is subtracted from the MAP to determine the family's aid payment.

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<sup>24</sup> WIC § 11451.5(b)(2). Private disability insurance benefits are disregarded regardless of whether there is an employee contribution. ACIN I-59-99 at 1.

<sup>25</sup> MPP § 44-315.39, example 2 (QR); ACL 98-37, #14.

<sup>26</sup> WIC § 11450(a)(1); MPP § 82-832.1(d).

<sup>27</sup> WIC § 11451.5(a); MPP § 44-111.231.

<sup>28</sup> WIC § 11451.5(a)(1)(B); MPP § 44-111.231.

<sup>29</sup> WIC § 11451.5(a)(2); MPP § 44-111.231.

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**EXAMPLE**

Jane has two children, one of whom receives federal Social Security disability benefits of \$300 per month based on the absent father's disability. Jane is also working and reasonably anticipates earning \$600 per month in the upcoming quarter. The family lives in Region 1. The family's aid calculation is as follows:

Social Security disability	\$300
Minus \$225 disregard	-\$225
Equals unearned NNI	\$75
Earned income	\$600
Minus 50% disregard	-\$300
Equals earned NNI	\$300
Maximum Aid Payment for 3	\$723
Minus total NNI (\$75 + \$300)	-\$375
Equals CalWORKs grant	\$348

**EXAMPLE**

Mr. and Mrs. Lee have two children, Mr. Lee receives \$200 in unemployment insurance benefits (UIB), and the children receive \$180 per month in disability benefits. Mrs. Lee has \$625 in earnings. The calculation is as follows:

\$225 disregard	\$225
Minus disability benefits	-\$180
Equals remaining disregard	\$45
Earnings	\$625
Minus remaining disregard	-\$45
Subtotal	\$580
Minus 50% disregard of remainder of earnings	-\$290
Equals NNI	\$290
Total monthly NNI (\$0 disability + \$290 earned + \$200 UIB)	\$490
Region 1 MAP for 4	\$862
Minus NNI	-\$490
Equals CalWORKs grant	\$372

**F. Computing Aid When a Family Has Non-AU Family Members.**

As described in Chapter II on the Assistance Unit and Family, some persons, who live in the CalWORKs family household and who have certain relationships to the CalWORKs children or parent(s), will have their income considered in the grant calculation. Persons who fit into this category are listed in Chapter II (“Who is the ‘Family’?”) and include spouses of the CalWORKs parent (stepparents), half-siblings of eligible children, parents or guardians of minor parents,

undocumented parents of eligible children and their spouses, as well as undocumented siblings of eligible children.<sup>30</sup>

**1. Including Non-AU Family Members in the Grant Computation.**

When a non-AU family member is in the household, the grant computation is made for a family size that includes the non-AU member, and that also includes whatever disregards are allowable for that person.<sup>31</sup> Thus, if a stepparent is living in a household with a mother and two children, but is not in the AU, the grant would be computed for a four-person family just as if the stepparent were in the AU. The result is then compared to the MAP for the AU of three since the grant cannot be greater than the maximum payment for the AU members. If the calculated grant is less than the MAP, the aid is equal to the calculated grant. If it is more than the MAP, the aid equals the MAP.

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<sup>30</sup> WIC § 11008.14; MPP § 44-133.5.

<sup>31</sup> MPP § 44-133.5. This is a different method of treating income of non-AU members compared to prior law, which “deemed” income over a designated amount to the AU itself. Deeming applies, however, to the income of sponsors of sponsored immigrants. See Chapter II for information on sponsored immigrants.

**EXAMPLE**

A stepparent, who is not in the AU, earns \$775 per month during a payment quarter, and there is no other family income. The calculation would be as follows:

Stepparent earnings	\$755
Minus \$225	-\$225
Subtotal	\$530
Minus 50% of \$530	-\$265
Equals NNI	\$265
Region 1 MAP for 4	\$862
Minus NNI	-265
Equals potential CalWORKs grant	\$597
Region 1 MAP for 3	\$723
<b>Actual CalWORKs grant (lesser of 7 &amp; 8)</b>	<b>\$597</b>

As described in Chapter II (the Assistance Unit and Family), the family can choose whether or not to include certain non-AU family members such as stepparents and grandparents in the AU if they are otherwise eligible.<sup>32</sup> (Some non-AU members, such as undocumented persons, cannot be in the AU because they are not eligible for aid.)<sup>33</sup> In the example above, including the stepparent would not have changed the amount of aid paid to the family. Including the stepparent in the AU, however, would have other implications: (1) the stepparent's property would count against the CalWORKs resource limits, and he would have to furnish information concerning any property, such as an automobile, that he owns;<sup>34</sup> (2) unless otherwise exempt, the

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<sup>32</sup> MPP § 82-828.2.

<sup>33</sup> MPP § 82-832.1.

<sup>34</sup> See Chapter III for more on resource limits.

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stepparent would be required to participate in the welfare-to-work program;<sup>35</sup> and (3) the stepparent's 60 month lifetime limit on aid would run.<sup>36</sup>

It ordinarily would be to the advantage of the family to include a stepparent (or senior parent) in the AU if this optional member has little or no income. By including an optional member, the family can take advantage of the higher MAP for the larger family size. If the stepparent in the example above had no income, excluding him would leave the remaining AU with a MAP for three (\$723), while including him would allow the family to be eligible for a four-person MAP (\$862).

The only times a family might *not* wish to include such a person in the AU is if:

- the value of his property exceeds the eligibility limit (or he refuses to document the value of property); or the optional member is not exempt from the welfare-to-work program and does not wish to participate.<sup>37</sup>
- If the family member has little or no income, the optional person's desire not to participate in work activities must be balanced against the lower CalWORKs grant as a result of a smaller MAP if he is excluded;<sup>38</sup>
- the optional person would rather forego what might be a small grant than use any of his 60 lifetime months of eligibility.<sup>39</sup>

The same method of calculating the grant applies for all non-AU family members, including (1) grandparents where the caretaker is a minor teen parent; (2) undocumented parents,

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<sup>35</sup> See Chapter VI for information about work requirements.

<sup>36</sup> See Chapter II for more on 60-month limits.

<sup>37</sup> If the person were included but did not participate without good cause, the family would lose the sanctioned person's share of the grant. See Chapter VI for a detailed discussion of work rules and sanctions.

<sup>38</sup> The sanction for nonparticipation in welfare-to-work activities is removal of the nonparticipating adult's share of the grant. WIC § 11327.5(c); MPP § 82-832.23.

<sup>39</sup> See Chapter II.

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spouses or siblings (who must be excluded from the AU); and (3) half-siblings of eligible children.<sup>40</sup>

**EXAMPLE CONTAINING UNDOCUMENTED FAMILY MEMBERS**

The Yeltsin family consists of parents Vladimir and Rosa, with children Leon and Nikita. They live in Region 1. Rosa and Nikita, who arrived in 1995, are eligible legal permanent residents, but Vladimir and Leon arrived in 1997 and are undocumented and thus ineligible. The family's income is stable during the quarter. Vladimir earns \$645 per month, and Rosa receives \$300 in unemployment insurance. Their grant calculation is as follows:

Vladimir's earnings	\$645
Minus \$225	-\$225
Subtotal	\$420
Minus 50%	-\$210
Equals NNI	\$210
Plus other nonexempt income (UIB)	\$300
Equal Total NNI	\$510
MAP for 4, Region 1	\$862
Minus NNI	-\$510
Equals potential CalWORKs grant	\$352
MAP for 2 (Rosa & Nikita)	\$584
<b>Actual CalWORKs grant (the lesser of 10 and 11)</b>	<b>\$352</b>

Other persons could be living in the household who are neither in the AU nor a "non-AU family member," e.g., unrelated persons; grandparents when the parents are not minors; aunts, uncles and other relatives not legally responsible for the child. Assuming these persons are not

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<sup>40</sup> MPP § 44-133.5.

caretaker relatives for an eligible child, and are not the spouse of the caretaker, they are not included in the AU nor are they non-AU family members. Their income is not considered, but neither can they be included on the grant.

**2. Senior Parent Income Deeming Rules for Children of Minor Parents When Living With Grandparents.**

The rule regarding senior parent income deeming has changed, and the “Baby MAP” has been eliminated.<sup>41</sup> Before October 1, 2002, the senior parent’s income could not be applied against the minor parent’s child, and thus an eligible child of a minor parent could not have her aid reduced below the MAP for one person as a result of the senior parent’s income. Effective October 1, 2002, when a minor parent is living with her senior parent (the grandparent of her child), regardless of whether or not the senior parent is in the AU, the senior parent’s income is considered available to meet the needs of the minor parent and her child. This change makes most children of minor parents ineligible for CalWORKs, except those whose families have very little income. An applicant family’s gross income cannot exceed the needs standard (MBSAC) plus \$90, and a recipient family’s countable income cannot exceed the MAP.<sup>42</sup>

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<sup>41</sup> WIC §§ 11008.14, 11254; MPP § 89-201.5; ACL 02-94, ACL 03-20. The elimination of the “Baby MAP” produces savings in the CalWORKs program budget since the primary effect of the change is the ineligibility of many minor parents’ children.

<sup>42</sup> See Chapter III for discussion on financial eligibility of applicant and recipient families.

**EXAMPLE 1**

Roxanne is a 16-year old parent of baby Tiffany. Roxanne and the baby live with her parents, Jack and Ellen. Jack and Ellen both have stable income. Jack earns \$900 per month, and Ellen earns \$400 per month. Roxanne applies for CalWORKs for baby Tiffany. (Note: there is no need to calculate monthly average income since their earnings do not fluctuate during a payment quarter.)

Gross family income	\$1300
\$180 disregard for applicant family with 2 workers	-\$ 180
Countable income	\$1120
MBSAC (needs standard) for a family of 4	\$1089

The countable income from senior parents, Jack and Ellen, is higher than the needs standard (MBSAC). Roxanne and Tiffany are not eligible for CalWORKs benefits. There is no more “Baby MAP” of one for baby Tiffany.

Whether the senior parent is excluded or included in the AU as a mandatory or optional member depends on (1) who has the care and control to be the caretaker relative of the minor parent’s child, and (2) whether the minor parent meets the deprivation requirement for CalWORKs eligibility.<sup>43</sup> In cases where the senior parent is an optional AU member, it may be financially advantageous to include the senior parent because the MAP for the AU will be based on a larger family size and will be higher. However, the senior parent may choose to not be in the AU if her resources would make the family ineligible or if she does not want to use up her 60

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<sup>43</sup> If the minor parent is the caretaker relative of her child, the senior parent may not be included in the AU. If the senior parent is the caretaker of the minor parent’s child and the minor parent does not meet the deprivation requirement, the minor parent and her child are mandatory AU members, and the senior parent is an optional AU member. If the senior parent is the caretaker of the minor parent’s child and the minor parent meets the deprivation requirement, then the senior parent is a mandatory AU member. MPP §§ 89-201.51, 82-808.2; ACL 03-20, Attach. A, examples 2-4.

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months of CalWORKs eligibility. Also note that a senior parent, who is in the AU, will be subject to CalWORKs welfare-to-work requirements, unless she is exempt.<sup>44</sup>

If the senior parent is in the AU, the CalWORKs income and grant calculation rules apply to the AU. In cases where the senior parent is not in the AU, the grant calculation for the AU is performed the same way as in cases with optional and undocumented family members. The senior parents' income is counted and gets income disregards, and a "potential CalWORKs grant" is computed based on a family size including the senior parents.<sup>45</sup>

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<sup>44</sup> See Chapter VI for more on welfare-to-work requirements.

<sup>45</sup> WIC § 11008.14; MPP §§ 89-201.5, 44-133.513.

**EXAMPLE 2**

Roxanne and baby Tiffany live with Roxanne’s parents, Jack and Ellen. Roxanne is the caretaker of the baby and receives aid for herself and the baby. Jack and Ellen have \$1,399 in income. Roxanne and the baby have no income.

Gross income	\$1399
Minus \$225 disregard	-\$ 225
Subtotal	\$1174
Minus 50% disregard	-\$ 587
Countable income	\$ 587
MAP for 4	\$ 862
Minus NNI	-\$587
Potential grant	<b>\$ 275</b>
MAP for two (Roxanne & Tiffany)	\$584
Actual CalWORKs grant	<b>\$275</b>

**G. Reduction In Reasonably Anticipated Income (No Reduced Income Supplement Payment (RISP) In Quarterly Reporting).**

Before quarterly reporting, special rule applied to families, who experienced a drop in income and, because of the two-month lag caused by retrospective budgeting in the old monthly reporting system, would suffer both income loss and a reduced aid payment until the grant adjusts to the change two months later. This hardship led to the creation of the Reduced Income Supplemental Payment (RISP). The RISP was a payment of the difference between the family’s actual income (combined income and grant) and 80% of the maximum CalWORKs grant for their family size.

The quarterly reporting system has eliminated the need for the RISP. In the current quarterly reporting system, a family can voluntarily report a decrease in income mid-quarter and

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receive a grant supplement.<sup>46</sup> The amount of the supplement is the difference between the recalculated cash aid based on the reported decrease in income and the cash aid that has been paid for the month the decrease in income is reported or the month the change actually occurs, whichever is later.<sup>47</sup> The county will also increase the grant amount for the remainder of the QR payment quarter.<sup>48</sup>

**EXAMPLE**

On a QR 7 due in March, Yolanda, a single parent of two children living in a Region 1 county, reported that she reasonably anticipated receiving \$545 per month in the upcoming April/May/June payment quarter.

In May, Yolanda voluntarily reported that she would receive only \$410 in May and \$300 in June. The county must recalculate her grant for the quarter based on the reported change in her income.

When the county received Yolanda's QR 7 in March, the county calculated her monthly grant for the upcoming April/May/June quarter. Since Yolanda anticipated her monthly income to be stable, the county did not need to calculate the monthly average income.

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<sup>46</sup> WIC § 11265.3(d)(2) and (3); MPP § 44-316.312 (a)(QR); ACL 03-18 at 41-47.

<sup>47</sup> WIC § 11265.3(d)(2) and (3)(B); MPP § 44-316.312 (a)(4)(QR); ACL 03-18 at 43-47.

<sup>48</sup> WIC § 11265.3(d)(3)(B); MPP § 44-316.312 (a)(5)(QR); ACL 03-18 at 43-47. See Chapter IX for more on voluntary mid-quarter reports.

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Reasonably anticipated monthly earnings	\$545
Minus \$225 earned income disregard	-\$225
Subtotal	\$320
Minus 50% earned income disregard	-\$160
Equals reasonably anticipated Net Nonexempt Income (NNI)	\$160
MAP for 3 (Region 1)	\$723
Minus reasonably anticipated NNI	-\$160
Equals monthly grant	\$563

When Yolanda submitted a voluntary mid-quarter report of a drop in income for May and June, the county must recalculate her CalWORKs grant based on the reported change in income. The county must first determine the monthly average income for May and June.

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Actual earnings in May	\$410
Anticipated earnings in June	\$300
Average monthly earnings in May and June $((\$410 + \$300 = \$710) \div 2)$	\$355
Minus \$225 earned income disregard	-\$225
Subtotal	\$130
Minus 50% earned income disregard	-\$65
Equals monthly NNI for May and June	\$65
MAP for 3 (Region 1)	\$723
Minus NNI	-\$65
Equals recalculated monthly grant based on mid-quarter decrease in income	\$658

The county must issue a supplement of \$95 for May and increase the June grant to \$658.

Recalculated grant for May and June based on the reported mid-quarter decrease in income	\$658
Minus grant received by Yolanda in May	-\$563
Equals to a supplement for May	\$95
<b>June grant</b>	<b>\$658</b>

**H. Computing Aid When a Family Has Timed-Out Adults.**

Once an adult AU member reaches her 60-month time limit on aid, the AU loses her portion of the monthly grant but the eligible children will receive their portion as a safety net

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grant.<sup>49</sup> How the timed-out adult's income counts against the family depends on who the adult is. If she is the parent, then her income counts, but her needs are not considered.<sup>50</sup> If she is a non-parent caretaker relative, then her income and needs are not considered.<sup>51</sup> If she is a stepparent, then both her income and needs are considered.<sup>52</sup> If the income is considered, the AU gets the same earned and disability deductions for earned and disability-based income.<sup>53</sup> Unearned income is deducted dollar for dollar from the MAP.<sup>54</sup>

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<sup>49</sup> MPP § 44-133.8. See Chapter II for more on time limits.

<sup>50</sup> MPP § 44-133.81.

<sup>51</sup> MPP § 44-133.82.

<sup>52</sup> MPP §§ 44-133.511, 44-133.54, 44-133.83. The grant calculation is the same as in Section E.1. above for stepparents.

<sup>53</sup> WIC § 11451.5; MPP § 44-111.23.

<sup>54</sup> WIC § 11451.5; MPP § 44-113.217.

**EXAMPLE OF A TIMED-OUT PARENT**

Sally lives in Region 1 with her 2 children. She reaches her 60-month time limit and loses her portion of the grant on March 31<sup>st</sup>. The nonexempt MAP for a family of three in Region 1 is \$723 per month. She reports on her QR 7 due in March that she reasonably anticipates her monthly income for the April/May/June payment quarter to be \$875 per month. The county will consider her \$875 income in calculating her children’s monthly grant for the quarter.

Sally’s earnings	\$875
Minus \$225 disregard	-\$225
Subtotal	\$650
Minus 50% disregard	-\$325
Equals NNI	\$325
MAP for 2 (Region 1) (not MAP for 3 since Sally’s needs are not considered)	\$584
Minus NNI	-\$325
Equals CalWORKs grant for the two children	\$259

**EXAMPLE OF A TIMED-OUT NON-PARENT CARETAKER  
RELATIVE**

Same as the previous example, except Sally is an aunt who lives with two nieces. The county will not consider her income or needs in determining the children’s grant. The children will get the full MAP for 2, which is \$584 in Region 1.

***Chapter VI: Work Requirements, Work-Related Sanctions, and Supportive Services***

All adult CalWORKs recipients, as well as some teen parents<sup>1</sup> and some children age 16 and over if they are not in school,<sup>2</sup> must work or participate in work activities for the entire time they are on aid, unless they are exempt or have good cause.<sup>3</sup> Adult recipients must do 32 hours per week; those in two-parent families must do 35 hours per week, but can share those hours.<sup>4</sup> The county is required to do an “assessment” of most recipients’ educational attainment and employment experience, and determine each recipient’s needs and barriers to obtaining employment.<sup>5</sup> This assessment is used to develop a “welfare-to-work” plan, which lists what work activities each recipient must do 32 hours (or 35 hours for two-parent families) per week. Section A.4 covers the welfare-to-work plan in detail.

Effective December 1, 2004, at least 20 hours of the 32 hours must be in “core” work activities.<sup>6</sup> See Section A. 8. below for a discussion on core work requirement.

Before December 1, 2004, there was an 18 to 24-month time limit on how long recipients could receive education and training. This time limit has been eliminated, and adult recipients

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<sup>1</sup> Most pregnant teens and teen parents will fulfill their requirements through the Cal-Learn program, which is aimed at helping teens secure high school diplomas. WIC § 11331 *et seq.* Chapter VIII of this manual covers Cal-Learn.

<sup>2</sup> See Section B in this chapter for a discussion on which teenagers are exempt. For teenagers who are not exempt, certain federal and state laws limit the types of work they may do.

<sup>3</sup> See Sections B and C in this chapter for a discussion on exemptions and good cause.

<sup>4</sup> WIC § 11322.8(a), (b); MPP § 42-711.4. If one parent is disabled, the other parent has to do 32 hours, and not 35 hours. WIC § 11322.8(b); MPP § 42-711.42. For purposes of this manual, discussion on participation requirements will refer to the 32-hour requirement for single-parent families.

<sup>5</sup> WIC § 11325.4; MPP § 42-711.55.

<sup>6</sup> WIC §§ 11320.1(c), 11322.8(c); MPP § 42-711.411(a); ACL 04-41 at 4-5.

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can now receive training and education for up to 60 months, as appropriate based on their assessments.<sup>7</sup>

**A. The Sequence of CalWORKs Activities.**

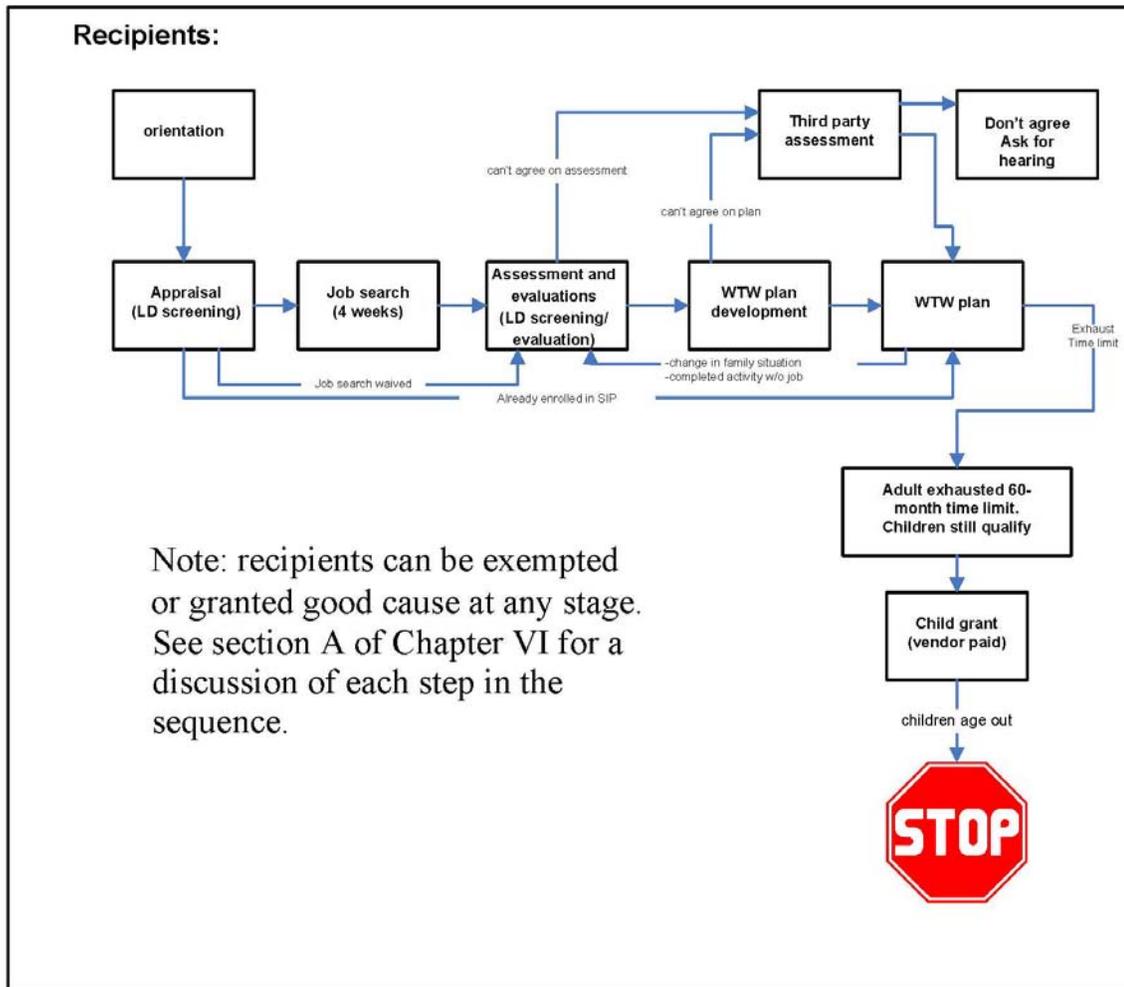
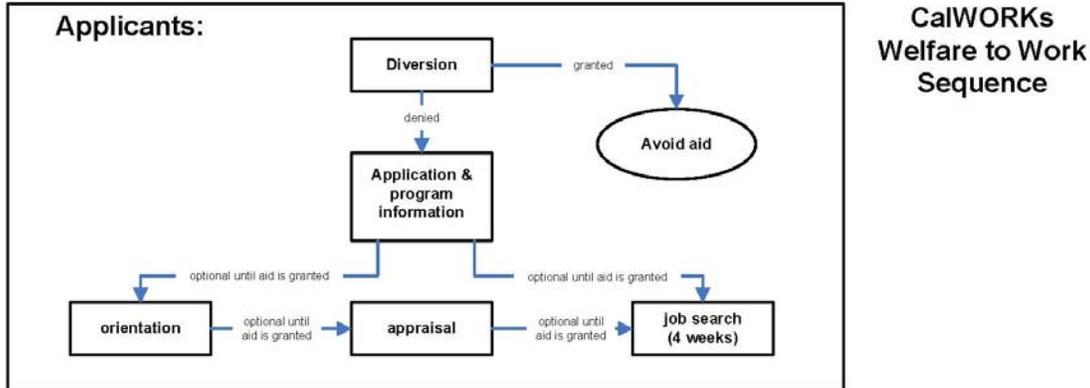
The chart on the following page shows the sequence of CalWORKs activities for applicants and recipients.<sup>8</sup> Following the chart is a discussion of each step.

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<sup>7</sup> WIC § 11454(a); *former* WIC § 11454(a)(1), Stats. 1997, ch. 270 (A.B. 1542) § 144; ACL 04-41 at 7.

<sup>8</sup> Appendix F contains a series of useful flyers on CalWORKs work requirements.

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**1. Orientation and Appraisal.**

Orientation and appraisal are the initial activities for all CalWORKs recipients.<sup>9</sup> Applicants can choose to participate in these activities, but cannot be required to do so until aid is granted.<sup>10</sup> At orientation, counties must provide information in writing, and orally as necessary, about the CalWORKs program, including a general description of the education, employment, and training opportunities and supportive services available, and a description of exemptions and sanctions.<sup>11</sup>

Appraisal is a meeting between the recipient and a caseworker to gather information about the recipient's employment history, skills, need for supportive services, and any other information that the county needs to assign welfare-to-work activities appropriately.<sup>12</sup> The county must evaluate the recipient's English language skills and use appropriate bilingual and interpretive services in appraising a Limited English proficient (LEP) recipient.<sup>13</sup> The county must also determine, based on the recipient's English language skills, whether job search is an appropriate activity for her.<sup>14</sup>

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<sup>9</sup> WIC §§ 11324.8(a), 11325.2(a); MPP §§ 42-711.11, 42-711.521-.522.

<sup>10</sup> WIC § 11320.1(a); MPP §§ 42-711.51, 42-711.521. Make sure the county is not requiring applicants to attend orientation, appraisal, job search, or other CalWORKs activities, and call Western Center if it is. Also, remember that a participant need not sign a welfare-to-work plan for job search. Finally, be aware that rushing into orientation and appraisal is never a good idea for an applicant, who intends to sign up for college or vocational education, but has not yet done so, since a self-initiated program (SIP) cannot be approved unless the participant was enrolled in the educational program at the time of appraisal. See Section A.10. in this chapter for more information on SIP.

<sup>11</sup> WIC § 11324.8(a); MPP § 42-711.112.

<sup>12</sup> WIC § 11325.2; MPP § 42-711.523.

<sup>13</sup> MPP § 21-115; ACL 00-30 at 2.

<sup>14</sup> ACL 00-30 at 2.

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At appraisal, the county must offer verbally and in writing a learning disability screen.<sup>15</sup> If the county does not screen for learning disability at appraisal, the county must provide verbal and written information about the purpose and benefits of the learning disability evaluation.<sup>16</sup> The county must provide such a screening at any time the recipient requests for one.<sup>17</sup> See Section A. 3. e below for details on learning disability screening and evaluation.

Often, counties schedule orientation and appraisal for the same day. Appraisal is a critical time for recipients in self-initiated education or training programs (SIPs) because for a SIP to be approved, the recipient must be enrolled in an educational program *before* the appraisal appointment.<sup>18</sup>

**2. Job Search.**

Following orientation and appraisal, all CalWORKs participants, who are not employed for the required number of hours<sup>19</sup> or enrolled in SIPs,<sup>20</sup> generally will be assigned to up to four

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<sup>15</sup> MPP § 42-722.11.

<sup>16</sup> MPP § 42-711.13. MPP § 44-711.121 lists the information that the county must give to recipients if it does not offer the screening at appraisal.

<sup>17</sup> MPP § 42-711.14.

<sup>18</sup> WIC § 11325.23(a)(1); MPP § 42-711.541(a); ACL 99-32 at 1. There are several advantages in being in a SIP. Section A.10. of this chapter discusses SIPs in more details.

<sup>19</sup> See Section A.7 in this chapter for a discussion on the required hours of participation. Single parents must participate 32 hours per week; two-parent families whose aid is based on unemployment must do 35 hours, which can be shared between the two parents so long as one does at least 20 hours. WIC § 11322.8(a), (b); MPP § 42-711.4. Participants who are working 32 hours per week need not sign welfare-to-work plans. MPP § 42-711.552; ACL 00-60 at 3.

<sup>20</sup> See Section A. 10 below for a discussion on SIPs.

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consecutive weeks of job search activities.<sup>21</sup> Applicants may volunteer to participate but are not required to do so until the county approves their CalWORKs applications.<sup>22</sup>

Job search activities may include supervised or unsupervised job search and job clubs (generally group classes to learn and practice job seeking and job behavior skills such as resume writing, cold calling, interviewing, dressing for employment, and workplace behavior).<sup>23</sup> In developing a job search strategy, the county must consider the participant's skills and interests.<sup>24</sup> The county cannot schedule job search that conflicts with the participant's current job or SIP.<sup>25</sup>

The four weeks of job search may be *shortened*, if the participant and the county agree that further activities would not be beneficial.<sup>26</sup> The county may also shorten job search at its option, if the county determines that the participant will not benefit because she may have an emotional, mental, or learning disability that will limit or preclude her CalWORKs participation.<sup>27</sup> Likewise, the county must send the participant directly to assessment, if it determines that job search will not be beneficial.<sup>28</sup> Advocates should consider using these

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<sup>21</sup> WIC § 11325.22(a)(1); MPP § 42-711.532. See Section A.11.b below on how job search counts toward the federal work participation rate and Appendix A for materials on TANF Reauthorization changes.

<sup>22</sup> WIC § 11320.1(a); MPP § 42-711.531.

<sup>23</sup> WIC § 11325.22(a)(1); MPP §§ 42-701.2(j)(2), 42-711.532(a).

<sup>24</sup> WIC § 11325.22(a)(1); MPP § 42-701.532(b).

<sup>25</sup> WIC § 11325.22(a)(2); MPP § 42-711.531(b). The recipient is also not required to accept a job offered during job search, if it would interfere with an approved SIP. WIC § 11320.31(f); MPP § 42-721.316. SIPs are discussed in more detail in Section A.10 of this chapter and in Western Center's *Students and CalWORKs: A Guide to Education Opportunities in the CalWORKs Program*.

<sup>26</sup> WIC § 11325.22(a)(1); MPP § 42-711.533.

<sup>27</sup> WIC § 11325.22(a)(1); MPP § 42-711.533(b); ACL 01-70 at 17. Section A.3.f in this chapter discusses the availability of mental health and substance abuse treatment sources for CalWORKs recipients. Section A.3.e below discusses screening, evaluation, and accommodations for learning disabilities.

<sup>28</sup> WIC § 11325.22(b)(2)(B); MPP § 42-711.531(a).

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provisions together with the requirement that job search strategy consider the skills and interests of the participant<sup>29</sup> to argue that participants with limited English proficiency or who are illiterate should be excused from job search and go straight to assessment.

Job search may be *lengthened* beyond four weeks, if the county determines that the participant's performance during job search indicates that she would get an unsubsidized job if the search period were lengthened.<sup>30</sup> While the CalWORKs law does not limit the length of additional job search that the county may require, counties have some incentive not to place recipients in activities (such as job search after 4 weeks) that do not count toward federal participation rates because they may have to pay half of any penalties imposed for failure to meet federal requirements.<sup>31</sup> The Final TANF Reauthorization Rule on how job search counts toward the federal work participation rate does not change CalWORKs rules on when and how long participants must do job search. The counties must still follow the existing CalWORKs law.<sup>32</sup>

### **3. Assessment.**

If the participant does not get a job for at least the minimum required weekly hours<sup>33</sup> during job search, or if the county determines that job search is not likely to be fruitful, she will be referred to assessment to develop a welfare-to-work plan on the basis of an assessment of her

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<sup>29</sup> WIC § 11325.22(a)(1); MPP § 42-711.532(b).

<sup>30</sup> WIC § 11325.22(a)(3); MPP § 42-711.534. Counties must develop written criteria for determining when this circumstance exists. MPP § 11-501.3; ACL 00-08 at 2.

<sup>31</sup> WIC § 10544(b). Four consecutive weeks and six total weeks (hourly equivalent) count towards federal work participation requirements. 42 USC § 607; Final TANF Rule, 73 Fed. Reg. 6785 (Feb. 5, 2008) (to be codified at 45 CFR § 261.2(g)). The six-week limit may be extended to twelve weeks, if California's unemployment rate is at least fifty percent greater than the national unemployment rate or if California is a "needy state" under federal law. See 42 USC §§ 603(b)(5) (needy state), 607(c)(2)(A)(i) (number of weeks of job search that count). See Section A.11.b below for a discussion on how job search is counted toward the federal work participation requirements.

<sup>32</sup> ACL 07-03 at 1, ACL 08-07 at 2.

<sup>33</sup> See Section A.7 in this chapter for information on the number of hours required.

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skills and needs.<sup>34</sup> The assessment may be performed by a county worker or an outside party such as an educational agency or JTPA service delivery area.<sup>35</sup>

**a. No assessment or plan needed if the participant is working enough hours.**

CalWORKs participants, who are working at least the minimum hours required each week, do not have to attend assessment or sign a welfare-to-work plan.<sup>36</sup> These participants are entitled to supportive services even if they choose not to sign a plan.<sup>37</sup> If they choose to attend assessment, they will be required to sign a welfare-to-work plan.<sup>38</sup>

There is no apparent advantage for these working participants to sign welfare-to-work plans since they will receive supportive services even without a plan. In addition, if they later lose their jobs, they can go through the welfare-to-work process and develop a welfare-to-work plan based on a more current assessment of their needs and skills, including their most recent work experience. Had they signed a welfare-to-work plan earlier, they would be bound by the terms of that plan.

Note that the regulations provide that only a person employed in “unsubsidized” employment can decline to sign a plan, but the statute contains no such limitation.<sup>39</sup> This might

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<sup>34</sup> WIC §§ 11320.1(b), 11325.22(b)(2)(A); MPP §§ 42-711.551, 42-711.553.

<sup>35</sup> WIC § 11325.4(b); MPP § 42-711.555. The CalWORKs law repealed the former GAIN requirement that the assessment be performed by a person qualified to provide counseling, guidance, or career planning.

<sup>36</sup> MPP § 42-711.552; ACL 00-60 at 3.

<sup>37</sup> MPP § 42-711.552(b); ACL 00-60 at 3. See Section F.1 in this chapter for more on supportive services and chapter VII on child care.

<sup>38</sup> MPP § 42-711.552(a).

<sup>39</sup> Compare MPP §§ 42-711.551(a), 42-711.552 with WIC § 11320.1(b). MPP § 42-701.2(s)(2) defines subsidized employment as “employment in which the welfare-to-work participant’s employer is partially or wholly reimbursed for wages and/or training costs.”

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lead counties to conclude that a participant whose employment is subsidized employment must attend assessment and sign a plan.<sup>40</sup>

**b. What does the assessment include?**

The assessment must include at least:

- The participant's work history and an inventory of her skills, knowledge, and abilities;
- The participant's educational history and current educational competency level;
- The participant's needs, including the need for supportive services;
- An evaluation of the participant's chances to get a job given her skills and the local job market;
- Local labor market information;
- Any physical or mental limitations on the participant's employability or ability to participate in welfare-to-work activities;
- Identification of available resources to complete the welfare-to-work plan.<sup>41</sup>

**ADVOCACY TIP**

Advocates and participants should make sure that the county is looking at the participants' actual skills, and not only at the work and education history, to determine the participants' needs and barriers to employment. For example, having a high school diploma may not accurately reflect a participant's educational skills since she may read below grade level.

The county must allow the participant to review the assessment records upon request.<sup>42</sup> After the assessment, the participant will be required to sign a welfare-to-work plan.<sup>43</sup> The plan

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<sup>40</sup> Contact Western Center, and advise the participant to file for a fair hearing.

<sup>41</sup> WIC § 11325.4(a); MPP § 42-711.554.

<sup>42</sup> MPP § 19-005.1; ACIN I-33-06 at 1.

<sup>43</sup> WIC § 11325.4(d); MPP § 42-711.61. The county must provide a copy of the plan to the participant. WIC §11324.8(d); MPP § 42-711.612.

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must be based on the participant's individualized assessment.<sup>44</sup> *The participant should never sign a plan that requires her to do something she does not feel is appropriate* since failure to fulfill commitments made in the plan can result in a sanction.<sup>45</sup> Instead, she should ask for a "third-party assessment."

### **c. Third Party Assessments When a Participant Doesn't Agree With the Plan or the Assessment.**

If the participant and assessor cannot agree on the results of the assessment or the welfare-to-work plan, the county *must* automatically refer the matter for an independent assessment by an impartial third party.<sup>46</sup> The results of this assessment will be binding on both the county and the participant, and must be used to develop the welfare-to-work plan.<sup>47</sup>

Many counties ignore and misunderstand the requirement for third-party assessments. Some counties require participants to make the request when the counties should automatically refer any participant who disagrees with either the assessment or welfare-to-work plan for third party assessments.<sup>48</sup> Numerous counties do not even have procedures in place for these third-party assessments to occur. While the third-party assessment may or may not prove valuable in

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<sup>44</sup> WIC § 11325.4(a); MPP § 42-711.553.

<sup>45</sup> See Section D in this chapter for a discussion on sanctions.

<sup>46</sup> WIC § 11325.4(c)(1); MPP § 42-711.556. Note that the regulation says that a third-party assessment is available if the recipient "disagrees with the results of the assessment." MPP § 42-711.556. However, the state has agreed that participants can receive third-party assessments if they disagree with the plan. ACL 02-03 at 3. If the county claims no third-party assessment is available because the participant disagrees with the plan, not the assessment, request a hearing. See Chapter XIII on hearings.

WIC § 11325.4(c)(2) requires the independent assessor to not "have any interest, financial or otherwise, in the outcome of the assessment" and "must be selected according to an unbiased procedure." Thus, third-party assessments should not be performed by persons with a stake in upholding the initial proposed assignment, such as supervisors of the workers, who have done the original assessment. Some counties have contracted with vocational education providers, community colleges, or community agencies such as Goodwill.

<sup>47</sup> WIC § 11325.4(c); MPP § 42-711.556(a).

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actually changing the assignment the recipient is given, it is likely to be beneficial even if it only slows down the process of signing a plan, allowing the participant more time to think about her options or seek advice. In addition, the third-party assessment may resolve the disagreement between the participant and the county faster than a hearing, and the participant can still request a hearing if she is not satisfied with the result of the third-party assessment. State form WTW 10 is used to request a third-party assessment.<sup>49</sup>

**ADVOCACY TIP**

Ask the county for a copy of its third-party assessment procedures. A participant might be able to argue that any welfare-to-work plan must be reopened if the participant signed under protest or the third-party assessment did not occur. Note that the participant need not request a third-party assessment (or even knows that it exists)--the statute and regulations make clear that referral is supposed to be automatic when a dispute occurs.

A participant may not request a fair hearing on her welfare-to-work plans until after a third-party assessment has been performed.<sup>50</sup> However, since so few counties provide third-party assessments, this requirement appears to be widely ignored, and perhaps not enforced by the Administrative Law Judges (ALJ) at hearing. A participant, who has not received a third party assessment, should ask the ALJ to order the assessments or to decide whether the welfare-to-work plan is appropriate, if the ALJ is willing to review the plan. Arguably any sanction for failing to sign a welfare-to-work plan should be rescinded if no third-party assessment was offered before the sanction process began.

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<sup>48</sup> WIC § 11325.4(c)(1); MPP § 42-711.556.

<sup>49</sup> A copy is in Appendix F. The form can also be downloaded from DSS' website at [www.dss.cahwnet.gov/pdf/WTW10.pdf](http://www.dss.cahwnet.gov/pdf/WTW10.pdf). Note that the form states that it is to be filled out by the worker. However, there is no reason a participant can't bring it to the worker, request it be submitted, and file for a state hearing (see Chapter XIII) if the worker refuses to fill out or submit the form.

<sup>50</sup> WIC § 11325.4(c)(1); MPP §§ 42-711.556(b)(1).

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**d. County grievance or state hearing when a participant still does not agree with the plan after third-party assessment.**

In addition to the third-party assessment and the state hearing process (discussed in detail in Chapter XIII of this manual), a county-level formal grievance process is also available.<sup>51</sup> Each county's Board of Supervisors must establish grievance procedures, which must be set forth in the county's CalWORKs plan.<sup>52</sup> Grievances can only be used to resolve whether a program requirement or assignment is in violation of the welfare-to-work plan or inconsistent with the CalWORKs requirements.<sup>53</sup> The grievance process is not available to a participant, who has gone through the sanction and compliance process and has failed to conciliate.<sup>54</sup>

Note that filing a grievance does *not* stop the imposition of a sanction unless the participant complies with the county's demands while the matter is pending.<sup>55</sup> Therefore, a recipient may need to file for a fair hearing and aid paid pending at the same time as she files her grievance. A recipient cannot use the grievance process to appeal an adverse administrative hearing decision, but she can use the administrative hearing process to appeal the grievance outcome.<sup>56</sup> Because a grievance often provides a quicker remedy than a hearing, it may be advisable to file for a hearing and aid paid pending but use the grievance process simultaneously.<sup>57</sup>

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<sup>51</sup> WIC §11327.8; MPP § 42-721.5.

<sup>52</sup> WIC § 11327.8(a); MPP §§ 42-721.51, 42-721.512(a).

<sup>53</sup> MPP § 42-721.512(b).

<sup>54</sup> MPP § 42-721(d). In such cases, the state hearing process, of course, remains available. See Section D in this chapter for information about the sanction and conciliation process.

<sup>55</sup> WIC § 11327.8(b); MPP § 42-721.512(e).

<sup>56</sup> WIC § 11327.8(b); MPP § 42-721.512(c).

<sup>57</sup> See WIC § 11324.8(d) (independent assessment, grievance and hearing available to resolve disputes).

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**e. Learning disabilities.<sup>58</sup>**

No later than the assessment, counties must offer participants the learning disability screening.<sup>59</sup> As part of the assessment, counties must follow a screening and evaluation process to identify learning disabled participants, and to determine accommodations participants need to successfully complete or benefit from their welfare-to-work activities.<sup>60</sup> If at any point during the assessment or evaluation process, the county, the assessor, or the participant suspect that the participant suffers from another impairment that may be a barrier to participation, in addition to

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<sup>58</sup> Statistics show that the welfare population has a higher incidence of learning disabilities than does the general population. See <http://www.nyrehab.org/LDguide.htm>; [http://www.ldonline.org/ld\\_indepth/adult/vogel\\_howmany.html](http://www.ldonline.org/ld_indepth/adult/vogel_howmany.html); <http://nifl.gov/nifl-ld/2001/001.html>.

<sup>59</sup> MPP § 42-722.11.

<sup>60</sup> WIC §11325.25; MPP § 42-722. The county also must make a referral for a learning disability evaluation if a participant is not making satisfactory progress in her welfare-to-work assignment. WIC §11325.25(a); MPP § 42-711.58.

MPP § 42-701.2(1)(2) provides that “For the purposes of the CalWORKs Welfare-to-Work program, these [learning disabilities] disorders interfere with the participant’s ability to obtain or retain employment or to participate in welfare-to-work activities.” Many counties interpret this statement to limit the scope of identification and accommodation of learning disabilities to situations in which the learning disabilities “interfere with the participant’s ability to obtain or retain employment or to participate in welfare-to-work activities.” However, arguably the Americans with Disabilities Act (ADA) requires identification of learning disabilities regardless of whether or not they interfere with welfare-to-work participation and may require accommodations outside the welfare-to-work context. 42 USC § 12132; 28 CFR § 35.130; 28 CFR § 35.130(b)(7). In fact, MPP § 21-111.4 requires counties to have ways to effectively communicate with individual with disabilities and to provide alternative means to allow these individuals to effectively access the program. For example, if a participant’s learning disability did not interfere with her welfare-to-work activity but made it hard for her to understand notices of action (“NoAs”), the appropriate and required accommodation would be for the caseworker to also verbally explain the NoA in person or by phone to ensure that the participant understood the content of the NoA. However, none of this is required by the regulations.

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or instead of a learning disability, the county has to refer the participant to a professional, who is licensed to diagnose that impairment.<sup>61</sup>

**i. Learning Disability Screening Process and Requirements.<sup>62</sup>**

Learning disability screening involves the use of a validated learning disability screening tool<sup>63</sup> that is administered by individuals trained on how to properly administer it.<sup>64</sup> Counties *must* offer participants the screening both verbally and in writing at the first welfare-to-work contact, or by no later than the assessment.<sup>65</sup> Participants in welfare-to-work activities have good cause for not participating in their assigned activities when their screening appointment conflicts with their activities.<sup>66</sup> Participants do not have to agree to the learning disability screenings.<sup>67</sup> But counties must screen these participants at any time upon the participants' request before assigning the participants to other welfare-to-work activities.<sup>68</sup> In addition, counties must offer to these participants an explanation regarding the indicators and facts of a

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<sup>61</sup> MPP § 42-722.466; ACL 01-70.

<sup>62</sup> Counties were required to fully implement the learning disability screening process by May 15, 2003, with all existing participants screened no later than their annual CalWORKs eligibility redetermination appointment, or before their appointment, if the participant is suspected of having a learning disability. See ACL 01-70 at 6 for explanation of what triggers a learning disability screening. This means that all participants should have been screened by now. Participants who have not yet been screened should request a screening immediately.

<sup>63</sup> This tool is only in English.

<sup>64</sup> MPP § 42-722.311; ACL 01-70 at 3.

<sup>65</sup> MPP § 42-722.11. If the county does not make such offer at the first contact, then the county must provide verbally and in writing information about learning disability screening. MPP § 42-722.12.

<sup>66</sup> MPP § 42-722.142.

<sup>67</sup> MPP §§ 42-722.21, 42-722.213(a).

<sup>68</sup> MPP §§ 42-722.14, 42-722.23.

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learning disability, the areas that will be tested, and the types of reasonable accommodations that are available.<sup>69</sup>

As of this writing, there is no learning disability screening tool in any non-English language. Given this, a limited-English proficient (LEP) participant can skip the screening and get a referral for a learning disability evaluation.<sup>70</sup> Counties must tell LEP participants at appraisal that they can get learning disability evaluations without having to be screened.<sup>71</sup>

In addition, all LEP participants must be screened by appropriate and *trained* bilingual and bicultural staff,<sup>72</sup> who through discussions with and observation of the participants can determine the existence of a potential learning disability.<sup>73</sup> Counties cannot use a screener, who is trained to administer the screening tool only in English. Advocates should work with counties to develop an appropriate screening and evaluation process for LEPs, including using a qualified learning disabilities screener. If the county determines that an LEP participant may have a potential learning disability, the county must refer the participant to a learning disability evaluation.<sup>74</sup>

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<sup>69</sup> ACL 01-70 at 7. Many participants believe that a learning disability means that a person is mildly mentally retarded. This misunderstanding and stigma can be one of the reasons why participants do not agree to a screening. ACL 01-70 recommends clarifying to participants that a learning disability affects people with average or above average intelligence and prevents them from reading at their true aptitude.

<sup>70</sup> MPP §§ 42-722.121(i), 42-722.414.

<sup>71</sup> MPP § 42-722.121(i).

<sup>72</sup> MPP §§ 42-722.311(a), 42-722.33.

<sup>73</sup> MPP § 42-722.151. *See* MPP §§ 42-722.151(a) (defining “discussions”), 42-722.151(b) (defining “observation”). Some counties erroneously believe that this means that the person must be trained to administer the validated screening tool. Instead, this means that the person must be qualified to determine learning disabilities from interview and observation. Note that LEPs must be informed in their primary language that they can request an evaluation, bypassing the screening. MPP § 42-722.33. Call Jodie Berger at Legal Services of Northern California at (707) 643-1408 X 302 for more information.

<sup>74</sup> MPP § 42-722.153; ACL 04-48 at 3.

A participant cannot be sanctioned for refusing to be screened for learning disabilities.<sup>75</sup> But if the participant later fails to comply with welfare-to-work requirements, she will not have good cause on the basis of being learning disabled, and will be subject to compliance and sanction requirements.<sup>76</sup> This participant will have good cause and will not be sanctioned, however, if during the sanction process the county's screening or evaluation determines that a learning disability contributes to the participant's failure to participate.<sup>77</sup> The county must then review the welfare-to-work plan and activities and modify them as appropriate based on the participant's disability and need for accommodation.<sup>78</sup>

**ii. Learning Disability Evaluation Process and Requirements.**

A learning disability evaluation referral *must* be made as soon as administratively possible for participants who: 1) have been identified as potentially having a learning disability during a screening process; 2) were previously identified as having learning disabilities (e.g. in special education classes in school); 3) are suspected of having a learning disability, even though the results from the screening did not indicate a potential learning disability; and 4) are limited-English proficient and request a referral to a learning disability evaluation (regardless of whether or not they were screened).<sup>79</sup> However, these participants do not have to agree to the evaluation and cannot be sanctioned for refusing to be evaluated.<sup>80</sup>

Once referred, the evaluation must be done before the completion of the assessment and the welfare-to-work plan.<sup>81</sup> It must be conducted by "learning disability evaluation

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<sup>75</sup> MPP § 42-722.22.

<sup>76</sup> MPP § 42-722.221.

<sup>77</sup> MPP § 42-722.71.

<sup>78</sup> MPP § 42-722.723.

<sup>79</sup> WIC § 11325.25; MPP § 42-722.41; ACL 01-70 at 10.

<sup>80</sup> MPP § 42-722.22; ACL 01-70 at 7.

<sup>81</sup> MPP § 42-722.44.

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professionals,” who are trained to use validated learning disability evaluation tools<sup>82</sup> that measure aptitudes, information processing, achievement, and vocational interests.<sup>83</sup>

The evaluator must determine (1) whether a learning disability exists, (2) if so, the impact of the learning disability on the participant’s ability to succeed, complete, or benefit from the welfare-to-work program, and (3) accommodations needed.<sup>84</sup>

**NOTE**

Evaluators often are unaware of the welfare-to-work hours of participation requirements and time limits, and thus are not aware of whether or not a person can participate in or benefit by the welfare-to-work program. Advocates may want to work with their county evaluators to educate them about being an exempt volunteer.<sup>85</sup>

If the participant provides the county with previous evaluation results from another county or that were conducted outside of the CalWORKs’ welfare-to-work program (such as an evaluation conducted at a community college), the county has the option: 1) accept all or part of the evaluation and provide the accommodations listed in the evaluation; or 2) not accept the evaluation and obtain a second opinion by referring the participant to another learning disability evaluation.<sup>86</sup> The county must at a minimum verbally inform the participant that it is accepting or rejecting all or part of a previous learning disability evaluation.<sup>87</sup> In cases where previous

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<sup>82</sup> MPP § 42-722.46. Because of the difference in the manifestation of learning disabilities in adults and children, the evaluator should be trained in learning disabilities for adults, not just youth.

<sup>83</sup> MPP § 42-722.464 and ACL 01-70 at 12 provide examples of the testing instruments that evaluators may use.

<sup>84</sup> For example, an evaluator cannot conclude that a cognitively impaired participant employed at a low-level job is not learning disabled because she is able to work.

<sup>85</sup> See Section B.1 in this chapter for more on exempt volunteers.

<sup>86</sup> MPP § 42-722.24; ACL 04-48 at 5.

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evaluations do not provide sufficient information,<sup>88</sup> the county must refer the participant for additional testing.<sup>89</sup>

Counties must use appropriate bilingual and bicultural staff to evaluate LEP participants.<sup>90</sup> If no recognized and validated tool exists in the participant's primary language, the learning disability specialist must use other evaluation tools that may provide pertinent information and discussions appropriately tailored to the participant's cultural background with, and observations of, the participant.<sup>91</sup>

The learning disability specialist must complete a written learning disabilities report, which must include certain minimal core information,<sup>92</sup> and some optional information.<sup>93</sup>

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<sup>87</sup> MPP § 42-722.26. A participant should request a hearing if she thinks her previous evaluation should have been accepted, especially if it was done by a qualified and trained learning disability evaluator.

<sup>88</sup> Current (within 3-5 years) information about employment and educational goals, relevant vocational and educational background, areas of strength, areas of deficiency, and range of needed accommodations may be considered "sufficient information." Some counties, such as Los Angeles, have chosen to develop policies instructing the workers to accept pre-existing evaluations if they contain sufficient information.

<sup>89</sup> MPP § 42-722.243.

<sup>90</sup> MPP §§ 42-722.15, 42-722.33; ACL 01-70 at 7, ACL 04-48 at 4.

<sup>91</sup> MPP § 42-722.465.

<sup>92</sup> This includes 1) vocational and educational background and history; 2) general aptitude and cognitive level; 3) issues such as physical or mental problems; 4) areas of strength; 5) areas of deficiency; and 6) a summary of the participant's condition and service needs such as severity of disability, areas of potential impact such as employment and participation in welfare-to-work activities, rationale for learning disabilities determination or diagnosis, recommendations for additional services, any suspected conditions other than a learning disability, and a range of recommended accommodations or assistive technology to be included in the participant's welfare-to-work plan. MPP § 42-722.51; ACL 01-70 at 13.

<sup>93</sup> This includes local resources, accommodation and assistive technology needs for other purposes, participant's goals, and vocational recommendations. MPP § 42-722.52; ACL 01-70 at 13.

**iii. Reasonable Accommodations for Participants With Learning Disabilities.**

The county must provide reasonable accommodations to CalWORKs participants with learning disabilities.<sup>94</sup> Reasonable accommodations are modifications and adjustments to the CalWORKs program requirements that make it possible for a participant with disability to apply for or perform the essential functions of a job or to participate in assigned welfare-to-work activities.<sup>95</sup> The accommodations should be specific to a participant's needs and must be provided free of cost.<sup>96</sup> In determining appropriate activities for a participant, the county must integrate the results from the participant's individualized assessment as well as the learning disability evaluation.<sup>97</sup>

If the learning disability evaluation does not establish a learning disability or any other disability that interferes with participation in the CalWORKs program, the participant must begin or resume her welfare-to-work activities and the county must inform the participant that she will not be provided special accommodations and that she has a right to file for a hearing.<sup>98</sup> The county must provide the participant with a copy of the report and an explanation of the results.<sup>99</sup>

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<sup>94</sup> 42 USC § 12132; 28 CFR § 35.130 (b)(7).

<sup>95</sup> 42 USC § 12132; 28 CFR § 35.130 (b)(7); ACL 01-70 at 4.

<sup>96</sup> 42 USC § 12132; 28 CFR § 35.130 (b)(7); ACL 01-70 at 4.

<sup>97</sup> 42 USC § 12132; 28 CFR § 35.130 (b)(7); ACL 01-70 at 4. Note that CDSS has not informed counties that these accommodations must be throughout the provision of CalWORKs services, and not just for welfare-to-work. So, for example, if the evaluation indicates that the recipient needs oral instruction, in addition to written information, under the ADA law, the eligibility worker must also provide this accommodation. Review the county's annual Civil Rights Plan to determine how the county provides accommodations to recipients, and advocated for a link between the welfare-to-work learning disability accommodations and other CalWORKs program accommodations.

<sup>98</sup> MPP § 42-722.531(b), (c), (d).

<sup>99</sup> MPP § 42-722.531(a); ACL 04-48 at 6. The county must provide the full copy of the report, including the tests administered during the evaluation, the participant's scores, and a written explanation of the findings.

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If the evaluation establishes that the participant has a learning disability that interferes with welfare-MPP § 42-722.531(b), (c), (d).to-work participation, the county must discuss the appropriate welfare-to-work activities and reasonable accommodations to be provided, and develop or modify the welfare-to-work activities or plan on the basis of the evaluation.<sup>100</sup>

**f. Medical conditions, mental disabilities, and substance abuse.**

If the appraisal or assessment reveals or suggests a medical problem, the county must refer the participant to an evaluation to determine whether she can successfully complete or benefit from a program assignment.<sup>101</sup> The county can require the participant to undergo appropriate examinations for this evaluation.<sup>102</sup> The evaluation must be conducted by a professional whose training qualifies her to determine whether the participant is unable to successfully complete or benefit from a current or proposed assignment.<sup>103</sup>

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<sup>100</sup> MPP § 42-722.532(b); ACL 01-70 at 13-14, ACL 04-48 at 9-10. The county may suggest modifying the participant's welfare-to-work plan in order to lessen the impact of her learning disabilities on the work activities in her plan. However, the county should first determine accommodations the participant needs to succeed in her current welfare-to-work plan, rather than simply modifying the welfare-to-work plan to include activities that are not impacted by the participant's learning disability. For example, if a participant in a nursing program is found to have a learning disability, the county should provide her with accommodations to allow her to continue in her nursing program--counting study time as work activity, allowing her to take fewer courses per semester--rather than modifying her welfare-to-work plan to find work as a waitress, an activity that would not require accommodations for her learning disability.

<sup>101</sup> WIC § 11325.25; MPP § 42-711.58. This referral for evaluation must also be made if a participant is not making satisfactory progress in her assignment and a substance or mental health problem is suspected.

<sup>102</sup> WIC § 11325.25(a); MPP § 42-711.58. Note that the California Constitution and the Medical Privacy Act limit an agency's ability to require involuntary physical or mental examinations (or treatment). A participant, who is willing to comply with welfare-to-work requirements and who does not want an evaluation, should argue that she cannot be sanctioned since she is willing to meet the requirements. Contact Jodie Berger at Legal Services of Northern California (707) 643-1408 X 302 for more information.

<sup>103</sup> MPP § 42-711.58.

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If the assessment reveals or suggests a mental disability that will impair the participant's ability to get a job, the county must refer her to the county mental health department.<sup>104</sup> Subject to availability of funds, the mental health department must evaluate the participant and determine any treatment needs.<sup>105</sup> The evaluation must include the extent to which the participant is capable of employment and under what working conditions and treatment the participant is capable of working.<sup>106</sup> The evaluator also must review prior diagnoses, assessments, and evaluations.<sup>107</sup> The participant's welfare-to-work plan must be developed based on this evaluation and include appropriate restrictions, accommodation, supportive services, and treatments needed for employment.<sup>108</sup>

If the assessment indicates a substance abuse problem, the case manager must refer the participant to the county alcohol and drug program or to an outside agency that contracts with the county for an evaluation and determination of necessary treatment.<sup>109</sup> In such cases, the welfare-to-work plan must be based on the evaluation of the alcohol and drug program, and may include treatment requirements, including assignment to a substance abuse program.<sup>110</sup>

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<sup>104</sup> WIC § 11325.5(a); MPP §42-711.56.

<sup>105</sup> WIC § 11325.5(b); MPP § 42-711.561.

<sup>106</sup> WIC § 11325.5(b); MPP § 42-711.562.

<sup>107</sup> WIC § 11325.5(b); MPP § 42-711.562.

<sup>108</sup> WIC § 11325.5(c); MPP § 42-711.563. Any prior diagnosis, evaluation, or assessment that the participant provides must be considered in the development of the plan. MPP § 42-711.563(b). See Section F.5 in this chapter for details on substance abuse and mental health supportive services.

<sup>109</sup> WIC § 11325.8(c)(2); MPP §42-711.57.

<sup>110</sup> WIC § 11325.8(c)(3). Note that if a treatment program is assigned as part of the welfare-to-work plan, the participant may be subject to sanction for failure to participate in the treatment program without good cause. WIC § 11325.8(c)(5). However, the worker must consider, in consultation with the treatment provider, whether the substance abuse problem "caused or substantially contributed to the failure to comply." WIC § 11325.8(c)(6).

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Note that for both substance abuse and mental health problems, a separate source of CalWORKs funding exists for providing treatment services.<sup>111</sup> Some workers are not aware that funds outside of the Medi-Cal or County Mental Health system exist.

If the participant needs substantial treatment services for a prolonged period, she should consider seeking an exemption, rather than using her limited 60 months on aid to receive services without the full benefit of education and training.<sup>112</sup>

### **g. Domestic Abuse.**

If the appraisal or assessment indicates that a participant may be a past or present domestic abuse survivor, the county must refer the participant to staff, who is trained in serving domestic abuse survivor.<sup>113</sup> The participant can also self-identify or disclose domestic abuse.<sup>114</sup> Her sworn statements are sufficient evidence of abuse, unless the county documents in writing an independent and reasonable basis for not finding her credible.<sup>115</sup> Other evidence of domestic abuse includes police, government agency, or court reports; documentation from domestic abuse providers, medical or legal professionals from whom the participant has sought help; physical evidence; statements from others with knowledge of the abuse; and any other evidence that support the abuse.<sup>116</sup>

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<sup>111</sup> WIC § 11325.8(e). These special funds are discussed in detail in Section F.5. of this chapter.

<sup>112</sup> See Chapter II for more on exemptions.

<sup>113</sup> MPP § 42-715.21. Counties must provide domestic abuse information and services at application, the start of the welfare-to-work program, and annual redetermination. MPP § 42-715.13.

<sup>114</sup> WIC § 11495.25; MPP § 42-715.12.

<sup>115</sup> WIC § 11495.25; MPP § 42-715.12.

<sup>116</sup> MPP § 42-715.121.

**4. The Welfare-to-Work Plan.**

After the assessment, the county and the participant must develop a welfare-to-work plan that is based on the participant's individualized assessment.<sup>117</sup> The plan must be written in clear and understandable language,<sup>118</sup> and must include at least the ten items specified in the statute.<sup>119</sup> If a person disagrees with the plan, the county must refer the matter to a third-party assessment.<sup>120</sup> In these instances, the third-party assessment will be the basis for the welfare-to-work plan.<sup>121</sup>

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<sup>117</sup> WIC §§ 11320.1(b), 11325.4(a); MPP §§42-711.553, 42-711.61.

<sup>118</sup> WIC § 11325.21(c).

<sup>119</sup> WIC § 11325.21(d); MPP §42-711.641.

<sup>120</sup> WIC § 11325.4(c)(1); MPP § 42-711.556; ACL 02-03 at 3.

<sup>121</sup> WIC § 11325.4(c); MPP § 42-711.556(a).

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The Welfare-to-Work Plan Must Include:

- A general description of the CalWORKs program, including activity components and supportive services;
- A general description of the rights and responsibilities of participants;
- A list of the exemptions from welfare-to-work participation;
- An explanation of the consequences of not participating;
- The criteria for successful completion of the program;
- An explanation of the 30-day grace period to request a change of assignment;
- The participant's specific assignment;
- The supportive services she will receive;
- The criteria for successful completion of the participant's specific activities, including required number of hours of participation;
- School attendance requirements for children in the assistance unit.<sup>122</sup>
- For domestic abuse survivors, the plan must include consideration of a specified list of factors affecting participation.<sup>123</sup>

The state has made certain of these items part of the welfare-to-work plan form. For example, the rights and responsibilities and sanction consequences are pre-printed on the form.

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<sup>122</sup> The plan must also address school attendance of all children in the assistance unit for whom school attendance is compulsory under MPP § 40-105.5, any "identify and participation required of the parent by the school to ensure the child's attendance." MPP § 42-711.642(a). See Chapter II for a discussion of school attendance requirements.

<sup>123</sup> See MPP § 42-715.211 (plan shall include consideration of the degree to which domestic abuse is a barrier to employment; flexibility in accommodating legal obligations or other activities related to the abuse; special cultural or religious needs; protection for the participant; and the need for a waiver from program requirements). MPP § 42-715.211(d)

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The welfare-to-work plans of participants, who have been identified as past or present domestic abuse survivors, must not place the participants and their children at further risk of abuse.<sup>124</sup> In developing the plan, the counties should consider 1) the extent to which domestic abuse is a barrier to employment, 2) flexibility in the participants' schedules to accommodate their needs for domestic abuse services, legal obligations, and other domestic abuse related activities, 3) appropriate protection from the abusers, including confidentiality concerning the participants' home and work addresses, and 4) the participants' needs for waivers of program requirements.<sup>125</sup> Participants can include domestic abuse services as part of their welfare-to-work plans.<sup>126</sup> However, if these services take up a significant number of hours, they should request a domestic abuse waiver.<sup>127</sup>

The participant must sign the welfare-to-work plan, and can be sanctioned for failure or refusal to sign without good cause.<sup>128</sup> *Participants should never sign a plan with which they don't agree*—instead, they should insist on a third-party assessment or request a state hearing if the county will not alter the proposed plan.<sup>129</sup>

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includes a non-exhaustive list of services for domestic abuse survivors, including community services, group and individual counseling, substance abuse, medical and public health services, mental health counseling, immigration services, parenting skills and independent living skills training, financial planning, relocation activities, and legal services.

<sup>124</sup> MPP § 42-715.21; ACIN I-02-06 at 2.

<sup>125</sup> MPP §42-715.211.

<sup>126</sup> MPP § 42-716.31(q).

<sup>127</sup> See WIC § 11495.1(a)(3) (waiver of program requirements for domestic abuse survivors); MPP § 42-715.51; ACIN I-02-06, Attach. at 4, #15.

<sup>128</sup> WIC § 11327.4(a)(1). See Section C in this chapter for a list of what constitutes good cause. Note also that the statutory examples of good cause are not exhaustive and counties may add other examples or criteria to the lists. See MPP §§ 42-713.2 (listing non-exhaustive examples of conditions that may be good cause for nonparticipation), 42-721.3 (listing non-exhaustive examples of good cause for failure or refusal to comply with program requirements).

<sup>129</sup> Note that DSS has instructed the counties not to proceed with a welfare-to-work plan leading toward a field that requires a license or background clearance (such as a licensed

**PRACTICE TIP**

Watch out for plans that do not contain *specific* assignments. Some counties are apparently requiring participants to sign plans indicating the type of training the county will *seek* to provide or will provide “if available” and stating that the participant may have to do “alternate activities” (generally job club) if the training program is not available. This violates WIC § 11325.21(e) and MPP § 42-711.632, which require that the plan contain the participant’s specific assignment and the criteria for successfully completing it. In addition, any change in activities requires an amendment to the plan<sup>130</sup> and thus a new opportunity for the participant to contest a requirement that she disagrees with.<sup>131</sup>

**a. Universal Engagement: Counties Have Deadline to Get Welfare-to-Work Plans Signed.**

Effective December 1, 2004, counties must develop and have non-exempt CalWORKs participants sign their welfare-to-work plans within 90 days from the date of the notice of action telling the applicants that they are eligible to receive CalWORKs cash aid.<sup>132</sup> This 90-day time frame is called “universal engagement.” If a participant begins attending an allowable job search activity within 30 days from the date of the notice of eligibility, then the county has 90 days after her completion of job search activity to have her sign the welfare-to-work plan.<sup>133</sup> A learning disability evaluation extends the 90-day period.<sup>134</sup> The time between the date on which the

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child care provider, Certified Nurse’s Assistant, or early childhood educator), if the participant has a criminal background which would prevent her from obtaining the license. ACIN I-68-99 discusses the issue and contains information about how a person with a conviction may obtain an exemption from the clearance criteria.

<sup>130</sup> WIC § 11325.21(e), (f); MPP § 42-711.642.

<sup>131</sup> See Section A.3.c in this chapter on third-party assessments.

<sup>132</sup> WIC § 11325.21; MPP § 42-711.62; ACL 04-41 at 3.

<sup>133</sup> WIC § 11325.21(a); MPP § 42-711.621; ACL 04-41 at 4.

<sup>134</sup> MPP § 42-711.622(b).

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learning disability evaluation is scheduled and the date the final report is issued, up to 90 days, does not count toward the 90-day period.<sup>135</sup> The time spent in good cause, compliance, and sanction process also extends the 90-day period.<sup>136</sup> Time spent in the third-party assessment and other disability evaluation process does not toll the 90-day timeframe.<sup>137</sup>

Some participants, such as those who are exempt or are working 32 (or 35 hours for two-parent families) per week, do not have to sign welfare-to-work plans after eligibility is determined.<sup>138</sup> If they later need to have welfare-to-work plans, the 90-day period runs from the date that the participants must begin or resume welfare-to-work participation.<sup>139</sup> In cases where the county knows in advance the date that a participant will be required to participate, the 90-day period begins from that date.<sup>140</sup>

**EXAMPLE**

Samantha is exempt from welfare-to-work participation. The county receives information that her exemption will end on January 15<sup>th</sup>. Unless she provides verification to extend her exemption, the county must develop and have Samantha sign a welfare-to-work plan no later than 90 days from January 16<sup>th</sup>, the day on which she is required to resume participation.

In cases where the county does not know the date in advance, the 90-day period does not start until the first day of the month following the day in which 1) the participant stops participating as required (i.e. she is no longer working 32 hours); or 2) the participant's reason for not having to participate ends (i.e. her exemption has ended).<sup>141</sup>

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<sup>135</sup> MPP § 42-711.622(b).

<sup>136</sup> MPP § 42-711.622(a).

<sup>137</sup> ACL 04-41 at 4; MPP § 42-711.622.

<sup>138</sup> MPP § 42-711.552; ACL 00-60; ACL 04-41 at 3-4.

<sup>139</sup> WIC § 11325.21(a); MPP § 42-711.623(c); ACL 04-41 at 3.

<sup>140</sup> MPP § 42-711.623(c); ACL 04-41 at 3.

<sup>141</sup> MPP § 42-711.624(d); ACL 04-41 at 3.

**EXAMPLE**

Wendy did not need a welfare-to-work plan because she was working 32 hours per week. She lost her job on December 18<sup>th</sup> and told the county on the 20<sup>th</sup>. The county must develop and have Wendy sign a welfare-to-work plan no later than 90 days from January 1<sup>st</sup>.

The county cannot sanction the participants for not signing the welfare-to-work plan within the 90-day timeframe.<sup>142</sup> Because of the short 90-day time frame, some counties may ignore the rules requiring counties to assign participants to appropriate welfare-to-work activities based on their individualized assessments. Advise the participant to request a third-party assessment if she does not agree with the assessment or the welfare-to-work plan or if she feels that the county has rushed through the assessment process and have developed an inappropriate plan.<sup>143</sup>

**b. Changing the welfare-to-work plans.**

*After signing, the participant has three days in which to request any changes in the plan's terms.*<sup>144</sup> The three-day opportunity to change the plan is available after any subsequent amendment to the welfare-to-work plan.<sup>145</sup> A request for a change should be made *in writing*, and the participant should keep a copy.

Once the participant has started the initial welfare-to-work activity, she has 30 days from the start of the activity to request a new assignment.<sup>146</sup> In requesting a new assignment, the participant is not asking to change the overall nature of the plan, but is asking for a different

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<sup>142</sup> WIC § 11327.4(a)(2); MPP §§ 42-721.211, 42-721.2 (participants can only be sanctioned for failure to comply with program requirements listed).

<sup>143</sup> See Section A.3.c for more detail on Third-party assessments.

<sup>144</sup> WIC § 11325.21(b); MPP § 42-711.646.

<sup>145</sup> MPP § 42-711.646.

<sup>146</sup> WIC § 11325.22(b)(5); MPP § 42-711.647.

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activity or a different provider for the same activity.<sup>147</sup> The county must grant the participant's request for reassignment if the assignment is available and consistent with the welfare-to-work plan. This request should also be done in writing. This 30-day change option is available only once during the 60 months.<sup>148</sup>

In addition to the three-day and 30-day opportunities to change, if the participant's situations change in a way that make her current activities and goals in the welfare-to-work plan inappropriate, she should request a change in her plan.<sup>149</sup>

Once the plan is final, the participant is required to maintain satisfactory progress in assigned activities, and the county is required to provide the specified supportive services.<sup>150</sup> At any time the participant's activities are changed, or new ones assigned, the county must amend the welfare-to-work plan.<sup>151</sup>

### **5. Welfare-to-Work Activities.**

The welfare-to-work plan must specify the welfare-to-work activities to which the participant is assigned.<sup>152</sup> Although counties don't have to offer every allowable activity, each county must provide an "adequate range of activities" to "ensure each participant's access to

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<sup>147</sup> For example, the plan may specify an English-as-a-second-language course at a local high school, but the participant wants to change the provider to a community college.

<sup>148</sup> WIC § 11325.22(b)(5); MPP § 42-711.647(b).

<sup>149</sup> For example, a participant, whose current goal is to become a nurse, injures her back permanently. Because nursing requires some physical exertion, the goal and activity in the nursing program are no longer appropriate. The participant should request a change in her welfare-to-work plan to include appropriate activity and employment goal.

<sup>150</sup> WIC § 11325.21(f); MPP § 42-711.645. Although lack of necessary supportive services can constitute good cause for failure to participate (see Section D in this chapter), WIC § 11325.21(f) specifies that the county *shall* provide the supportive services set forth in the welfare-to-work plan. This arguably provides an enforceable right to supportive services for a participant, who does not want to simply accept a finding of good cause and forego participation.

<sup>151</sup> WIC §§ 11325.21(e), 11325.22(c); MPP § 42-711.642. The three-day opportunity to request changes is available after each amendment. MPP § 42-711.646.

<sup>152</sup> WIC § 11325.21(e); MPP § 42-711.642.

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needed activities and services to assist her in seeking employment, to provide education and training she needs to find self-supporting work.”<sup>153</sup> No county may require job search and workfare to the exclusion of a range of activities.<sup>154</sup> Each county must submit to the state a plan that lists all the activities offered in the county.<sup>155</sup> Advocates should review the county plan to ensure that it does not have an across-the-board policy of assigning all participants to particular activities (i.e. job search, workfare, community service, etc.) without regards to the participants’ individualized assessment.<sup>156</sup> Advocates should also seek information about the number of participants actually placed in each activity and whether the county actually has the required “adequate range” of activities.<sup>157</sup>

Allowable welfare-to-work activities include but are not limited to the following:<sup>158</sup>

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<sup>153</sup> WIC § 11322.7(a).

<sup>154</sup> WIC § 11322.7(b). The statutory requirement that a county not require job search and community service to the exclusion of a range of activities has not been included in the regulations.

<sup>155</sup> WIC § 11322.7(b).

<sup>156</sup> WIC § 11325.4(a); MPP § 42-711.611.

<sup>157</sup> Information about the number of people placed in each activity is also available in the monthly WTW 25 reports each county provides to DSS at [http://www.dss.cahwnet.gov/research/WTW25-CalW\\_397.htm](http://www.dss.cahwnet.gov/research/WTW25-CalW_397.htm).

<sup>158</sup> WIC § 11322.6; MPP § 42-716.31.

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- Unsubsidized employment;
- Subsidized employment in the private or public sector
- “Work experience” (workfare) in the public or private sector<sup>159</sup>
- On the job training (OJT) or “grant-based on the job training” (in which some or all of the aid payment goes to the employer to offset the wages paid to the participant)<sup>160</sup>
- Supported work or transitional employment (a form of grant-based OJT in which aid payments go to an intermediary service provider to offset wages)
- Work-study
- Self-employment
- Community service<sup>161</sup>
- Adult basic education (ABE), including reading, writing, math, high school proficiency or GED certificate, and English as a second language (ESL)
- Job skills training directly related to employment
- Vocational education and training (including but not limited to college and community college, adult education, regional occupational centers and regional occupational programs)
- Job search and “job readiness” assistance<sup>162</sup>
- Participation in activities required by a child’s school<sup>163</sup>
- Education directly related to employment
- Satisfactory progress in high school or GED preparation
- Mental health, substance abuse, or domestic violence services needed to get or keep a job<sup>164</sup>
- Other activities necessary to get unsubsidized employment<sup>165</sup>

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<sup>159</sup> Work experience must “help provide basic job skills, enhance existing job skills in a position related to the participant’s experience, or provide a needed community service that will lead to employment.” WIC § 11322.6(d); MPP § 42-701.2(w)(3).

<sup>160</sup> Special protections apply to OJT, to ensure that employers do not accept welfare funds and then fail to pay their welfare employees. The law specifies that if an employer causes a break in income for an employee in grant-based OJT, the county must pay the employee the maximum aid payment (MAP) for her family, not counting the unpaid wages, as a supplemental grant payment. WIC § 11322.61(a); MPP § 42-742. Counties using grant-based OJT must monitor whether OJT employers retain OJT participants as employees, and must cease using employers who “demonstrate an unwillingness to hire those who have participated with that employer.” WIC § 11322.61(b); MPP § 42-716.771.

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Participants may be assigned to an educational activity (ABE, vocational education or training, education directly related to employment, or secondary school) if they need education to become employed.<sup>166</sup> However, participants, who lack basic literacy, math, or English language skills, or who don't have a high school diploma or GED, *must* be assigned to Adult Basic Education “as appropriate and necessary for removal of . . . barriers to employment.”<sup>167</sup>

Since welfare-to-work plans must be based on an individualized assessment, counties cannot have blanket policies to assign all participants to particular activities or to limit education or training opportunities available to participants.<sup>168</sup> Policies limiting education or training to a 12-month period or allowing only participants, who are working, to have access to job skills training or education directly related to employment are illegal.<sup>169</sup>

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<sup>161</sup> Community service is a temporary training activity in the nonprofit or public sector which provides job skills that can lead to employment. MPP § 42-701.2(c)(3). See Section A.9 in this chapter for more information about community service.

<sup>162</sup> Job readiness assistance is defined as “training to learn job seeking and interviewing skills, understand employer expectations, and to learn skills designed to enhance the capacity to move toward self-sufficiency.” WIC § 11322.6(n); MPP § 42-701.2(j)(2).

<sup>163</sup> MPP § 42-711.642(a).

<sup>164</sup> WIC § 11322.6(q); *see also* WIC § 11325.7; MPP §§ 42-711.563, 42-716.4 (mental health); WIC § 11325.8 and MPP § 42-711.57 and 42-716.5 (substance abuse); WIC § 11495; MPP § 42-713.221 (domestic violence).

<sup>165</sup> For example, San Francisco will count housing search as a welfare-to-work activity for homeless participants.

<sup>166</sup> WIC § 11322.6; MPP §§ 42-711.541, 42-711.543, 42-716.31.

<sup>167</sup> WIC § 11325.22(b)(3); MPP § 42-711.644. Note that while the statute's language is that participants, who lack basic skills, or a diploma or GED, *shall* be assigned to educational activities “as appropriate and necessary,” the regulation says the assignment shall occur “if the CWD determines it to be appropriate and necessary.” MPP § 42-711.644. Participants, who want basic education or GED classes should insist on them, and should insist upon a third-party assessment and state hearing if the county disagrees. See Section A.3.c in this chapter for more on third-party assessments.

<sup>168</sup> ACL 02-03 at 1-2.

<sup>169</sup> ACL 02-03 at 1-2. Contact Western Center for more information.

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If a child's school requires the parent's participation to ensure the child's attendance, the parent's participation in such activities counts toward the required hours of participation as "other activities."<sup>170</sup>

Participants can be assigned to activities sequentially or concurrently.<sup>171</sup> Concurrent assignment means the person will do more than one activity at a time. Sequential assignment means one activity will follow the next. The county may require concurrent participation, if it is appropriate based on the participant's abilities, consistent with her welfare-to-work plan, and the activities can be concurrently scheduled.<sup>172</sup> Criteria for successful completion of an assigned education or training activity include regular attendance, satisfactory progress, and completion of the assignment.<sup>173</sup> The activity provider determines satisfactory progress.<sup>174</sup>

If the assigned education or training activity is not available when the welfare-to-work plan is signed (for example, if the class does not begin for a week or two), the participant shall be assigned to job search or job readiness programs until the activity is available.<sup>175</sup> The participant does not have to accept a job that she finds during this job search, if it would interfere with her approved education or training activity once it begins.<sup>176</sup>

### **6. 18 or 24 Month Time Limit on Welfare-to-Work Activities is Repealed.**

Before December 1, 2004, participants had a maximum of 24 months to complete "work activities" other than employment or community service.<sup>177</sup> CalWORKs participants now can engage in any allowable welfare-to-work activities, subject to the new core requirements

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<sup>170</sup> MPP § 42-711.642(a).

<sup>171</sup> WIC § 11325.22(b)(4); MPP § 42-711.643.

<sup>172</sup> WIC § 11325.22(b)(4); MPP § 42-711.633.

<sup>173</sup> WIC § 11327.4; MPP § 42-711.8.

<sup>174</sup> MPP § 42-711.811.

<sup>175</sup> WIC § 11325.6; MPP § 42-711.648.

<sup>176</sup> MPP § 42-721.316.

<sup>177</sup> Former WIC § 11454(a), *amended by* Stat. 2004, c. 229 (S.B. 1104), § 32.

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discussed below, for their entire 60 months of eligibility on aid.<sup>178</sup> Advocates report that some counties are taking a piece-meal approach to plans, and are creating short term assignments, followed by job search, then reassigning to another activity. Recipients should challenge this, if such an approach or the specific assignments are not consistent with the assessment and will not provide skills or training necessary to transition from welfare to work.

### **7. How Many Hours of Participation in CalWORKs Activities Are Required?**

Nonexempt single parents must participate in work activities at least 32 hours per week.<sup>179</sup> Two-parent families that receive aid based on unemployment of one parent must participate for at least 35 hours per week, which may be shared by both parents if at least one participates for 20 hours or more.<sup>180</sup> Some counties appear to be requiring both parents in two-parent families to participate, which is illegal.<sup>181</sup> Of the 32 or 35 hours, 20 must be in core work activities.<sup>182</sup>

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<sup>178</sup> WIC § 11454(a); MPP § 42-301.1. Participants in Self Initiated Programs (SIPs) are not subject to the new core requirements. WIC § 11320.1(c); MPP § 42-716.2; ACL 04-41 at 5.

<sup>179</sup> WIC § 11322.8(a); MPP § 42-711.411. Exempt volunteers (see Section B.1 in this chapter) do not need to participate for the full number of required hours. MPP § 42-711.412.

<sup>180</sup> WIC § 11322.8(b); MPP § 42-711.421(a). If the family receives federally funded child care, and no adult in the house is disabled or caring for a severely disabled child, the parents must participate for a combined total of 55 hours per week. MPP § 42-711.422. However, California has created a separate state program for two-parent families and chosen to use state funds to pay for child care to avoid the higher federal participation requirement. ACL 99-54 at 2, 5. Thus, two-parent families are required to participate for a maximum of 35 hours. WIC § 11322.8(b); MPP § 42-711.421(a). The program has no other effect on the eligibility or participation requirements for two-parent families. ACL 99-54 at 3.

<sup>181</sup> MPP § 42-712.5. Call Western Center if the county is doing this. Note also that ACL 99-111 specifies at question 7 that one parent may choose to do all 35 hours. The regulations and ACLs provide that the second parent is “excused” from participation. Also, most counties take the position that self-initiated program (SIP) participants in two-parent families must *each* do 32 hours per week. See Section A.10 below for more on SIPs. Thus, while other two-parent families do 35 hours per week, SIP families must do 64 hours. The SIP participants

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If a participant's approved activities do not amount to 32 hours, the county may assign her to community service to make up the difference.<sup>183</sup> If the participant disagrees with the county's suggested assignment, she can request a third-party assessment.<sup>184</sup>

The required number of participation hours and other program requirements can be waived for past or present domestic abuse survivors, if the participation requirement would be detrimental to or unfairly penalize the participant or her family.<sup>185</sup> For example, a domestic abuse survivor might participate in welfare-to-work activities for 20 hours per week and get a waiver of the remaining hours so she can spend that time recovering from the abuse. Participants receiving reduced hours as a domestic abuse service should also request a waiver of the 60-month time limit.<sup>186</sup>

Finally, CalWORKs participants with disabilities who are not (or do not choose to be) exempt from welfare-to-work activities should request to participate less than 32 hours per week,

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in this situation should request a hearing. Advocates should contact Western Center for more information.

<sup>182</sup> WIC § 11322.8(c); MPP §42-711.421(a). See Section A.8 in this chapter for more on core work activities.

<sup>183</sup> WIC § 11322.9(a)(1); MPP § 42-701.2(c).

<sup>184</sup> WIC § 11325.4(c)(1); MPP §42-711.556. See Section A.3 in this chapter.

<sup>185</sup> WIC §11320.3(f)(2); MPP § 42-713.221(a)(1). Counties must have written criteria for granting waivers and must reevaluate those criteria "periodically." MPP § 42-715.52; *see also* MPP § 11-501.3 (requiring written standards for county discretionary areas); ACL 00-08 at 3 (listing domestic violence waivers among areas where written criteria required). However, domestic abuse waiver cannot waive deprivation and financial eligibility requirements. MPP § 42-715.511. Deprivation is discussed in Chapter II of this manual. Chapter III covers financial eligibility.

<sup>186</sup> Participants with domestic abuse experience, who have reached their 60-month time limit, may qualify for a waiver to receive aid beyond 60 months. See Chapter II for more on the 60-month time limit.

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as an accommodation for the disabilities” if necessary.<sup>187</sup> The participants with disabilities, however, should request a time limit exemption to stop their 60-month clocks.<sup>188</sup>

**a. What happens during holidays or other breaks?**

Participants are not required to make up hours that fall on holidays, nor can counties assign more than the required hours as a cushion against absences or participation problems.<sup>189</sup> Counties also cannot require participants to make up hours that a participant misses for good cause (see Section C in this chapter).<sup>190</sup> During a holiday period or break of less than one week when the employer, school, provider, or work activity site is closed, the participant is credited with participating and need not make up the hours.<sup>191</sup> However, due to the pressure of having to meet the federal work participation requirement (see Section A.11 below), the state now encourages counties to provide temporary bridging activities to participants during breaks of one week or less.<sup>192</sup> During a break of longer than one week (such as for education programs when school is closed in December and January or in the summer), participants must participate in other welfare-to-work activities.

These activities during breaks, regardless of the length of the breaks, must be consistent with the participants’ assessment and must be listed in the welfare-to-work plan.<sup>193</sup> The counties

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<sup>187</sup> Contact Jodie Berger, Legal Services of Northern California at (707) 643-0054 X 302 for assistance with disability-related welfare-to-work issues.

<sup>188</sup> Participants with disabilities, who have reached their 60-month time limits, may also qualify for extension to get aid beyond 60 months. See Chapter II for more on the 60-month time limit.

<sup>189</sup> See ACL 99-65. Counties that improperly require participants to do more than the required 32 or 35 hours must give the participants the opportunity to reduce participation to the required level.

<sup>190</sup> ACL 99-65 at 2.

<sup>191</sup> ACL 99-65 at 2.

<sup>192</sup> ACL 08-50 at 1.

<sup>193</sup> ACL 99-65 at 2, ACL 08-50 at 2.

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must give the participants reasonable advance notice of these activities.<sup>194</sup> Child care and other supportive services must be provided during these break activities just as for any other welfare-to-work activity.<sup>195</sup> The counties cannot sanction the participants for failure to comply if they do not give participants sufficient notice or supportive services necessary to participate.<sup>196</sup>

In some counties, students and community colleges have worked together to come up with creative ideas for using activities during school breaks. These have included parenting classes, special parent/child group activities, internships at the campus clinics, offices, or libraries, exam review sessions, and presentations on subjects such as students' legal rights.<sup>197</sup> Students can also find their own community service assignments to do during school breaks. The counties cannot reject the students' initiated community service assignments if the assignments are consistent with the students' welfare-to-work plans.<sup>198</sup>

**8. The Core and Non-Core Work Requirements.**

In addition to the 32-hour welfare-to-work requirement, non-exempt adult participants must also meet the core and non-core work requirements.<sup>199</sup> SIPs are not subject to this core work requirement.<sup>200</sup>

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<sup>194</sup> ACL 99-65 at 2, ACL 08-50 at 2.

<sup>195</sup> ACL 99-65 at 2, ACL 08-50 at 2.

<sup>196</sup> ACL 99-65 at 2, ACL 08-50 at 2.

<sup>197</sup> Two CalWORKs student support groups can provide information on this and other issues of interest to students. Contact LIFETIME in Oakland (510) 452-5192 or SPIN in San Diego (619) 285-9997 for more information.

<sup>198</sup> ACL 99-111, #5.

<sup>199</sup> WIC § 11320.1(c); MPP §42-716.21; ACL 04-41 at 4.

<sup>200</sup> WIC §11320.1(c); MPP § 42-716.2; ACL 04-41 at 5. See Section A.10 below for more information on SIPs.

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**a. Core Work Activities.**

Of the 32 (or 35 hours for 2-parent families) participation hours, at least 20 hours must be in “core” work activities.<sup>201</sup> This section describes the CalWORKs rules for the core work requirements, which are different from the federal requirements for core activities that count toward the federal participation rate.<sup>202</sup> Core work activities are:<sup>203</sup>

- unsubsidized employment
- subsidized private and public sector employment
- work experience
- on-the-job training
- grant-based on-the-job training
- supported work or transitional employment
- work-study
- self-employment
- community service
- vocational education and training *for 12 months*
- job search and job readiness assistance.

**EXAMPLE**

Julie is a single parent. She goes to her college classes 12 hours per week and works at a bookstore 20 hours per week. Julie’s classes are not core, but her 20 hours of work are core. She is meeting her 20-hour core requirement.

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<sup>201</sup> WIC § 11320.1(c); MPP § 42-701.1(c); ACL 04-41 at 4.

<sup>202</sup> See Section A.11 below for a discussion on federal participation requirements and Appendix A for TANF materials.

<sup>203</sup> WIC § 11322.8(a), (c); MPP § 42-716.31(a)-(j), (m)-(n); ACL 04-41 at 4-5.

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**i. Vocational Education.**

Vocational education counts as a core activity for up to 12 months.<sup>204</sup> Participation in vocational education beyond 12 months can continue, but the time *must* be allocated to non-core hours.<sup>205</sup> If a student participant meets the 20-hour core requirement through another activity, the county should not use up the 12-month time limit to count vocational education as a core activity.<sup>206</sup>

**EXAMPLE**

Julie has 12 hours of vocational educational classes per week and 20 hours of work study. Although all her hours are core, since she meets the 20-hour core requirement with work study, the county should treat her 12 hours of classes as education related to employment so that she does not use up her 12-month limit on vocational education counting as core. If Julie's work hours later drop below 20, then she can use her classes as vocational education to help her meet the 20-hour core requirement, and she will start using her 12-month limit.

Months of participation in vocational education pursuant to a welfare-to-work plan developed before December 1, 2004, do not count against this 12-month time limit.<sup>207</sup> For these participants, the 12-month period does not start counting until the date the participant signs a new welfare-to-work plan that meets the new core work requirements.<sup>208</sup>

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<sup>204</sup> WIC § 11322.8(c); MPP §§ 42-701.2(c)(4), 42-716.211; ACL 04-41 at 5.

<sup>205</sup> MPP §§ 42-701.2(n)(1), 42-716.242; ACL 04-41 at 5.

<sup>206</sup> The county should not count an educational activity as vocational education when it may be considered satisfactory attendance at secondary school or other countable federal activity when the participant has met the core requirement. This will help the participant not to use up her 12-month limit on vocational education counting as core. ACL 08-07 at 3.

<sup>207</sup> MPP § 42-716.211(a); ACL 04-41 at 5.

<sup>208</sup> MPP § 42-716.211(a); ACL 04-41 at 5.

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**b. Non-Core Work Activities.**

While 20 hours must be in core activities, the remaining 12 of the 32 hours (or 15 of the 35 hours for two-parent families) can be in non-core activities, which are.<sup>209</sup>

- adult basic education
- job skills training directly related to employment
- satisfactory progress in a secondary school or in a course of study leading to a General Education Development (GED) certificate
- education or training directly related to employment
- mental health, substance abuse, or domestic violence services.
- vocational education *beyond* 12 months.
- other activities necessary for employment

If appropriate based on the participant’s individualized assessment, participation in these “non-core” activities, including training and education, can count toward the 32-hour participation requirement for up to 60 months.<sup>210</sup> If certain criteria are met, some of these non-core activities may be “blended” to count towards the core participation requirement.<sup>211</sup>

**c. Non-Core Activities Can Be “Blended” (or Converted)<sup>212</sup> to Count As Core.**

In some cases, participants may not be able to do all the non-core activities they need in 12 hours (or 15 hours for two-parent families). In these situations, some of the non-core activities may be blended to count toward the 20-hour core work requirement. Non-core activities may be blended to count as core, if they cannot be done within the 12 hours (or 15

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<sup>209</sup> WIC §§ 11322.6, 11322.8(c); MPP §§ 42-716.22, 42-716.31.

<sup>210</sup> WIC § 11454(a); MPP § 42-716.11; ACL 04-41 at 7.

<sup>211</sup> WIC § 11322.8(d), (e); MPP § 42-716.23; ACL 04-41 at 6-7.

<sup>212</sup> At the drafting of the state regulations, DSS has decided to use “blend” and “blendable,” instead of “convert” or “convertible,” which were the terms used in ACL-04-41.

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hours for two-parent families) *and* if they meet certain conditions as will be discussed below.<sup>213</sup> The state calls this blending “exceptions” to the core hourly requirements.<sup>214</sup>

It may be helpful to group different non-core activities into “blendable” and “non-blendable” categories. The blendable non-core activities can count toward the 20-hour core work requirement if the criteria are met. The “non-blendable” non-core activities can never count as core.

**i. Mental health, substance abuse, and domestic abuse services.**

Participation hours in mental health, substance abuse, and domestic abuse services can be blended to count toward the 20-hour core work requirement if these activities cannot be done within 12 hours *and* if the county has determined that the participant needs these activities in order to participate in other core activities.<sup>215</sup> However, if the participant has significant needs for these services, the individual should request to be exempt from the welfare-to-work requirements and the 60-month time limit.<sup>216</sup>

**ii. Specified educational activities.**

Participation hours in classroom, laboratory, and internship activities in adult basic education (ABE), job skills training, education directly related to employment programs, secondary education, and education leading to a General Educational Development (GED) certificate can also be blended to count toward the 20-hour core work requirement. These hours will blend to count as core hours if they cannot be done within 12 hours *and* if they meet the following criteria:<sup>217</sup>

1. The county has determined that the program leads to a self-supporting job;

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<sup>213</sup> WIC § 11322.8(d), (e); MPP §§ 42-716.23 - .24; ACL 04-41 at 5-7.

<sup>214</sup> ACL 04-41 at 5.

<sup>215</sup> WIC § 11322.8(d); MPP § 42-716.23; ACL 04-41 at 5-6.

<sup>216</sup> See Section B of this chapter for a list of exemptions and Chapter II for a discussion on the 60-month time limit.

<sup>217</sup> WIC § 11322.8(e); MPP § 42-716.23; ACL 04-41 at 5-6.

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2. The participant is making satisfactory progress in the program;
3. The participant does not already have a bachelor degree unless she is pursuing a California teaching credential;
4. The program is on the list that the county determines will lead to employment.<sup>218</sup>

These blending criteria are similar to the SIP criteria. See Section A.10 for a more detailed discussion about each of the criteria.

Even though classes, labs, and internships in 2-year or 4-year degree programs may be blended to count toward the 20-hour core work requirement, counties may be reluctant to do this since the new federal rules do not allow blending of these activities to count toward the federal 20-hour core requirement.<sup>219</sup> However, counties must follow the state CalWORKs laws and must allow blending of these activities to count as core if the participants meet the blending criteria.<sup>220</sup> If the county refuses to blend and count these hours as core, the participants should request a state fair hearing. See Chapter XIII for a discussion on state fair hearing process.

**EXAMPLE**

Heather is a single parent. She has work study, a core activity, 12 hours per week and has 16 hours of classes at a community college. Her education is a non-core activity. She cannot do all of her 16 hours of classes in 12 hours. 4 hours of her classes can be blended to count toward the 20-hour core requirement if the classes meet the four criteria. 12 hours of work study + 4 “blended” hours of classes = 16 core hours. Heather needs to do 4 more hours of other core activities.

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<sup>218</sup> If the program is not on the county’s list, the county must give the participant written information on how to show that the program will lead to employment. MPP § 42-716.232(d)(1); ACL 04-41 at 6.

<sup>219</sup> See Final TANF Rule, 73 Fed. Reg. 6784 (Feb. 5, 2008) (to be codified at 45 CFR § 261.2(e)). See *Summary of Final TANF Rules* by Center on Budget and Policy Priorities in Appendix A for a discussion on how education and training count toward federal work participation rate.

<sup>220</sup> ACL 04-41 at 5-6.

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**iii. Study Hours.**

Under the current CalWORKs rule, study hours may be blended to count as core hours, if they give the participant educational credits or units that count toward the completion of her education program,<sup>221</sup> *and* they cannot be accomplished in 12 hours *and* if the program for which study time is granted meets the four blending criteria for educational activities above.<sup>222</sup>

Counties can count non-credit study time, whether supervised or non-supervised, as a non-core welfare-to-work activity.<sup>223</sup> However, the non-credit study time cannot be blended to count as core hours. Check with the county to see if study time counts.

The Final TANF Reauthorization Rule allows states to count supervised study time plus up to one hour of unsupervised study time for each hour of class time.<sup>224</sup> However, the total study time counted for participation cannot exceed the hours required for or advised by the educational program.<sup>225</sup> California has not adopted this recent change as of this writing, but it is likely that the state soon will adopt this more generous approach to counting study time.<sup>226</sup>

**iv. Limitations to blending non-core activities to core.**

A participant usually can add up her participation hours in two or more blendable non-core activities to meet the requirement that non-core activities cannot be done within 12 hours (or 15 hours for two-parent families).

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<sup>221</sup> WIC § 11322.8(e); ACL 04-41 at 6.

<sup>222</sup> WIC § 11322.8(e); ACL 04-41 at 6.

<sup>223</sup> MPP § 42-716.262; ACL 04-41 at 6.

<sup>224</sup> 45 CFR § 261.60; Final TANF Rule, 73 Fed. Reg. 6812 (Feb. 5, 2008). The Final TANF Reauthorization Rule is available at [http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/tanf\\_final\\_rule.htm](http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/tanf_final_rule.htm).

<sup>225</sup> 45 CFR § 261.60; 73 Fed. Reg. 6812.

<sup>226</sup> Contact Mike Herald at Western Center, [mherald@wclp.org](mailto:mherald@wclp.org), for more information and update on California's upcoming changes.

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**EXAMPLE**

Susan needs 5 hours of domestic violence services and 10 hours of her child development classes. Susan cannot do both activities, which are non-core and add up to 15 hours, in 12 hours. If either activity meets the criteria to blend, 3 of the 15 hours can blend to count towards her 20-hour core work requirement. She needs to do 17 hours of other core activities.

Having other non-blendable non-core activities (i.e. participating in a family reunification program or at a child's school) necessary for the student to participate in other welfare-to-work activities does not prohibit the student from counting her blendable non-core activities (mental health, substance abuse, and domestic violence services, and education) as core.<sup>227</sup> Have the participant ask for a hearing if the county does not allow blending in this situation.

If a participant has non-blendable vocational education after 12 months, she will not be able to blend any non-core activity to count toward the 20-hour core work requirement.<sup>228</sup> This limitation makes it difficult for vocational education students. Some counties may be willing to overlook this limitation or to recharacterize vocational education after 12 months as education or job skills training related to employment, which is a blendable non-core activity. Student participants and their advocates should check with the county workers and supervisors.

**EXAMPLE**

Nicole has already used up her 12 months during which vocational education can count as a core activity. She needs 4 hours of mental health services and 10 hours of vocational education, adding up to 14 hours of non-core activities. Since vocational education beyond 12 months is not blendable and prevents other non-core hours from counting as core, Nicole cannot blend any of her mental health services to count as core hours. Nicole can do 12 of the 14 hours as non-core, and volunteer to do the remaining 2 hours on her own time. Nicole will need to do 20 hours of core work activities.

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<sup>227</sup> WIC § 11322.8(f); MPP § 42-716.241.

<sup>228</sup> WIC § 11322.8(f); MPP § 42-716.242.

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**9. Community Service.**

Before December 1, 2004, participants, who had reached the 18- to 24-month time limit on welfare-to-work activities, had to do community service, if they did not work 32 hours per week (35 hours for two-parent families).<sup>229</sup> As of December 1, 2004, community service is an allowable core welfare-to-work activity, but is no longer mandatory.<sup>230</sup>

As with all welfare-to-work activities, community service can only be part of a participant's welfare-to-work plan, if based on her individualized assessment, it is an appropriate activity that will help her develop or enhance her job skills.<sup>231</sup> The county must review the participant's community service activity as necessary to determine her progress and to ensure that the assignment continues to be consistent with her welfare-to-work plan and employment goals.<sup>232</sup> If the community service activity is no longer appropriate, the county must revise the participant's welfare-to-work plan.<sup>233</sup>

When assigning participants to unpaid community service, the county must use the Simplified Food Stamp Program formula to determine the maximum number of hours for which they may make participants participate.<sup>234</sup> Under this formula, the total CalWORKs cash grant and Food Stamps grant for the Assistance Unit is divided by the state or federal minimum wage, whichever is greater (currently, the state minimum wage is \$8<sup>235</sup> and is higher than the federal minimum wage of \$5.85). This amount is the maximum monthly hours that the county can

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<sup>229</sup> The 18- to 24-month time limit and the mandatory assignment to community service were eliminated effective December 1, 2004. Former WIC § 11454(a), *amended by* Stat. 2004, c. 229 (S.B. 1104), § 32; *see also* ACL 04-41 at 7.

<sup>230</sup> WIC § 11322.8(a), (c); MPP § 42-716.31(j); ACL 04-41 at 4-5. Section A.8 in this chapter discusses core and non-core activities.

<sup>231</sup> WIC § 11325.4(a); MPP §§ 42-711.553, 42-716.31(j)(1).

<sup>232</sup> MPP § 42-716.31(j)(1).

<sup>233</sup> MPP § 42-716.31(j)(1).

<sup>234</sup> MPP § 42-716.31(j)(2); ACL 04-41 at 7-8.

<sup>235</sup> ACIN I-08-08.

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require the participant to do in unpaid community service.<sup>236</sup> This number is divided by 4.33 to get the maximum weekly unpaid community service hours that the county can require the participant to do.<sup>237</sup> The participant would then be assigned to other activities to meet the work requirements of 32 hours for single parents and 35 hours for two-parent families.<sup>238</sup> Note that the other assigned activities must be appropriate for the participant based on her assessment.<sup>239</sup>

**10. What About People In Self-Initiated Education or Training Programs?<sup>240</sup>**

Many CalWORKs participants go out and enroll in education or training programs on their own without any help from the welfare department. Typically these programs are at a community college, adult school, vocational school, or Job Training Partnership Act (JTPA) provider, but they can also be at a four-year college or university. These programs that participants find on their own are called “Self-Initiated Programs” or SIPs.<sup>241</sup> Some SIPs are approvable as welfare-to-work activities and may become part of a participant’s welfare-to-work plan. Others are not approvable, but participants may be allowed to continue for a limited time, and then change to an approvable program. In all cases, the participant must be enrolled in the SIP *before* the CalWORKs appraisal for the SIP to be approved as a welfare-to-work activity.<sup>242</sup>

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<sup>236</sup> MPP § 42-716.31(j)(2)(A); ACIN I-08-08.

<sup>237</sup> MPP § 42-716.31(j)(3); ACL 04-41 at 7-8.

<sup>238</sup> WIC 11322.9 (b)(2); MPP 42-711.4; ACL 02-07 at 4-5.

<sup>239</sup> See Section A.3 in this chapter regarding assessments and appropriate assignment of activities.

<sup>240</sup> WIC § 11325.23; MPP § 42-711.54, ACL 99-32; see also the Western Center’s mini-manual, *Students and CalWORKs: A guide to Educational Opportunities in the CalWORKs Program*.

<sup>241</sup> WIC § 11325.23; MPP § 42-711.54.

<sup>242</sup> WIC § 11325.23(a)(1); MPP §42-711.541.

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A participant in an approved SIP does not have to meet the 20-hour core work requirement and can participate in her SIP until it is complete, or until she reaches her 60-month time limit.<sup>243</sup>

**a. Which SIPs Count Toward Welfare-to-Work Requirements?**

There are only four SIP approval criteria. A SIP must be approved if:

- the participant was enrolled on the date of the CalWORKs appraisal, *and*
- the program leads to an undergraduate degree or certificate or California teaching credential, *and*
- the program “leads to employment,” *and*
- the participant is making satisfactory progress in the program

These are the *only* SIP approval criteria, and a program that meets them must be approved.<sup>244</sup> A county cannot deny a SIP because it is a four-year college program since there is no limit on the length of the program to be approved.<sup>245</sup> See below for information on continuing in an unapprovable SIP. A participant with past or present domestic abuse can request a waiver of any of the SIP requirements, if her domestic abuse issues prevent her from meeting the requirements.<sup>246</sup>

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<sup>243</sup> WIC §§11320.1(c), 11454(a); MPP §§ 42-711.544, 42-716.11, 42-716.2; ACL 04-41 at 5, 7-8.

<sup>244</sup> ACL 99-32 at 1. The ACL includes numerous examples of unlawful additional county SIP approval criteria, such as requirements that the participant be able to complete the SIP in some specified period of time, that she has not already had a SIP under the old GAIN program, that she already has job skills, that she is not attending full-time, etc.

<sup>245</sup> ACL 99-32, # 5.

<sup>246</sup> WIC § 11495.1(a)(3); MPP § 42-715.51; ACIN I-02-06, Attach. at 4, #15.

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**i. When must a SIP participant be “enrolled”?**

The law says that for a SIP to be approved, the participant must be enrolled at the time she is required to participate in welfare-to-work program.<sup>247</sup> The regulations interpret this to mean that the participant must be enrolled in school at the time of the CalWORKs appraisal.<sup>248</sup> If the participant skips appraisal without good cause, the date she would have to be enrolled is the date of the scheduled appraisal.<sup>249</sup> Note that this means a participant who postpones appraisal for good cause or *with* the county’s permission gains more time to enroll in school since the rescheduled appraisal date is the date by which she must be enrolled.

**EXAMPLE**

Yolanda is a new applicant for CalWORKs. She plans to sign up for a firefighter training course. She gets a notice to come to appraisal on September 3<sup>rd</sup>. If she has not enrolled in the firefighter course by September 3, it cannot be approved as a SIP.<sup>250</sup> However, if Yolanda calls the county and the worker postpones the appraisal to September 10<sup>th</sup> because she has no transportation to the appointment, she can enroll any time before September 10<sup>th</sup> and meets the SIP enrollment requirement.

Note that the enrollment requirement does not mean that the participant must actually be attending classes at the time of the appraisal. If she has applied for and been accepted into a qualifying program, she is enrolled, even if classes will not begin until the following semester.<sup>251</sup> If there is a dispute, request a hearing and argue that the education provider’s standard for enrollment status should control.

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<sup>247</sup> WIC § 11325.23(a)(1); MPP § 42-711.541.

<sup>248</sup> MPP § 42-711.547; ACL 99-32, # 1.

<sup>249</sup> MPP § 42-711.547(a)(2); ACL 99-31, # 1.

<sup>250</sup> Note that even if a program can’t be approved as a SIP, the participant can still try to get it approved as a welfare-to-work activity through the normal assessment process, using a third-party assessment if necessary. See Section A.3 in this chapter on third-party assessments.

<sup>251</sup> MPP § 42-711.549, ACL 99-32, # 2.

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**ii. The program must lead to an undergraduate degree or certificate or teaching credential.**

Because a SIP must lead to an undergraduate degree or certificate or to a teaching credential,<sup>252</sup> General Education Development certificates (GEDs), high school diplomas, and English as a Second Language (ESL) courses, standing alone, usually cannot be SIPs. However, these courses may be approvable if combined with a degree or certificate program.

**iii. When does a program “lead to employment”?**<sup>253</sup>

State law provides two ways for a participant to show that her program leads to employment. One way is for it to appear on the list that the county and local education agencies and providers must create and update annually.<sup>254</sup> This list should be available from county workers or community colleges, and must be provided to participants and the public upon request.<sup>255</sup> If a program is on the county’s list, it is automatically considered to lead to employment.

If a program is not on the county’s list, the county must still give the participant a chance to show that the program will lead to employment.<sup>256</sup> Every county must have written criteria for approving programs not on the county list.<sup>257</sup> Before denying a SIP because it is not on the

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<sup>252</sup> WIC § 11325.23(a)(1), (2); MPP § 42-711.54. Participants, who already have four-year college degrees, cannot be SIPs unless they are seeking a teaching credential. WIC § 11325.23(a)(2); MPP § 42-711.542. Participants with past or present domestic abuse issues, who have bachelor degrees, should ask for a domestic abuse waiver of this limitation. WIC § 11495.1(a)(3); MPP § 42-715.51; ACIN I-02-06, Attach. at 4, #15.

<sup>253</sup> WIC § 11325.23(a)(1); MPP § 42-711.541(c); ACL 99-32 at 1.

<sup>254</sup> WIC § 11325.23(a)(3)(A); MPP § 42-711.543; MPP § 42-711.543(a).

<sup>255</sup> MPP § 42-711.543; ACL 99-32, # 3. Contact Western Center if the county refuses to provide a copy, claims not to have a list, or refuses to update it annually. Likewise, call us if the county’s list is unreasonably narrow or the county refuses to include programs that the college believes will lead to employment.

<sup>256</sup> WIC § 11325.23(a)(3)(B); MPP § 42-711.543(b).

<sup>257</sup> MPP §§ 42-711.543(b)(1)(A), 11-501.3; ACL 99-32, #4, ACL 00-08.

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list, the county must provide the participant with written information that explains the procedures for approving unlisted programs, and must allow a reasonable amount of time for the participant to provide the county with proof that the program will lead to employment.<sup>258</sup> A college placement office or counselor may be able to help the participant gather the information that will demonstrate that a program leads to employment. Job announcements, want ads, newspaper articles, job availability statistics, and statements from employers generally can be used to show that a program will lead to work.

Note that the school and educational program must also be in compliance with all state laws.<sup>259</sup> A program offered by a private postsecondary educational provider must be either approved or exempted by the appropriate state regulatory agency.<sup>260</sup>

**iv. The student must be making satisfactory progress in the program.**<sup>261</sup>

The fourth and final criterion for SIP approval is that the participant is making satisfactory progress in the education program. State law and regulations do not define satisfactory progress. However, counties must have written definitions of “satisfactory progress.”<sup>262</sup> Many advocates believe counties should leave the determination of satisfactory progress to the educational institutions. Most institutions have a definition of satisfactory progress or good standing. Some counties have tried to deny a participant SIP status if she does not maintain a certain grade point average or got a single poor grade, claiming that this is not satisfactory progress. If this happens, and the participant is within the institution’s definition of good standing (for example, if she is not on academic probation), use the state hearing process to contest the denial or termination of the SIP.

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<sup>258</sup> WIC § 11325.23(a)(3)(B); MPP § 42-711.543 (b)(1)(A), ACL 99-32, #4.

<sup>259</sup> WIC § 11325.23(f); MPP § 42-711.543(c).

<sup>260</sup> WIC § 11325.23(f); MPP §42-711.543(c).

<sup>261</sup> WIC § 11325.23(a); MPP § 42-711.541(b); ACL 99-32 at 1.

<sup>262</sup> MPP § 11-501-3; ACL 00-08 at 3.

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**b. What if a SIP is not approved?**

When a SIP is not approved, it may be because the participant has not met one of the rules or the county may have made a mistake. The county must provide the reason for denial *in writing*.<sup>263</sup> Participants, who believe the county has made a mistake in not approving a SIP or who disagree that the SIP does not meet the four approval criteria, should always request state fair hearings. It is sometimes easier to win a state hearing than convince a county that it has made a mistake. Also, the Administrative Law Judges, who hear disputes through the hearing system, are often more inclined than the county to use common sense to help participants.

If the SIP cannot be approved, the participant need not drop out of school. Under state law, as long as she was enrolled and making satisfactory progress in her SIP at the time of her appraisal, she must be allowed the option to change to a SIP that is approvable.<sup>264</sup> The participant can stay in her original program until the end of the quarter or semester before changing programs.<sup>265</sup> The county must pay for supportive services during the time a participant finishes the quarter or semester in an unapprovable program.<sup>266</sup>

**c. What happens after a SIP is approved?**

If the SIP meets all requirements, it will be included in the participant's welfare-to-work plan.<sup>267</sup> The plan will also specify that if a SIP participant stops attending the SIP without good

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<sup>263</sup> MPP § 42-711.524; ACL 99-32, #11.

<sup>264</sup> WIC § 11325.23(e); MPP § 42-711.548(a)(1).

<sup>265</sup> WIC § 11325.23(e); MPP § 42-711.547; ACL 99-32, #17.

<sup>266</sup> WIC § 11325.23(e); MPP § 42-711.547; ACL 99-32, #18.

<sup>267</sup> WIC § 11325.23(b), MPP §42-711.545. Since SIPs have to do 32 hours per week of welfare-to-work activities, many SIPs' welfare-to-work plans will include other activities in addition to classroom, lab and internship hours. If the SIP participant's activities do not add up to 32 hours, the county will assess her and develop her welfare-to-work plan based on that assessment. WIC § 11325.23(a)(3)(c); MPP § 42-711.544. Remember that if the participant and the county cannot agree on the welfare-to-work plan, a third-party assessment *must* be performed. WIC § 11325.4(c)(1); MPP § 42-711.556. Also, participants have good cause for refusing any activity that interferes with her SIP. WIC §11320.31(f), MPP §42-721.316.

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cause or fails to make satisfactory progress, she will be required to participate in the normal CalWORKs sequence of job search followed by a welfare-to-work activity from the county's list.<sup>268</sup>

If a participant has to drop out or take a leave from her SIP for good cause,<sup>269</sup> she may resume participation in the same program, if she has been in good standing before taking her leave and the SIP continues to meet the county's approval criteria.<sup>270</sup>

Although participants in approved SIPs do not have to meet the 20-hour core work requirement,<sup>271</sup> they must do 32 hours of "welfare-to-work activities" each week.<sup>272</sup> All of the 32 hours of "work activities" can be non-core.<sup>273</sup> Every hour spent in classes, labs, internships, supervised study time, community service, work-study, or anything else the school requires counts towards the 32 hours.<sup>274</sup>

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<sup>268</sup> WIC § 11325.23(b); MPP §42-711.545(a).

<sup>269</sup> See Section C in this chapter on good cause.

<sup>270</sup> WIC § 11325.23(c); MPP § 42-711.546.

<sup>271</sup> WIC § 11320.1(c); MPP § 42-716.2; ACL 04-41 at 5.

<sup>272</sup> WIC § 11325.23(a)(3)(C); MPP § 42-711.544. Note that the requirements for families with both parents in the home are a bit unclear. In general, these families must do 35 hours per week of work activities, which may be split between the two so long as one does 20 hours. WIC § 11322.8(b); MPP § 42-711.421. However, many counties take the position that the specific SIP requirement of 32 hours per week applies to *each* parent, if both are in SIPs. Thus, while other two-adult families do 35 hours of work activities per week, SIP families must do 64 hours. It may be worth challenging this at a state hearing. Contact Western Center for more information. The second adult can also ask to do the school program as a volunteer for fewer hours.

<sup>273</sup> See Section A.8 in this chapter for discussion on the 20-hour core work requirement for non-SIPs.

<sup>274</sup> WIC § 11325.23(a)(3)(C); MPP § 42-711.544; ACL 99-32, #13, #14, #15. All classroom hours that count towards the completion of the degree or certificate program, including those in electives or remedial classes, count towards the 32-hour requirement.

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If the classroom, lab, internship, work-study, special tutorial and other countable hours add up to 32 hours, they will all be included in the welfare-to-work plan and no assessment of the participant is necessary.<sup>275</sup>

### **11. TANF Reauthorization Changes.**

In 2006, Congress reauthorized TANF through the Deficit Reduction Act of 2005 (DRA).<sup>276</sup> The DRA took back some of the flexibility that the original TANF had given to the states in designing their welfare programs. In particular, the new law broadens the categories of “work eligible” adults that are subject to the federal work participation requirements, changes the baseline for caseload reduction credit from Fiscal Year 1995 to Fiscal Year 2005, directs the federal Health and Human Services to define work activities that count toward the federal work participation requirements, and increases the documentation requirement to verify recipients’ work participation.<sup>277</sup> States that do not meet these federal requirements will face substantial monetary penalties.<sup>278</sup>

California faces significant challenges in meeting the 50% work participation requirement for all families and 90% for two-parent families, even with caseload reduction

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<sup>275</sup> MPP § 42-711.557. “Assessment” is the initial step in developing a welfare-to-work plan and assigning activities for participants. MPP § 42-711.55.

<sup>276</sup> Pub. L. No. 109-171, 120 Stat. 135, 138 (codified as amended at 42 USC §§ 603 *et seq.* (2006)). See Appendix A for materials on the 2006 TANF Reauthorization.

<sup>277</sup> Pub. L. No. 109-171, 120 Stat. 136 (codified as amended at 42 USC § 607 (2006)); TANF Interim Final Rule, 71 Fed. Reg. 37453, 37455 (June 29, 2006), <http://www.acf.hhs.gov/programs/ofa/law-reg/tfinrule.html>; TANF Final Rule, 73 Fed. Reg. 6771 (Feb. 5, 2008), [http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/tanf\\_final\\_rule.htm](http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/tanf_final_rule.htm). The DRA also include other changes that are beyond the scope of this manual. See Appendix A for analysis of TANF Reauthorization changes.

<sup>278</sup> See Pub. L. No. 109-171, 120 Stat. 135, 137 (codified as amended at 42 USC § 609 (2006)).

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credits.<sup>279</sup> This is because, in addition to the lower adjusted caseload reduction credits based on Fiscal Year 2005 caseload, the federal law now counts toward the work participation rates cases with exempt adults<sup>280</sup> and child-only cases with timed-out and sanctioned adults (sanctioned longer than three months).<sup>281</sup> The federal work participation rate will put tremendous pressure on the state and counties to develop or change participants' welfare-to-work plans to increase the work participation rate.<sup>282</sup> This problem is exacerbated by the fact that CalWORKs allows participants to do several activities that are not federally countable and for non-core activities to count as core<sup>283</sup> when the federal law does not.

While these changes affect the way the state and counties report and count participants toward the federal work participation rate for federal funding purposes, they should not adversely affect CalWORKs participants. The counties must still follow the current CalWORKs laws, including offering participants an adequate range of welfare-to-work activities that will lead to employment and developing welfare-to-work plans based on the participants'

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<sup>279</sup> See 42 USC § 607 (mandatory work requirements and participation rates). Contact Mike Herald at Western Center, [mherald@wclp.org](mailto:mherald@wclp.org) for California's current participation requirements.

<sup>280</sup> Adults needed to care for an ill or disabled household members do not count toward the federal work participation rate, but all other exempt adults do. Interim Final Rule, 71 Fed. Reg. 37475 (June 29, 2006) (codified at 45 CFR § 261.2(n)).

<sup>281</sup> Interim Final Rule, 71 Fed. Reg. 37476 (June 29, 2006) (codified at 45 CFR § 261.2(n)).

<sup>282</sup> Counties must contribute to the federal penalty payments for failure to meet the federal requirements, unless the counties have good cause. WIC § 11454.6; ACL 06-46.

<sup>283</sup> See Section A.8.b above for a discussion of blending non-core activities to count as core. In addition, although California allows participants to participate in mental health and substance abuse treatment as part of their welfare-to-work plans, treatment on its own is not a federally countable activity. Compare 42 USC § 607(d) (defining work activities); TANF Final Rule, 73 Fed. Reg. 6780 (Feb. 5, 2008) and WIC § 11322.6 (defining work activities). Under the federal rule, mental health and substance abuse treatment counts only as part of job search and job readiness assistance, which is limited to six to 12 weeks per year. TANF Final Rule, 73 Fed. Reg. 6780 (Feb. 5, 2008).

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individualized assessments.<sup>284</sup> The state has instructed the counties not to change participants' existing plans, absent the need for more hours, lack of satisfactory progress, changes in participants' circumstances making the current plans inappropriate, changes in the labor market, or changes in the counties' resources.<sup>285</sup>

Whether federally countable or not, CalWORKs rules on allowable education and training have not changed. All participants can participate in education and training until they complete the program or until they have reached their 60-month time limit.<sup>286</sup> Non-SIP participants' education and training can blend to count as core hours if they meet the prescribed criteria.<sup>287</sup> Non-SIP participants can also participate in vocational education as a core activity for 12 months and as a non-core activity thereafter until they complete the program or have reached their 60-month time limit.<sup>288</sup>

### **a. Work Verification Requirements.**

One TANF Reauthorization change that affects the participants directly is the work verification requirement.<sup>289</sup> HHS approved California's revised Work Verification Plan (WVP), which became effective on October 1, 2008.<sup>290</sup> The revised WVP describes how the state and counties will verify the actual hours of participation for welfare-to-work activities. However, DSS has not issued an ACL to implement the revised WVP, but the advocates and counties have had an opportunity to review and comment on a draft ACL.

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<sup>284</sup> ACL 07-03, ACL 08-07 at 2. See Sections A.4 and A.5 above for more on welfare-to-work activities and welfare-to-work plans.

<sup>285</sup> ACL 07-03 at 11.

<sup>286</sup> WIC § 11454(a); MPP §§ 42-711.544, 42-716.11, 42-716.2; ACL 04-41 at 7-8.

<sup>287</sup> See Section A.8.b above for blending non-core activities to count as core.

<sup>288</sup> See Section A.8.c above for more on vocational education.

<sup>289</sup> See 45 CFR §§ 261.60, 261.65; TANF Final Rule, 73 Fed. Reg. 6813 (Feb. 5, 2008).

<sup>290</sup> The revised WVP may be downloaded at <http://www.cdss.ca.gov/cdssweb/entres/pdf/VerificationPlanEffective2008.pdf>.

## ***Chapter VI: Work Requirements, Work-Related Sanctions, and Supportive Services***

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Generally, hours of participation are monitored and verified monthly by information on the QR-7 form and other records in the case file, such as pay stubs, time and attendance records from the service provider or participant.<sup>291</sup> The exception to the monthly monitoring and verifying is the flexibility to project participation hours for unsubsidized employment, subsidized private and public sector employment, and on-the-job training, for three months based on information provided during the QR-7 process.<sup>292</sup> If the information necessary to verify actual hours is not in the case file or the verification documentation is not signed, the county will seek verification from the participants, the service providers, or employers.<sup>293</sup>

There is some concern, however, about verification of hours spent in educational activities.<sup>294</sup> For most educational activities, in addition to the information on the QR-7 form, other records in the case file can include lab and classroom time sheets, attendance records, and report cards.<sup>295</sup> Documentation needed to support all the reported participations must include the participant's name; the name of provider, supervisor, or service provider; the number of hours; and the name and phone number of the person verifying the hours.<sup>296</sup> Documentation for study time must include the participant's name and a time sheet or record of participation hours signed by the individual verifying the activity.<sup>297</sup>

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<sup>291</sup> See WVP at 3, 5, 7; ACL 08-07 at 3. Each allowable welfare-to-work has slightly different verification requirements. As mentioned above, the state has not issued an implementing ACL as of this writing. Please refer to the WVP for more details on work verification requirements.

<sup>292</sup> WVP at 4, 6, 9; ACL 08-07 at 3. Counties will divide the total monthly hours by 4.33 to get the weekly participation hours. If the participant reports a change in work hours mid-quarter, the county will recalculate the average weekly projected hours. WVP at 4, 6, 9.

<sup>293</sup> WVP at 3, 5, 7-8, 11, 13, 15, 17-19.

<sup>294</sup> Stakeholders, including the community colleges, DSS, counties, and advocates are working together to develop an ACIN to assist the colleges, counties, and other service providers in meeting the WVP requirements for student participants.

<sup>295</sup> See WVP at 15, 17, 19, 21.

<sup>296</sup> See WVP at 15, 17, 19, 21.

<sup>297</sup> See WVP at 15-16, 19, 21.

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DSS' draft ACL implementing the revised WVP clarifies the term "signature of the person verifying the hours." At a minimum, the individual (service provider or other responsible party) verifying participation confirms that the student participant is enrolled in an allowable course of study during the period of time for which hours are being reported and that the hours of participation correspond to the days classes are scheduled. Under the existing law, counties cannot require student participants to get their instructors to sign their attendance sheets.<sup>298</sup> Counties also cannot sanction participants for failure to provide verification that meets the federal requirements. For further information about work verification requirements, contact Mike Herald at Western Center, [mherald@wclp.org](mailto:mherald@wclp.org).

### **b. Job Search and Job Readiness Assistance.**

Although the TANF Reauthorization changes on how to count job search and job readiness assistance does not affect CalWORKs participants' ability to do this activity if it is appropriate, there is much confusion on this issue. After receiving several comments, HHS has revised its policy and relaxed the rules on this activity.<sup>299</sup>

While mental health and substance abuse treatment is not one of the 12 federally countable activities,<sup>300</sup> if the need for treatment is documented by a qualified mental health, substance abuse, or medical profession, the treatment may be countable as job readiness assistance.<sup>301</sup>

In limiting job search and job readiness assistance to four consecutive weeks and no more than six weeks (or 12 weeks for states that meet the definition of "needy" states) in the preceding 12-month period, the Interim Final TANF Rule counted any hour of the activity in a week as

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<sup>298</sup> If the county has such a requirement, contact Western Center.

<sup>299</sup> Compare TANF Interim Final Rule, 71 Fed. Reg. 37459-37460, 37475 (June 29, 2006) and TANF Final Rule, 73 Fed. Reg. 6780, 6785-6788 (Feb. 5, 2008) (to be codified at 261.2 (g)).

<sup>300</sup> This does not affect CalWORKs participants' rights to these services if appropriate based on their assessment. ACL 07-03, ACL 08-07 at 2.

<sup>301</sup> TANF Final Rule, 73 Fed. Reg. 6785 (Feb. 5, 2008) (to be codified at 261.2 (g)).

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using up one full week toward the limitation.<sup>302</sup> The Final TANF Rule, however, adopts an hourly equivalent for the six (or 12) week limit, defining a week of participation in this activity as 20 hours for a single parent with a child under age six and 30 hours for all other work-eligible adults.<sup>303</sup> However, the four consecutive week limitation will still be measured on a weekly basis.<sup>304</sup>

### **c. Excused Absences.**

Under the Interim Final Rule, a partial day of excused absence counted as a full day toward the 10-day limit per year and two-day limit per month.<sup>305</sup> The TANF Final Rule, however, allows 80 hours of excused absences in a 12-month period and no more than 16 hours in any given month.<sup>306</sup> As with other TANF Reauthorization changes, the hourly limit on excused absences does not prevent CalWORKs recipients to be excused from work participation on holidays, breaks of less than one week, or on days for which the participants have good cause for nonparticipation.<sup>307</sup>

### **B. Who is Exempt from Welfare-to-Work Requirements?**

Every adult aid participant and some teenage participants<sup>308</sup> must participate in welfare-to-work activities as a condition of eligibility, unless they are exempt.<sup>309</sup>

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<sup>302</sup> TANF Interim Final Rule, 71 Fed. Reg. 37459-37460 (June 29, 2006).

<sup>303</sup> TANF Final Rule, 73 Fed. Reg. 6788-6789 (Feb. 5, 2008) (to be codified at 261.2 (g)).

<sup>304</sup> TANF Final Rule, 73 Fed. Reg. 6789 (Feb. 5, 2008) (to be codified at 261.2 (g)).

<sup>305</sup> TANF Interim Final Rule, 71 Fed. Reg. 37479 (June 29, 2006).

<sup>306</sup> TANF Final Rule, 73 Fed. Reg. 6774, 6809 (Feb. 5, 2008) (to be codified at 261.60).

<sup>307</sup> See Section A.7.a in this chapter for a discussion on participation requirement during holidays and breaks and Section C in this chapter on good cause.

<sup>308</sup> Teenagers, age 16 and 17, who graduate early and who are planning to enroll in post-secondary school are exempt from welfare-to-work participation. WIC § 11320.3(b)(2)(c); MPP § 42-712.422. See Chapter VIII on Cal-Learn. Teen parents graduating from the Cal-Learn

**WELFARE-TO-WORK EXEMPTIONS**

- Under age 16
- Full-time student under age 18
- Disabled
- Age 60 or older
- 16 or 17 years of age with high school diploma and going to college
- Caring for a disabled family member
- Caring for a new baby
- Pregnant
- VISTA volunteer
- Responsible for an at-risk child

A CalWORKs participant is exempt from participation requirements only if she is:

- Under age 16 (unless she is a teen parent subject to Cal-Learn)<sup>310</sup>
- A child under age 18 in elementary, secondary, vocational or technical school full-time<sup>311</sup>
- 16 or 17 years of age with a high school diploma and going to college.<sup>312</sup>
- Disabled, with a doctor's note that the disability is expected to last at least 30 days and significantly impairs the participant's ability to be regularly employed or do welfare-to-work activities.<sup>313</sup>

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program can have SIPs approved if they enroll in an education program before their CalWORKs appraisal. ACL 99-32, #10. Note that federal law limits the work teens can do. Call Jodie Berger at the Legal Services of Northern California at (707) 643-1408 X 302 for more information.

<sup>309</sup> WIC § 11320.3(a)(1); MPP §42-711.51. Remember that applicants need not participate until aid is granted. MPP §§ 42-711.51, 42-711.521, 42-711.531. An exemption can be requested by filling out form CW 2186A.

<sup>310</sup> WIC § 11320.3(b)(1), MPP § 42-712.411. See Chapter VIII for the Cal-Learn rules.

<sup>311</sup> WIC § 11320.3(b)(2); MPP §42-712.421. Note that a child who loses this exemption cannot regain it by going back to school. Once the child drops out, she is subject to the CalWORKs work requirements.

<sup>312</sup> WIC § 11320.3(b)(2)(c); MPP § 42-712.421.

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- 60 years old or older<sup>314</sup>
- A nonparent caretaker relative with primary responsibility for a child who is a dependent or ward of the court, or for a child the county determines is at risk of placement in foster care.<sup>315</sup>
- Needed in the home to care for a disabled or incapacitated household member, if the caretaking responsibilities impair the participant's ability to be regularly employed or participate in assigned activities.<sup>316</sup>
- Responsible for caring for a new baby under 6 months old. Counties may, on a case-by-case basis and based on county criteria, extend this exemption to 12 months or decrease it to 12 weeks.<sup>317</sup>
- A pregnant woman with medical verification that the pregnancy impairs her ability to be regularly employed or participate in welfare-to-work activities.<sup>318</sup>
- A full-time VISTA volunteer<sup>319</sup>

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<sup>313</sup> WIC § 11320.3(b)(3)(A); MPP § 42-712.441. To qualify for the exemption, participants with disabilities must also actively seek appropriate medical treatment.

<sup>314</sup> The CalWORKs law says persons of “advanced age” are exempt. WIC § 11320.3(b)(3)(B). DSS has specified that advanced age means 60 or older. MPP § 42-712.43.

<sup>315</sup> WIC § 11320.3(b)(4); MPP § 42-712.45. To qualify for the exemption, the caretaking responsibilities must go beyond normal day-to-day parenting responsibilities and must impair the relative's ability to be regularly employed or participate in welfare-to-work activities.

<sup>316</sup> WIC § 11320.3(b)(5); MPP § 42-712.461. The ill or disabled household members need not be on CalWORKs.

<sup>317</sup> WIC § 11320.3(b)(6)(A)(i); MPP § 42-712.471. The statute and regulations specify that once a person has used this exemption, she may be exempt for only 12 weeks (with a county option to extend to 6 months) for the birth of any subsequent children. In determining whether to extend the child exemption, the county may consider the availability of child care, local labor market conditions, and other factors it considers relevant. In a two-parent family where neither parent is disabled, only one parent may claim this exemption. Counties must have written standards on whether and when they provide the longer time periods for these exemptions. MPP § 11-501.3; ACL 00-08.

<sup>318</sup> WIC § 11320.3(b)(7); MPP § 42-712.481.

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The exemption lasts as long as the condition lasts.<sup>320</sup> A person who is exempt from CalWORKs work requirements may choose to participate voluntarily, and may not be sanctioned for failing to participate unless her status has changed such that she is no longer exempt.<sup>321</sup> Months of exemption based on disability, advanced age, or caretaking responsibilities (for a disabled family member or a child who is a ward of the court or at risk of foster care) that impair the participant's ability to be regularly employed *do not* count against the 60-month lifetime limit on aid to adults.<sup>322</sup>

### **ADVOCACY TIP**

Advise participants to keep records of their exempt months.

If a participant with disabilities, including learning disabilities, can do 32 hours only with extensive accommodations, the participant should consider requesting an exemption.<sup>323</sup> An exemption is proper if the disability, or learning disability, alone or in combination with another impairment or impairments, significantly interferes with her ability to participate in welfare-to-

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<sup>319</sup> MPP § 42-712.49.

<sup>320</sup> WIC § 11320.3(b); MPP § 42-712.4. The exemption can be applied retroactively to the onset date of the conditions qualifying the participant for the exemption. ACL 03-21 at 4.

<sup>321</sup> WIC § 11320.3(c); MPP § 42-712.5; ACL 03-59 at 9. Likewise, a participant not initially exempt, who is sanctioned for nonparticipation should be able to have the sanction lifted if she becomes exempt, and her condition contributes to her nonparticipation.

<sup>322</sup> WIC § 11454.5(a); MPP § 42-712.61. See Chapter II for more on 60-month time limits.

<sup>323</sup> A participant, who needs a significant number of mental health or domestic abuse services in order to participate in welfare-to-work activities, should be exempt. WIC § 11320.3(b)(3)(A); MPP § 42-712.441.

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work activities.<sup>324</sup> Verification of the impairment must be provided by a health care professional who is licensed by the state to diagnose or treat physical or mental impairments.<sup>325</sup>

**1. Exempt Participants Can Volunteer to Participate.**

Participants who are exempt from work participation requirements may volunteer to participate.<sup>326</sup> A volunteer can stop participating at any time without penalty, unless her status has changed in a way that requires participation.<sup>327</sup> Volunteers do not have to participate 32 hours per week as requested.<sup>328</sup> Volunteers are entitled to the same necessary supportive services as mandatory participants.<sup>329</sup>

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<sup>324</sup> WIC § 11320.3(b)(3)(A); MPP § 42-712.441. In a letter to Jodie Berger at LSNC, the state said that so long as the participant cannot do 32 hours, she is exempt. See Appendix F. For more information, call Jodie Berger at (707) 643-0054 X 302.

<sup>325</sup> ACL 01-70 at 20-21; *See* MPP §§ 42-712.44 and 42-701.2(d)(2) for the criteria to exempt a participant based on disability.

<sup>326</sup> WIC § 11320.3(c); MPP § 42-712.5.

<sup>327</sup> WIC §§ 11320.3(c), 11327.6; MPP § 42-712.5.

<sup>328</sup> MPP § 42-711.412.

<sup>329</sup> MPP §42-750.11 (necessary supportive services “shall be available to *every* participant . . .”, emphasis added); *see also* ACIN I-70-99 at 2 (“Counties are reminded that they must provide child care for all CalWORKs participants working or participating in welfare-to-work activities, regardless of the number of hours . . .”). Counties cannot require volunteers to participate a certain number of hours in order to receive supportive services. ACL 04-04, #11.

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**EXAMPLE**

Susan had a baby on January 15, and her county provides a 6-month exemption from work requirements after childbirth. In April, Susan decides that she'd like to do some part-time training, so she volunteers for welfare-to-work and is assigned to vocational training 15 hours per week. She can miss days or stop participating for any reason (or no reason) until July 15 and cannot be sanctioned. After July 15, she becomes a mandatory participant (unless she has a new basis for exemption), and must participate 32 hours per week.

When one parent of a two-parent family fully meets the required number of hours, the second parent is not required to participate in welfare-to-work activities.<sup>330</sup> Although not technically exempt from participation, the second parent is not a “mandatory” participant, and may volunteer for any number of hours.

Volunteering may also be a good option for exempt participants with substance abuse or mental health disabilities, since they would then be able to access supportive services or treatment for those problems<sup>331</sup> without running the risk of sanction if they had a participation problem.

**2. Survivors of Domestic Abuse.**

While survivors of domestic abuse may be excused from work participation and other requirements, there is no *exemption* per se for domestic abuse. However, program requirements including time limits and work requirements may be waived on a case-by-case basis, but only for so long as necessary.<sup>332</sup>

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<sup>330</sup> WIC § 11322.8(b); MPP § 42-711.421.

<sup>331</sup> Section F.5 of this chapter discusses the special mental health and substance abuse services available to CalWORKs participants.

<sup>332</sup> MPP § 42-713.221. See Section C below for more on domestic abuse waivers. *See also* MPP § 42-715 for domestic abuse protocols and training standards. Domestic abuse survivors can be excused from the child support cooperation requirements discussed in Chapter X. MPP § 82-512.112. Supportive services for domestic abuse survivors, who participate in

**C. Who Has Good Cause for Not Participating In CalWORKs Work Activities?**

- SUMMARY OF GROUNDS FOR GOOD CAUSE**
- Participant lacks needed supportive services
  - Participant is a victim of domestic abuse and participating would be detrimental
  - Child care problem
  - Job or activity is discriminatory
  - Job or activity requires excessive daily or weekly hours
  - Job or activity requires more than 2 hours or more than a 2-mile walk of round trip travel time
  - Conditions of job or activity violate health or safety standards
  - Accepting job or work activity would require participant to violate terms of union membership
  - Job or activity does not provide worker's compensation coverage
  - Accepting job or work activity would interrupt approved education program or SIP
  - Any time the county determines there is a condition or other circumstance that temporarily prevents or significantly impairs the participant's ability to be regularly employed or participate in welfare-to-work activities

Good cause is different from and may be more temporary than an exemption.<sup>333</sup> For example, a finding of good cause can excuse a failure or refusal to participate on a single day, without necessitating a change of assignment. Good cause does not stop the 60-month time clock.<sup>334</sup>

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CalWORKs activities, are discussed at Section F of this chapter, and a comprehensive memo on domestic abuse issues is in Appendix I.

<sup>333</sup> WIC § 11320.3(f) (“A participant shall be excused . . . for good cause when the county has determined there is a condition or other circumstance that temporarily prevents or significantly impairs the participant’s ability to be regularly employed or to participate in welfare-to-work activities.”). The county is required to review the good cause determination at least every three months. MPP § 42-713.1; *compare* MPP § 42-712.4.

<sup>334</sup> See Section B for more information on exemptions and Chapter II on time limits.

## **Chapter VI: Work Requirements, Work-Related Sanctions, and Supportive Services**

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The CalWORKs law provides examples of circumstances constituting good cause, but it also allows counties to add to the list. The listed examples are:

- The participant lacks necessary supportive services<sup>335</sup>
- The participant is a victim of domestic abuse, *if* participating in work activities would be detrimental to or unfairly penalize the participant or family<sup>336</sup>
- The participant has a child care problem, which could be that care (licensed or exempt) is not “reasonably available,”<sup>337</sup> or that a breakdown or interruption in arrangements has occurred, or child care is needed but not available for a child who is under 10 or disabled but is not in the assistance unit.<sup>338</sup>

A participant who has good cause cannot be sanctioned for failure or refusal to sign a welfare-to-work plan, participate in an assigned activity, or fulfill some other CalWORKs program requirement.<sup>339</sup>

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<sup>335</sup> WIC § 11320.3(f)(1); MPP §42-713.21. Supportive services can include child care, transportation expenses, books, tools, uniforms, personal counseling, mental health services, or drug and alcohol services. *See* WIC §§ 11323.2 (supportive services generally), 11325.5 (mental health), 11325.8 (drug and alcohol), and Section B of this chapter.

<sup>336</sup> WIC § 11320.3(f)(2); MPP §42-713.22. Domestic abuse issues are addressed in more detail in the statute at WIC §§ 11495 *et seq.*, and in Appendix I.

*See also* 45 CFR § 260.55 and .58 (under the TANF, states can document that they are unable to meet federal work participation requirements due to federally recognized domestic abuse waivers and can avoid financial penalties).

<sup>337</sup> The regulations specify that child care is “available” if there is at least one “appropriate, suitable, and affordable child care arrangement that is commonly available in the participant’s community to a person who is not receiving aid, that is available to parents during the hours that they are required to participate in county-approved activities or employment, and is within a reasonable distance from the participant’s home.” MPP § 42-713.25. Child care is “affordable” if the unreimbursed cost to the family is no more than the state’s child care family fees under MPP §§ 47-401.7 and .8. *See* Chapter VII for more detail on child care.

<sup>338</sup> WIC § 11320.3(f)(3); MPP §42-713.23. *See* Chapter VII for more details on child care.

<sup>339</sup> WIC § 11327.5; MPP § 42-721.211 (sanctions only for failure to comply without good cause).

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In addition to the good cause provisions listed above, a participant may also refuse an assignment or job without penalty if it:

- discriminates based on age, sex, race, religion, national origin, or physical or mental disability;<sup>340</sup>
- requires hours of work that exceed the daily or weekly hours customary to the occupation;<sup>341</sup>
- requires the participant to travel more than two hours round trip (not counting the time to take children or others to school or day care) or to walk more than two miles round trip when walking is the participant's only form of transportation;<sup>342</sup>
- involves conditions that violate health and safety standards;<sup>343</sup>
- does not provide worker's compensation insurance;<sup>344</sup>
- would cause an interruption in an approved education or training program in progress that would otherwise lead to employment and sufficient income to be self-supporting,<sup>345</sup> or
- would cause the person to violate the terms of her union membership.<sup>346</sup>

There is no requirement that a person claiming good cause do so at any time prior to a state hearing. As explained in Section D below, the cause determination process is a chance for the participant to establish good cause and avoid a sanction. However, even a person, who failed to respond to the cause determination and conciliation process, can avoid a sanction if she in fact

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<sup>340</sup> WIC § 11320.31(a); MPP §42-721.311.

<sup>341</sup> WIC § 11320.31(b); MPP §42-721.312.

<sup>342</sup> WIC § 11320.31(c); MPP §42-721.313. A participant, who has good cause to refuse an assignment or job based on this provision, must participate in community service.

<sup>343</sup> WIC § 11320.31(d); MPP § 42-721.314.

<sup>344</sup> WIC § 11320.31(e); MPP §42-721.315.

<sup>345</sup> WIC § 11320.31(f); MPP §42-721.316. The program that would be interrupted cannot be work experience or community service employment.

<sup>346</sup> WIC § 11320.31(g); MPP §42-721.317.

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has good cause for the underlying failure to perform, so long as she requests a hearing and proves the existence of good cause to the satisfaction of the Administrative Law Judge.<sup>347</sup>

**1. Survivors of Domestic Abuse.**

A participant has good cause for not participating in welfare-to-work activities if she is a victim of domestic abuse and participating in work activities would be detrimental to or unfairly penalize the person or family.<sup>348</sup> A domestic abuse survivor has at least three options: (1) she can apply for a good cause waiver of *all* welfare-to-work activities;<sup>349</sup> (2) domestic abuse services can constitute all or part of her welfare-to-work plan;<sup>350</sup> or (3) she can apply for a waiver of some of the required hours.<sup>351</sup> She can also request a waiver of the 60-month time limit.<sup>352</sup>

**D. The Sanction Process: What Happens When A Person Fails or Refuses to Participate in CalWORKs Work Activities?**

CalWORKs includes financial penalties (“sanctions”) for failure or refusal to comply with program requirements without good cause.<sup>353</sup> The chart on the next page shows the sanctions process.

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<sup>347</sup> See DSS State Hearings Division (SHD), “Notes from the Training Bureau” Item 00-1-1, #6. The Notes are available on the SHD website at [www.dss.cahwnet.gov/shd](http://www.dss.cahwnet.gov/shd).

<sup>348</sup> WIC § 11320.3(f)(2); MPP § 42-713.22; ACIN I-02-06. Domestic abuse survivors can request good cause waivers of CalWORKs program requirements. WIC § 11495.1(a)(3); MPP § 42-715.51; ACIN I-02-06, #15. Domestic abuse issues are addressed in more detail in the statute at WIC §§ 11495 *et seq.*, and in Appendix I.

<sup>349</sup> WIC § 11495.1(a)(3); MPP § 42-715.51; ACIN I-02-06.

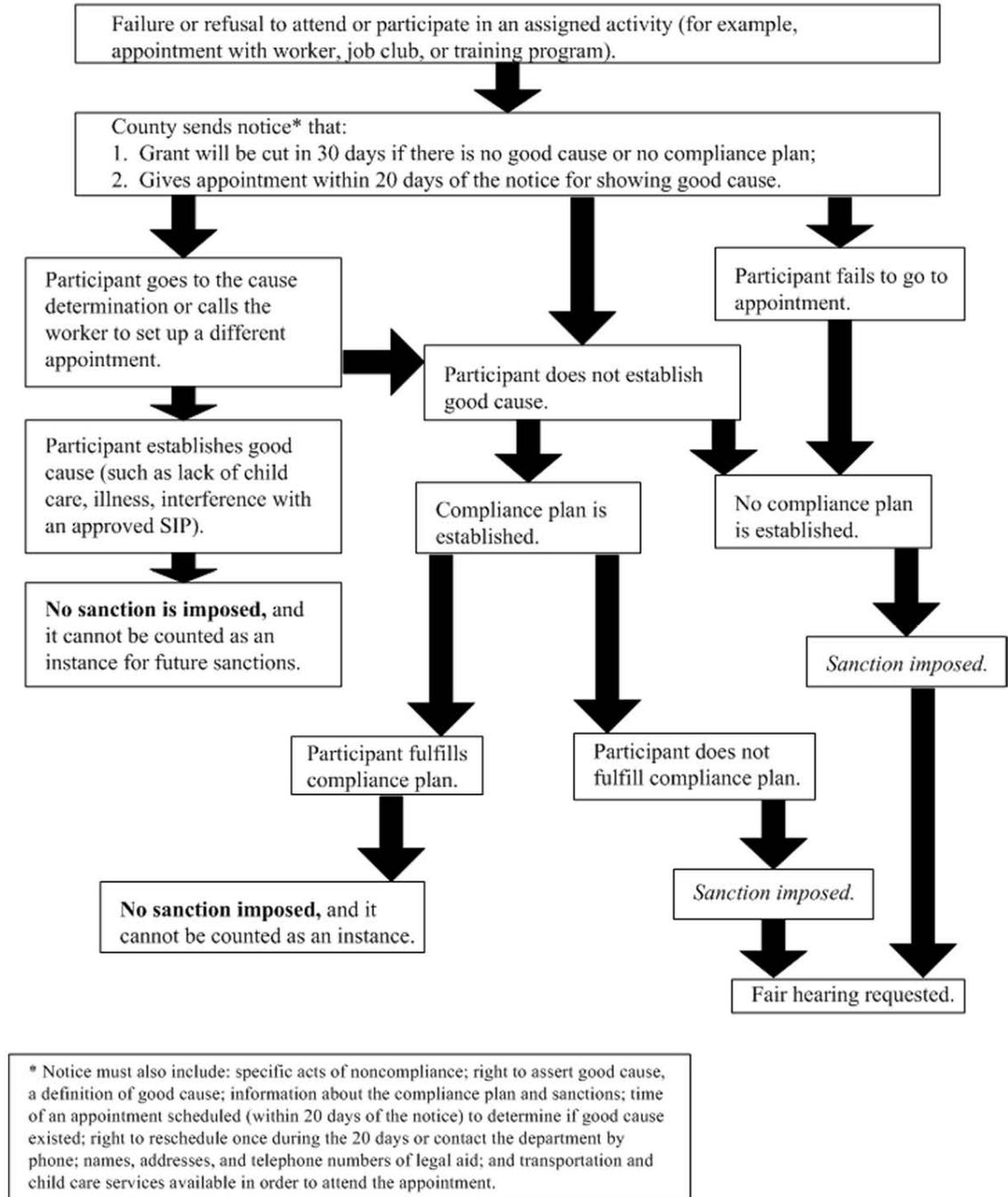
<sup>350</sup> MPP § 42-716.31.

<sup>351</sup> WIC § 11495.1(a)(3); MPP § 42-715.51; ACIN I-02-06.

<sup>352</sup> WIC § 11495.1(a)(3); MPP § 42-715.51; ACIN I-02-06, #7. See Chapter II for more on time limits.

<sup>353</sup> WIC § 11327.5(a); MPP §§ 42-721.21, 42-721.4.

**Sanctions Process**



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Participants can only be sanctioned for failure or refusal, without good cause, to:

- sign a welfare-to-work plan;
- participate in any assigned program activity;
- provide proof of satisfactory progress in activities, including SIPs;
- accept employment; or for terminating employment or reducing earnings without good cause.<sup>354</sup>

Before a sanction can be imposed, the county must: (1) issue a notice; (2) conduct a cause determination to find out if there was good cause for the noncompliance; and (3) offer a compliance plan to those whom it finds do not have good cause.<sup>355</sup> Only after the participant fails to agree to or fulfill a compliance plan can a sanction occur.<sup>356</sup>

**1. Notice and Cause Determination.**

When the county determines that a participant has failed or refused to comply with program requirements, the county must issue a notice of action (NA 840).

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<sup>354</sup> WIC § 11327.4(a)(2); MPP § 42-721.22. Thus, participants cannot be sanctioned for failing to attend meetings with workers, unless the meeting is for orientation, appraisal, plan signing, or some other purpose that is itself a program requirement. Request a hearing if the sanction is for failing to attend a meeting or appointment that is not a program requirement.

<sup>355</sup> WIC § 11327.4(b); MPP §§ 42-721.23 - .25; ACL 03-59 at 5-6.

<sup>356</sup> WIC § 11327.5(d); MPP § 42-721.43.

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The Notice of Action must include:

- the specific acts of noncompliance;
- the right to assert good cause for the failure to comply, along with a general definition of good cause and examples (the county must also send the WTW 27 Request for Good Cause Determination form);
- information about the compliance plan and sanctions in the event good cause is not found;
- the date and time of an appointment scheduled (within 20 days of the notice) to determine whether good cause existed;
- the right to reschedule the appointment once during the 20 days or to contact the welfare department by phone rather than attend the appointment;
- the names, addresses, and telephone numbers of state and local legal aid and welfare rights organizations that may assist with the good cause and compliance plan process; *and*
- the transportation and child care services the participant is entitled to in order to attend the appointment<sup>357</sup>

Along with the NA 840 notice of action, the county must also mail participants a WTW 27 “Request for Good Cause Determination” form.<sup>358</sup> This form lists examples of good cause and may be useful to participants in talking to the welfare worker about the reasons for their noncompliance and in asking about good cause.<sup>359</sup>

If the participant attends the appointment, or contacts the county orally or in writing to claim good cause within the 20-day good cause/compliance period, counties are required to issue

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<sup>357</sup> WIC § 11327.4(b)(3); MPP § 42-721.232.

<sup>358</sup> ACL 03-59 at 4.

<sup>359</sup> ACL 03-59 at 4. The law provides several examples of circumstances constituting good cause, including lack of supportive services, domestic abuse, or problems with child care. Other good reasons like illness, transportation breakdown, family crisis, or a death in the family can also constitute good cause. A participant can turn the WTW 27 form in by mail or in person, but is not required to do so, and can just discuss the good cause with the worker. Regardless of whether the individual turns in the WTW 27 form, she should still talk to the worker about her reasons for noncompliance to ensure that the worker understands the situation and to answer any questions that remain. The county also may have *additional* reasons that it accepts as good cause. Check the county’s regulations.

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a notice of action (NA 840A Determination of Good Cause/No Good Cause) granting or denying good cause.<sup>360</sup>

If the participant fails to attend the appointment or contact the worker, the county must make an attempt to contact her by telephone at the time of the missed appointment<sup>361</sup> to make a cause determination and develop a compliance plan if no good cause is found.<sup>362</sup>

If the participant does not attend the scheduled appointment or contact the county within the 20-day period and the county's attempt at contact is not successful, she will be sanctioned and her grant reduced 30 days after the initial notice (NA 840 and WTW27).<sup>363</sup>

**2. Compliance Plan.**

If a participant attends the cause determination meeting or contacts the county within 20 days, and has good cause, the county must cancel the notice of action, and no sanction will be imposed.<sup>364</sup> If the participant does not have good cause, but agrees to and fulfills the requirements of a compliance plan, the county must cancel the notice of action, and no sanction will occur.<sup>365</sup>

The compliance plan can only require the participant to do the activity that she has failed to do.<sup>366</sup> The county should only assign a different activity if the original one is no longer

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<sup>360</sup> ACL 03-59 at 3.

<sup>361</sup> WIC § 11327.4(c); MPP § 42-721.25. Many county workers skip this “attempt to contact” step. If there is no evidence in the case file that the worker has attempted to contact the participant, the sanction is imposed improperly because the county has failed to follow all required steps before imposing the sanction. The participant should ask for a hearing to challenge the sanction. See Chapter XIII on Hearings.

<sup>362</sup> WIC § 11327.4(c); MPP § 42-721.25; ACL 03-59 at 3.

<sup>363</sup> WIC § 11327.4 (b)(1), (d); MPP §42-721.23.

<sup>364</sup> WIC § 11327.4(e); MPP § 42-721.27.

<sup>365</sup> WIC § 11327.4(e); MPP § 42-721.27; ACL 03-59 at 5-7.

<sup>366</sup> ACL 03-59 at 6.

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available or appropriate.<sup>367</sup> In the compliance process, the participant is required to participate in the activity as specified in the compliance plan until she completes the activity, or up to a maximum of 60 days from the date she begins participating in the activity.<sup>368</sup> The county cannot require the participant to participate for a longer period than the original activity would have taken to complete.<sup>369</sup>

**EXAMPLE**

Jenny was assigned to vocational education and an internship. Jenny fails to do her assigned internship. The county proposes sanction and determines that she does not have good cause. The internship is no longer available. The compliance plan must specify another appropriate activity for Jenny to do and can last up to 60 days. Jenny would continue to attend her vocational educational program listed in her welfare-to-work plan, as well as carrying out the compliance plan, for a total of 32 hours. After Jenny completes the compliance activity or after 60 days, the county must lift the sanction.

**EXAMPLE**

Sara fails to attend her orientation appointment. The compliance plan can require her only to attend the orientation and cannot require Sara to do a different activity. Once she attends the orientation, she has completed her compliance plan, and sanction cannot be imposed.

If the original activity lasts longer than 60 days, once the participant participates in the activity as part of her compliance plan for 60 days, she has completed the compliance plan.

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<sup>367</sup> ACL 03-59 at 6-7.

<sup>368</sup> ACL 03-59 at 6.

<sup>369</sup> ACL 03-59 at 7.

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Even if she continues in the activity, the compliance plan is no longer in effect.<sup>370</sup> If she later fails to participate in the activity, that failure would be subject to a new sanction process.<sup>371</sup>

**EXAMPLE**

Susan fails to attend her 12-month training program. The compliance plan can only require her to attend the program for 60 days. Once she participates for 60 days, she has completed her compliance plan even though she will continue in the program until she completes it.

The county must use the compliance plan (form WTW 32) to set out what the participant needs to do to carry out the compliance plan.<sup>372</sup> The county can develop this plan with the participant over the phone; the participant does not have to go to an in-person meeting.<sup>373</sup> Upon completion of the compliance plan, the county must amend the welfare-to-work plan to specify new activities, even if the new activities are the same as those in the compliance plan.<sup>374</sup> The participant would have the same rights to a third-party assessment and 3 days to change the plan and 30 days to change the component or assignment.<sup>375</sup>

If, after attending the cause determination meeting, the participant does not fulfill the requirements of the compliance plan, the county does not have to start the compliance process again. Instead, the county will determine, based on available information, whether the participant has good cause for not fulfilling the terms of the compliance plan.<sup>376</sup> If the county

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<sup>370</sup> ACL 03-59 at 6-7.

<sup>371</sup> ACL 03-59 at 7.

<sup>372</sup> ACL 03-59 at 5, 8.

<sup>373</sup> ACL 03-59 at 6.

<sup>374</sup> ACL 03-59 at 8.

<sup>375</sup> WIC § 11325.4(c)(1); MPP §§ 42-711.556, 42-711.646. See Section A.4.b in this chapter for more on changing welfare-to-work plans and A.3.c. for more on third party assessments.

<sup>376</sup> ACL 03-59 at 3, 6, 8.

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determines that there is no good cause, then it will send another sanction notice informing the participant of the day and amount that the grant will be cut. The county will not hold any additional cause determination.<sup>377</sup> It is, therefore, *very* important that if the participant has *any* problem with the compliance plan that she tells the worker right away, and backs it up in writing. If the participant asks for a hearing before the date the grant will be cut, aid will continue until a hearing decision is issued.<sup>378</sup> Participants retain the right to an administrative hearing whether or not they have participated in the good cause of conciliation process.<sup>379</sup>

### **3. Sanctions and Learning Disabilities.**

If a learning disability is confirmed through an evaluation prior to or during a person's good cause determination or compliance process, the county must determine if the disability has contributed to the participant's failure to participate.<sup>380</sup> If the learning disability diminished the participant's ability to participate, the participant has good cause for her failure to participate, or may be exempt from welfare-to-work requirements.<sup>381</sup> In this case, the person will not be sanctioned.<sup>382</sup> The county must review the welfare-to-work activity or plan and modify if necessary.<sup>383</sup>

If the county cannot determine from the evaluation report if the disability has contributed to the participant's failure to participate, the county must consult with the learning disabilities evaluator or another learning disabilities specialist to make the determination.<sup>384</sup>

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<sup>377</sup> WIC § 11327.4(h); MPP § 42-721.29; ACL 03-59 at 8.

<sup>378</sup> MPP § 22-072.5.

<sup>379</sup> MPP § 42-721.5. See Chapter XIII for more on hearings.

<sup>380</sup> MPP § 42-722.71.

<sup>381</sup> MPP §§ 42-722, 42-712, 42-713; ACL 01-70 at 14. See Sections B and C on exemptions and good cause.

<sup>382</sup> MPP § 42-722.72.

<sup>383</sup> MPP §§ 42-722.532(c), 42-711.63; ACL 01-70 at 14.

<sup>384</sup> MPP § 42-722.74; ACL 01-70 at 14.

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**E. The Effects of Sanctions: Sanctions for Failing or Refusing to Participate in CalWORKs Work Activities Without Good Cause.**

If a non-exempt CalWORKs participant fails or refuses to participate without good cause and does not fulfill a compliance plan, she will be sanctioned.<sup>385</sup> The sanction begins, and cash aid will be lowered, on the first day of the next quarter.<sup>386</sup> For example, if a parent is found to have not participated without good cause, and does not agree to a compliance in the 1<sup>st</sup> quarter (January-March), the sanction (grant cut) will take place April 1<sup>st</sup>, the first day of the next quarter.<sup>387</sup> The sanction is the reduction of the family's aid by removing of the noncomplying member.<sup>388</sup> In other words, only the parent's share of the CalWORKs grant is cut.<sup>389</sup> The family will also lose other CalWORKs supportive services, such as transportation and books.<sup>390</sup> Child care will still be available for any hours the parent works or participates in county-approved activities.<sup>391</sup> If the sanction lasts more than three months, the county must issue vouchers or vendor payments for at least rent and utility payments.<sup>392</sup>

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<sup>385</sup> WIC § 11327.4; MPP § 42-721.29.

<sup>386</sup> WIC § 11327.5(e); MPP § 42-721.44.

<sup>387</sup> WIC § 11327.5(e); MPP § 42-721.44.

<sup>388</sup> WIC § 11327.5(c); MPP § 42-721.43.

<sup>389</sup> WIC § 11327.5(c); MPP § 42-721.43. For a single parent with two children, this means the family will lose about \$120 per month. Even if the county imposes a sanction, the children in the household will still receive cash aid and everyone in the family should still get Medi-Cal and Food Stamps. In some cases, the Food Stamp amount may go down if the participant's non-participation is also sanctionable under Food Stamps. However, if the participant meets an exemption standard for the Food Stamp work requirement, her Food Stamp will not go down. But in all cases, the Food Stamp amount will not go up even though the CalWORKs grant has been cut. MPP § 63-503.44.

<sup>390</sup> WIC § 11323.2; MPP § 42-750.11.

<sup>391</sup> MPP § 47-220.32.

<sup>392</sup> WIC § 11453.2; MPP § 44-303.34. The voucher or vendor payments must continue until the sanction is over. See Chapter IX for a detailed discussion of these restricted payments.

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**1. Special Sanction Rules for Two-Parent Families Receiving Aid Based on Unemployment.**

In two-parent families whose eligibility for aid is based on the unemployment of the primary wage earner,<sup>393</sup> the noncomplying parent will be removed from the assistance unit, and that parent's portion of the grant will be cut.<sup>394</sup> In addition, the other parent must participate in welfare-to-work or she too will be sanctioned.<sup>395</sup> At the same time the county sends the non-complying parent the initial sanction notice and starts the 20-day compliance period, it must tell the spouse that she must participate or face her own sanction.<sup>396</sup> If the second parent is exempt, she will not need to participate to keep her aid, unless the exemption is based on caring for an ill or disabled household member or for a new child.<sup>397</sup>

The second parent is also entitled to claim good cause and use the compliance process herself.<sup>398</sup> If she participates to avoid being sanctioned for the first parent's noncompliance, and later has her own noncompliance problem, she will go through the good cause and compliance process. If she is under her own sanction at the time the first parent is sanctioned, no additional sanction will be imposed, as both parents would be off the grant. When one of the parents removes the sanction by carrying out a compliance plan, the family will need to continue to meet the 35 hour requirement or face a new sanction.<sup>399</sup>

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<sup>393</sup> WIC § 11250; MPP § 42-721.45. See Chapter II for more on deprivation as an eligibility requirement.

<sup>394</sup> MPP § 42-721.45; ACL 04-47, Attach.1.

<sup>395</sup> WIC § 11327.5(c)(1); MPP § 42-721.451; ACL 04-47, Attach.1. This does not apply to families in which the deprivation basis for aid is a parent's disability.

<sup>396</sup> WIC 11327.5(c)(1); MPP § 42-721.452.

<sup>397</sup> WIC § 11327.5(c)(2); MPP § 42-721.453. See MPP § 42-712 and Section B of this chapter for a list of exemptions.

<sup>398</sup> WIC § 11327.5(c)(2); MPP § 42-721.453; ACL 04-47, Attach.1.

<sup>399</sup> WIC § 11327.5(c)(2)(D); MPP § 42-721.455; ACL 04-47, Attach.1.

**EXAMPLE**

Bob and Lucia receive aid for themselves and their two children based on Bob's unemployment. In January, Bob stops doing workfare and skips the good cause process. Lucia has not been working because she takes care of Lupe, their severely disabled child who requires 24-hour care.

Even though Lucia was exempt from CalWORKs based on caring for Lupe, she must participate now to avoid imposition of Bob's sanction. The exemption for caring for a disabled household member is not applicable to a second parent who must participate to avoid the first parent's sanction. This is because Bob is expected to provide care to Lupe.

Lucia must participate 35 hours or she will be sanctioned also.

**2. How long will a sanction last?**

There is no minimum amount of time the participant must be sanctioned: the sanction lasts until the participant performs the activity she had previously refused.<sup>400</sup> This means that even if there was no good cause and no compliance plan, a participant can end the sanction quickly, without loss of aid in many cases.<sup>401</sup>

A wrinkle to the duration of sanctions has been added with the quarterly reporting system for reporting income (participants are now required to report income quarterly, instead of monthly).<sup>402</sup> Under this reporting system, the state says that after completing the sanction cure plan, the county will add the sanctioned participant back onto the grant the 1<sup>st</sup> of the month after

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<sup>400</sup> WIC § 11327.5(d); MPP § 42-721.431; ACL 03-59 at 9, ACL 06-27; ACIN I-65-06 at 3.

<sup>401</sup> California previously required people with prior sanctions to remain off aid for a period of time. With the end of "durational sanctions" in 2006, all sanctions can be "cured" whenever the individual participates. For more information, *see* ACL 06-27, ACL 07-04, ACL 08-38; ACIN I-65-06 at 3.

<sup>402</sup> ACIN I-29-04, #33. See Chapters V and IX for a discussion on Quarterly Reporting.

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curing the sanction.<sup>403</sup> This means that, effectively, sanctions can last longer than the time period the statute sets out for sanctions.<sup>404</sup>

### **3. How to end a sanction?**

To stop (cure) the sanction, the participant must do the following:<sup>405</sup>

- Contact the county and say that she wants to cure the sanction;
- Sign a “cure” plan (WTW 29), either at a scheduled meeting, or by mail, with the county; and
- Participate in the activity listed in the “cure” plan until it is completed, or up to a maximum of 30 calendar days from the date the cure plan is signed, whichever is shorter.<sup>406</sup>

The county will use a form WTW 29 (the “cure” plan) to tell the participant of how to “cure” the sanction.<sup>407</sup> As with the compliance plan, the cure plan *must* specify the activity or assignment that the participant has failed to do, or another assignment if the original one is no longer available or appropriate.<sup>408</sup> The cure plan will be for the length of the activity, or up to 30 days if it is an ongoing activity.<sup>409</sup> The date on which the person signs the cure plan, or agrees to the details over the phone starts the 30-day period.<sup>410</sup> If no supportive services are available, the sanction will be considered cured as of the date the county determines that no supportive

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<sup>403</sup> MPP § 44-316.331(c).

<sup>404</sup> Contact the Western Center to discuss this issue.

<sup>405</sup> ACL 03-59 at 10.

<sup>406</sup> ACL 03-59 at 13.

<sup>407</sup> ACL 03-59 at 10, 15.

<sup>408</sup> ACL 03-59 at 13.

<sup>409</sup> ACL 03-59 at 10.

<sup>410</sup> ACL 03-59 at 15.

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services are available.<sup>411</sup> After completing the cure plan, the participant will resume either the activities in the original welfare-to-work plan, or a revised plan signed with the county.<sup>412</sup>

**4. Will a sanction count against time limits?**

Months in which a participant is on a sanction do **not** count against the 60-month lifetime limit.<sup>413</sup> Participants should take care to track the sanctioned months to make sure they are not counted in calculating when the time limit expires.

**SANCTIONS CHECKLIST**

*Do not accept a sanction without knowing:*

- What is the county sanctioning for? Sanctions can only be imposed for failure to do certain things (without good cause). See Section D above.
- Is the participant exempt?
- Does the participant have good cause for not participating?
- Was the assignment in violation of any of the protections listed in Section C above?
- Did the county follow the required notice and appointment steps listed on all the steps in Section D above?
- In a two-parent family, did the county offer the second parent a chance to participate or to show her own good cause or exemption?
- Has the participant requested a grievance or fair hearing?

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<sup>411</sup> ACL 03-59 at 16.

<sup>412</sup> ACL 03-59 at 15.

<sup>413</sup> WIC § 11454(c)(3); MPP § 42–302.21(f). See Chapter II for a discussion on time limits.

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**F. What Supportive Services Are Available for CalWORKs Participants?**

The county must provide all CalWORKs participants, whether they are mandatory participants or volunteers, with necessary supportive services (including child care, transportation, and ancillary expenses like tools, books, fees and special clothing) to participate in their assigned activities or accept employment.<sup>414</sup> Under some circumstances, supportive services incurred by a SIP participant prior to signing the welfare-to-work plan may be covered.<sup>415</sup> Supportive services are available to participants who take on-line courses as part of their welfare-to-work plan.<sup>416</sup> Exempt volunteers are entitled to the same supportive services as mandatory welfare-to-work participants.<sup>417</sup> If the needed services are not provided, the participant has good cause for not participating.<sup>418</sup> The county must specify the supportive services for each participant in her welfare-to-work plan.<sup>419</sup>

Counties **may not** limit or cap the amount of supportive services that participants can receive.<sup>420</sup> For example, a county may not set a maximum amount of monthly transportation

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<sup>414</sup> WIC § 11323.2(a); MPP §42-750.11.

<sup>415</sup> ACL 08-36 (*Camacho v. Allenby* settlement). See Section A.10 in this chapter for more on SIPs.

<sup>416</sup> ACIN I-47-08.

<sup>417</sup> MPP § 42-750.11 (“necessary supportive services shall be available to every participant . . . .”); ACIN I-70-99 at 2 (“counties are reminded that they must provide child care for all CalWORKs participants working or participating in welfare-to-work activities, regardless of the number of hours . . . .”). ACIN I-02-06, Attach., #7 for a discussion of supportive services for persons with domestic abuse waivers, who volunteer to participate in welfare-to-work activities.

<sup>418</sup> WIC § 11323.2(a); MPP § 42-750.11.

<sup>419</sup> WIC §§ 11323.2(a), 11325.21(f); MPP § 42-750.11.

<sup>420</sup> ACL 00-12, ACL 00-54 at 2, ACL 04-04, #1-3, ACL 00-12. Transportation caps were specifically enjoined in the *Crary v. McMahon* litigation under the GAIN program. Contact the Western Center for more information.

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costs or ancillary expense it will pay, and refuse to provide more if the participant's expenses exceed that limit.<sup>421</sup>

Moreover, counties may not require participants to use their income, income disregard, or cash aid payment to pay for supportive services.<sup>422</sup>

Payments for supportive services, except child care, must be paid in advance to participants when necessary and desired by the participants so that they need not use personal funds to pay for these services.<sup>423</sup> For example, money for books must be paid ahead of time if a participant cannot afford to pay for them out-of-pocket and be reimbursed later.

**1. Required Supportive Services During Work and Welfare-to-Work Activities.**

**a. Child Care.**

Child care must be paid for children in the assistance unit or who would be in the AU but for their receipt of foster care or SSI disability benefits, who are aged 10 or under, disabled, or under court supervision.<sup>424</sup> Chapter VII of this manual is devoted to child care.

**b. Transportation.**

Participants are entitled to paid transportation costs to get to and from their CalWORKs activities, including meetings with workers, employment, job search, training, and any other approved or required activity.<sup>425</sup> Counties must also pay for transportation costs necessary for

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<sup>421</sup> Similarly, counties may not set cumulative maximums on the amount of ancillary expenses to be covered (for example, refusing to pay more than \$200 in book reimbursements per semester).

<sup>422</sup> ACL 00-54 at 2.

<sup>423</sup> MPP § 42-750.21; ACL 04-41 #1 and #12, ACL 00-54 at 2.

<sup>424</sup> WIC § 11323.2(a)(1); MPP § 47-201.1. Paid child care for children age 11 and 12 will be provided "to the extent funds are available." WIC § 11323.2(a)(1)(B); MPP § 47-201.31.

<sup>425</sup> WIC § 11323.2(a)(2); MPP § 42-750.112.

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participants to get to and from child care providers.<sup>426</sup> Transportation costs must be determined by regional market rates.<sup>427</sup> Participants must use the least costly form of transportation (including transportation provided by the county) that would not preclude participation.<sup>428</sup> Counties may not use a flat “cap” or maximum monthly reimbursement amount.<sup>429</sup> An assignment or job is not appropriate (and the participant has good cause for refusing it) if it would require more than two hours round trip travel time, or more than 2 miles walking if walking is the only available transportation, not counting the time to take family members to school or day care.<sup>430</sup> The two-hour period includes waiting time for transfers and connections, and not just the actual time on the public transportation.

However, the statute requires that a person who refuses an assignment based on this remoteness provision be assigned to community service.<sup>431</sup> For this reason, even participants who must travel long distances to participate may prefer to do so rather than forego training or education to do community service. Of course, the participant should first challenge the initial remote assignment and seek a third-party assessment and state hearing, if she wants a closer welfare-to-work activity.

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<sup>426</sup> WIC § 11323.2(a)(2); MPP § 42-750.112; ACL 00-54 at 3-4.

<sup>427</sup> WIC § 11323.2(a)(2); MPP § 42-750.112.

<sup>428</sup> MPP § 42-750.112(a).

<sup>429</sup> MPP § 42-750.112(b)(3); *see also* ACL 00-12 at 1-2, ACL 00-54 at 2, ACL 03-15 at 2-3.

<sup>430</sup> WIC § 11320.31(c); MPP § 42-721.313.

<sup>431</sup> WIC § 11320.31(c); MPP § 42-721.313.

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**EXAMPLE**

Irina’s vocational training assignment is on the other side of town. Although it would only take 20 minutes to get there if she had a car, it takes 2 hours by bus because she must transfer twice and wait for connections. Irina has good cause for not participating in this assignment.

**WARNING**

Although Irina cannot be sanctioned for refusing this assignment, she is not necessarily entitled to a closer placement. Therefore, she may want to accept the assignment (if it’s one she wants) despite the travel time if she cannot persuade the county to find a closer placement, since otherwise she will simply go to community service and use up months on her 60-month clock.

If there is no public transportation available that would take less than two hours round trip, participants can use their own cars and must either be reimbursed at an “existing reimbursement rate used in the county”<sup>432</sup> or “the county shall develop a rate that covers necessary costs.”<sup>433</sup> The reimbursement rate used must cover necessary transportation costs based on the regional market rate and must include the cost of gas, oil, insurance, license and registration fees, and normal wear and tear and maintenance.<sup>434</sup> Parking is reimbursed at actual cost, with receipts required except for parking meters.<sup>435</sup> Participants who use their own cars when public transportation is available will be reimbursed only at the public transportation rate.<sup>436</sup>

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<sup>432</sup> MPP § 42-750.112(b)(1).

<sup>433</sup> MPP § 42-750.112(b)(2).

<sup>434</sup> ACL 08-41 at 2 (*Roberts v Allenby* settlement), ACL 03-15 at 3.

<sup>435</sup> MPP § 42-750.112(c).

<sup>436</sup> MPP § 42-750.112(d).

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**c. Ancillary expenses.**

Ancillary expenses include the cost of books, tools, clothing specifically required for a job, fees, and other necessary costs.<sup>437</sup> Counties may not impose a cap on ancillary expenses.<sup>438</sup> Tuition cannot be paid as an ancillary expense, unless the county has contracted for the education.<sup>439</sup> Counties must pay for required books for elective classes if these classes count towards a degree or certificate.<sup>440</sup>

**d. Personal counseling.**

Participants with personal or family problems that would affect the outcome of the welfare-to-work plan must “to the extent available” receive necessary counseling or therapy to help her or her family adjust to the job or training assignment.<sup>441</sup>

**e. Mental health services and drug or alcohol services.**

These are discussed in detail in Section F. 5 of this chapter.<sup>442</sup>

**2. Supportive Service Overpayments and Underpayments.**

If a participant gets more supportive services money than she uses, or if she is advanced funds for supportive services but does not use them for that purpose, she has an overpayment. The county must take “all reasonable steps” to promptly correct any overpayment or underpayment, whether to a participant or provider, and must seek repayment in all cases

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<sup>437</sup> WIC §§ 11323.2(a)(3), 11325.23(d); MPP § 42-750.113; ACL 00-04.

<sup>438</sup> ACL 04-04, #1.

<sup>439</sup> MPP § 42-750.113(a).

<sup>440</sup> ACL 99-32, #14, ACL 04-04, #6.

<sup>441</sup> WIC § 11323.2(a)(4); MPP §42-750.114.

<sup>442</sup> WIC §§ 11325.7, 11325.8; MPP §§ 42-711.56-.57.

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involving fraud.<sup>443</sup> However, the county cannot collect supportive services overpayments from CalWORKs cash grants unless the participant agrees.<sup>444</sup> The county can collect the overpayment from future supportive service payments, but only if it does not interfere with participation.<sup>445</sup>

### **3. Post-Employment Supportive Services for Former Aid Recipients.**

Any CalWORKs participant in an on-the-job training assignment (OJT), who becomes ineligible for cash aid because of income (whether from a raise or an increase in hours worked), remains eligible for supportive services during the OJT assignment.<sup>446</sup>

In addition, counties may choose to provide case management and supportive services to former CalWORKs participants who become employed.<sup>447</sup> These post-employment services can be provided for up to a year if they are not available from other sources and the person needs them to retain employment.<sup>448</sup> Child care is available for two years.<sup>449</sup>

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<sup>443</sup> WIC § 11323.4(b); MPP § 42-751.11. See Chapter XI for more detail on overpayments. The regulations contain several pages of detail on overpayments and underpayments and the accompanying notice requirements.

<sup>444</sup> MPP § 42-751.4(e)(3).

<sup>445</sup> MPP § 42-751.221. See also The Child Care Law Center's *Child Care Subsidies in California* manual for a discussion on child care overpayments, available at online at [www.childcarelaw.org](http://www.childcarelaw.org).

<sup>446</sup> WIC § 11323.4(c); MPP § 42-750.211.

<sup>447</sup> WIC § 11323.2(b); MPP § 42-717. Fresno County's plan, for example, includes 6 months of peer support and life skills services. Alameda County's plan includes mentoring, crisis management and career/family counseling.

<sup>448</sup> WIC § 11323.2(b); MPP §§ 42-717.22-.23.

<sup>449</sup> See Chapter VII for a discussion on post employment child care.

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**4. Supportive Services and Financial Aid.<sup>450</sup>**

Participants in self-initiated education or training programs are entitled to supportive services “if no other source of funding . . . is available.”<sup>451</sup> Participants shall be “encouraged” to apply for financial aid, including grants, scholarships, and awards.<sup>452</sup>

Where financial aid is received, and to the extent permitted by federal law, the county is to coordinate with financial aid offices to ensure that payments are not duplicated and that the participant’s needs are covered.<sup>453</sup> This coordination must be done on an individualized basis to ensure that using financial aid will not prevent the student’s participation in her welfare-to-work plan.<sup>454</sup> Under no circumstances can loans or work study funds be used to reduce CalWORKs supportive services.<sup>455</sup> Because supportive service needs must be evaluated on a case-by-case basis,<sup>456</sup> counties may not have a blanket policy of deducting all financial aid, or of presuming that the budget used in a financial aid award reflects the participant’s actual needs.

Remember that participants are free to use their financial aid for any permissible purpose and need not use it for items for which CalWORKs would otherwise pay. For example, a participant may legitimately use her financial aid award for child care during weekends or evenings when she needs to study, leaving CalWORKs to cover child care during class time.

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<sup>450</sup> A detailed memo on the effects of receiving student financial aid while on CalWORKs is included in Appendix F. For much more detail on the treatment of supportive services and financial aid, see Western Center’s mini-manual *Students and CalWORKs: A Guide to Educational Opportunities in the CalWORKs Program*. Check our website [www.wclp.org](http://www.wclp.org) or fax a request to (213) 487-0242 for ordering information.

<sup>451</sup> WIC § 11325.23(d); MPP § 42-750.32.

<sup>452</sup> WIC § 11323.4(e)(1); MPP § 42-750.31.

<sup>453</sup> WIC § 11323.4(e)(2); MPP § 42-750.3.

<sup>454</sup> WIC § 11323.4(e)(2); MPP §42-750.335.

<sup>455</sup> MPP § 42-750.34.

<sup>456</sup> MPP § 42-750.4.

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Most importantly, the participant must agree that the financial aid funds are actually available or else the county cannot take them into consideration.<sup>457</sup>

While participants are required to report the receipt of any financial aid on their quarterly QR7 income reports,<sup>458</sup> most student financial aid is considered exempt income, and does not count against the CalWORKs grant.<sup>459</sup> Some financial aid is considered “fully exempt,” and will not reduce the amount of cash aid.<sup>460</sup> Work study is fully exempt.<sup>461</sup> “Partially exempt” financial aid grants – typically non-federal aid, such as grants from charitable institutions or private scholarship money – are exempt only if they are used to meet educational expenses, such as tuition, books, fees, equipment, special clothing, etc.<sup>462</sup> If the financial aid cannot be exempted in full or in part, it will reduce the cash grant dollar for dollar.<sup>463</sup> However, the non-

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<sup>457</sup> MPP § 42-750.332; ACIN I-50-04. The county must put any finding that the financial aid is available in writing. MPP § 42-750.333. The county cannot deduct the financial aid funds from CalWORKs supportive services unless the participant has signed the form WTW 8. Students can revoke the permission at any time by signing the lower part of the WTW 8. ACIN I-50-04. A copy of the form is available in Appendix F and available online at [www.dss.cahwnet.gov/pdf/WTW8.pdf](http://www.dss.cahwnet.gov/pdf/WTW8.pdf).

<sup>458</sup> MPP § 40-181.241.

<sup>459</sup> MPP §§ 44-111 *et seq.* Under the quarterly reporting system, students should report their financial aid as soon as possible. If students know when they will be getting the aid payment and the amount, they can report it in the “what will happen in the next 3 months” section of the QR 7. Students must report the aid once they have actually received it under the first section (income received in the “report” month). Even though financial aid generally does not count against the cash aid, failure to report income (even if exempt) may lead to fraud charges.

<sup>460</sup> MPP § 44-111.4.

<sup>461</sup> MPP § 44-111.24.

<sup>462</sup> MPP § 44-111.435.

<sup>463</sup> WIC § 11451.5(a)(1); MPP §§ 44-111.231, 44-111.435(b), 44-113.217, 44-315.11, 44-315.34. See Chapter III for a discussion on how financial aid is treated in determining CalWORKs benefits.

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exempt amount should be pro-rated over the period it was intended to cover, rather than all treated as income in the CalWORKs quarter it is received.<sup>464</sup>

**5. Mental Health and Substance Abuse Treatment.**

**a. Mental Health Services.**

Each county's CalWORKs plan must include a plan for mental health employment assistance services developed jointly by the county's mental health and welfare departments.<sup>465</sup> The goal is to treat mental or emotional disabilities or disorders that may limit or impair a participant's ability to work or retain employment over the long term. County CalWORKs plans must also include a process for identifying persons with severe mental disabilities who may qualify for SSI.<sup>466</sup>

Service delivery may include community-based providers with experience with the CalWORKs population, but plans must be consistent with counties' consolidated Medi-Cal mental health plans.<sup>467</sup>

When doing an assessment<sup>468</sup> of a CalWORKs participant's skills and needs, a county welfare department must consider whether the person has any "mental conditions that limit the ability for employment or participation in welfare-to-work activities."<sup>469</sup> If the assessment discloses a mental or emotional disability or disorder that impairs an individual's ability to get a

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<sup>464</sup> 7 CFR §§ 273.8(e)(9), 273.10(c)(3)(iii); MPP § 63-501.3(i).

<sup>465</sup> WIC § 11325.7(b) (mental or emotional disabilities.); *see also* WIC §§ 11325.5(a) (mental disability), 11325.5(c) (mental or emotional disorders), 11325.7(c)(4) (mental or emotional disorders); MPP § 42-716.4.

<sup>466</sup> WIC § 11325.7(c)(5); MPP § 42-716.415.

<sup>467</sup> WIC § 11325.7(b); MPP § 42-716.4.

<sup>468</sup> See section A. 3 in this chapter.

<sup>469</sup> WIC § 11325.4(a)(6); MPP § 42-711.554(f).

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job,<sup>470</sup> she must be referred to the county mental health department for an evaluation of ability to work, the working and treatment conditions under which the individual could work, and treatment needs.<sup>471</sup> The evaluation must include prior diagnoses, assessments, or evaluations *provided by the participant*.<sup>472</sup> It is important to inform participants to tell the county mental health evaluator about relevant history and to provide whatever documentation they may have.

The mental health department's evaluation becomes the basis for the county's welfare-to-work plan for the individual, which must include "appropriate employment accommodations or restrictions, supportive services, and treatment requirements."<sup>473</sup> Covered mental health services include case management, counseling to overcome mental health barriers to employment and to retaining employment, and other treatment and rehabilitation services.<sup>474</sup> Mental health treatment must be coordinated with the individual's welfare-to-work plan.<sup>475</sup> People with significant mental health treatment needs may want to request an exemption, so they can participate voluntarily but not use up their 60 months.<sup>476</sup>

The Legislature created a funding stream for CalWORKs recipients to receive the mental health services necessary to enable them to transition from welfare to work.<sup>477</sup> Counties must

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<sup>470</sup> WIC §§ 11325.5(a) (mental disability); 11325.5(c) (mental or emotional disorders), 11325.7(b) (mental or emotional disabilities); 11325.7(c)(4) (mental or emotional disorders); MPP § 42-711.56.

<sup>471</sup> WIC § 11325.5(b); WIC § 11325.7(c)(1); MPP § 42-711.562(a).

<sup>472</sup> WIC § 11325.5(b), (c); MPP § 42-711.562(b). The participant need not provide this information if she does not wish it to be considered, and the county cannot force her to reveal prior diagnoses or examination results, if she does not wish to do so.

<sup>473</sup> WIC § 11325.5(c). A welfare-to-work plan must also address the substance abuse treatment needs of participants with secondary diagnoses of substance abuse. WIC § 11325.7(c)(4); MPP § 42-711.563(a).

<sup>474</sup> WIC § 11325.7(c)(2) and (3); MPP § 42-716.41.

<sup>475</sup> WIC § 11325.7(c)(3); MPP §§ 42-711.563, 42-711.611.

<sup>476</sup> See Chapter II for a discussion on time limits.

<sup>477</sup> WIC § 11325.7(a).

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account for these funds “in a manner that ensures that participants in need of mental health services are receiving appropriate services.”<sup>478</sup> They must also report annually to the state the number of CalWORKs participants who receive mental health services and the extent to which the allocation is sufficient to meet needs.<sup>479</sup>

**b. Substance Abuse Treatment Services.**

County CalWORKs plans must also provide for substance abuse treatment services by describing how a county’s welfare department will collaborate with its alcohol and drug program to ensure that “an effective system is available to provide alcohol and drug services to recipients whose substance abuse creates a barrier to employment.”<sup>480</sup>

Substance abuse treatment services must include evaluation, treatment, employment counseling, or other appropriate services. Community service jobs are also included among available treatment services.<sup>481</sup>

Counties may contract with private agencies to provide substance abuse treatment services for CalWORKs participants generally or for participants when a county’s alcohol and drug program is not able to provide the services needed.<sup>482</sup>

An individual who wants substance abuse treatment services to help in the transition from welfare to work can ask for them during the CalWORKs assessment. However, the degree

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<sup>478</sup> WIC § 11325.7(a). However, the counties’ duty to evaluate CalWORKs participants for mental and emotional condition and provide related treatment and services appears to be limited by available state funding. *See* WIC §§ 11325.5(b) (subject to appropriations), 11325.7(c) (subject to specific expenditure authority).

Each county’s allocation for mental health services is based on the CalWORKs allocation formula. WIC § 11325.7(d). In developing this formula, the state Department of Mental Health was not supposed to “supplant” existing mental health services funds. WIC § 11325.7(d); MPP § 42-711.561.

<sup>479</sup> WIC § 11325.7(d).

<sup>480</sup> WIC § 11325.8(a); MPP § 42-711.57.

<sup>481</sup> WIC § 11325.8(a); MPP § 42-716.61.

<sup>482</sup> WIC § 11325.8(b); MPP § 42-716.61.

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to which county workers will keep information about the participant’s substance problem confidential and use it only to evaluate and develop a treatment services plan is unclear at this point. The state has urged counties to “consider” training CalWORKs eligibility workers and others, who work closely with CalWORKs participants in the laws regarding confidentiality of information disclosed by participants and how to explain these rights to them.<sup>483</sup> The state has also strongly encouraged counties to develop “procedures, policies, and written materials” to ensure that CalWORKs participants are “accurately” informed about their rights to privacy and confidentiality.<sup>484</sup>

An individual in job search may be referred to an assessment any time a job search manager believes that substance abuse may be interfering with satisfactory completion of the job search component.<sup>485</sup> The case manager may then refer the individual to the county alcohol and drug program for an evaluation and determination of any treatment necessary for the transition from welfare to work.<sup>486</sup> The individual’s welfare-to-work plan must be based on the results of the evaluation<sup>487</sup> and may include appropriate treatment with assignment to a substance abuse program.<sup>488</sup> Assigned treatment programs must be “reasonably accessible within the county of residence or a nearby county.”<sup>489</sup> Other assignments must be made in consultation with the participant’s treatment provider.<sup>490</sup>

Participants get only two opportunities to receive substance abuse treatment among their welfare-to-work activities unless the county decides to allow additional treatment

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<sup>483</sup> ACIN I-16-00 at 13.

<sup>484</sup> ACIN I-16-00 at 15.

<sup>485</sup> WIC § 11325.8(c)(1); MPP § 42-711.57.

<sup>486</sup> WIC § 11325.8(c)(2); MPP § 42-711.57.

<sup>487</sup> WIC § 11325.8(c)(3); MPP § 42-716.512.

<sup>488</sup> WIC § 11325.8(c)(3); MPP § 42-716.512.

<sup>489</sup> WIC § 11325.8(c)(5); MPP § 42-716.513.

<sup>490</sup> WIC § 11325.8(d); MPP § 42-716.514.

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opportunities.<sup>491</sup> This means that a CalWORKs participant must perform welfare-to-work activities other than treatment after these opportunities are exhausted. Treatment providers should work with individuals and counties to make sure a person gets all the treatment she needs to transition from welfare-to-work.

For the first six months, if not exempted, an individual in assigned treatment may meet the participation requirements without also participating in other work activities.<sup>492</sup> However, if a participant is doing 32 or 35 hours of treatment, she may want to seek an exemption from participation and from time limits, so she does not use her 60 months on aid.

After six months, or if full participation in treatment is not needed, the participant must do other work activities at the same time she participates in treatment. The only exception is if the participant is in a program that requires her to stay at the program site for a minimum of three hours per day, three days per week, or otherwise not to participate in nonprogram activities.<sup>493</sup> In that case, the requirements of the treatment program will fulfill the participant's work activity requirement.<sup>494</sup>

State funds appropriated for county alcohol and drug programs for CalWORKs participants must be used by the counties to “develop, expand, or develop and expand programs appropriate for CalWORKs program recipients.”<sup>495</sup> Counties must report annually to the state the number of CalWORKs program recipients who receive substance abuse treatment and the extent to which the state’s allocation of funding is sufficient to meet needs.<sup>496</sup>

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<sup>491</sup> WIC § 11325.8(c)(4); MPP § 42-716.511.

<sup>492</sup> WIC § 11325.8(d); MPP § 42-716.515.

<sup>493</sup> WIC § 11325.8(d); MPP § 42-716.515.

<sup>494</sup> WIC § 11325.8(d); MPP § 42-716.515.

<sup>495</sup> WIC § 11325.8(e).

<sup>496</sup> WIC § 11325.8(f); MPP § 42-716.62.

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**c. Constructing the Welfare-to-Work Plan when Mental Health and Substance Abuse Is an Issue.**

Participants should think carefully about how they want to incorporate substance abuse and mental health treatment services into their welfare-to-work plans. Advocates should be encouraged to review the following options with participants to ensure that participants are able to tailor welfare-to-work plans that are right for their needs.

**i. Treatment as Part of Required Hours.**

A participant who chooses treatment services as either all or part of her work activity hours runs the risk of being sanctioned by the County, if she does not comply with her treatment.<sup>497</sup> However, if treatment is the participant's work activity, all of the hours spent in treatment will satisfy her weekly work requirement, thereby eliminating the possibly debilitating pressure that could result from combining 32 hours of trying to do additional hours of treatment outside of the welfare-to-work structure. In addition, if treatment is the participant's work activity, she would be entitled to receive transportation, child care, and other necessary supportive services while receiving treatment.<sup>498</sup> However, a participant who needs a significant

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<sup>497</sup> See Sections D and E in this chapter for a discussion of the sanction procedure. The argument certainly could be made under both the Americans with Disabilities Act (ADA) (42 USC §§ 12132 *et seq.*) and section 504 of the Rehabilitation Act (Rehab Act) (29 USC § 794 *et seq.*) that participant's mental health condition would require a "reasonable accommodation" such as a finding of good cause for her noncompliance with her treatment. Contact Jodie Berger at the Legal Services of Northern California at (707) 643-0054 X 302 to discuss these issues. However, those individuals who are currently using illegal drugs are excluded from the protections of the ADA and the Rehab Act. *See, e.g.*, 42 USC §§ 12210 *et seq.*, 28 CFR §§ 35.131 *et seq.* (ADA); 29 USC § 706(8)(C)(i) (Rehab Act). In addition, those individuals whose current use of alcohol prevents them from performing the duties of their job are excluded from the protections of the Rehab Act. 29 USC § 706(8)(C)(v).

Even if a participant is not entitled to the protections of the ADA or the Rehab Act, the determination of whether she has "good cause" for noncompliance with her treatment must include a consideration of whether her substance abuse problem "caused or substantially contributed to" her noncompliance. WIC § 11325.8(c)(6); MPP § 42-716.514.

<sup>498</sup> See Section F in this chapter.

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number of treatment hours, especially one who needs 32 hours per week, should request an exemption from Welfare-to-work and time limits.<sup>499</sup> She can still volunteer to participate in the treatment.

The new federal rules do not count time spent in any form of treatment (substance abuse, learning disability, mental health or domestic violence services) as participation.<sup>500</sup> This puts pressure on counties to try to deny services to participants, who need them and assign to other, countable, welfare-to-work activities. Counties, however, must follow CalWORKs law, and assign individuals to needed activities according to the assessment of their needs.<sup>501</sup>

### **ii. Treatment as an Additional Activity.**

A participant, whose disabling conditions and needs for treatment, do not rise to a level that requires accommodation, either through an exemption or a reduction of hours, can volunteer to do treatment in addition to the 32 hours in other welfare-to-work activities. Although on its face, this may appear excessive, these extra hours in treatment could be considered “volunteer” hours, which would protect her from sanction in the event that she drops out of treatment, and entitle her to supportive services as a condition of her participation.<sup>502</sup> However, this might be too many hours or too stressful for the participant, or might lead to her dropping treatment due to a lack of time.<sup>503</sup>

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<sup>499</sup> See Section B on welfare-to-work exemptions and Chapter II on time limits.

<sup>500</sup> See Appendix A for a summary of the TANF Reauthorization changes.

<sup>501</sup> ACL 07-03 at 11, ACL 08-07 at 2.

<sup>502</sup> WIC § 11320.3(c); MPP § 42-712.5.

<sup>503</sup> Contact Jodie Berger at the Legal Services of Northern California at (707) 643-0054 X 302 for more information on this accommodation issue. Since treatment is not a countable welfare-to-work activity for the *federal* participation rates, and since sanctioned individuals are part of those looked at for federal participation, the participant should encourage the county to provide an exemption, stop the 60 months clock, and allow the participant to get treatment at a manageable number of hours, without the pressure of other activities. See Section A.11 in this chapter and Appendix A for a summary of the DRA rules.

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**iii. Treatment Outside The Welfare-to-Work Plan.**

Another option is for the participant to pursue treatment outside of her plan on her own. One of the benefits of this option is that the individual's need for and receipt of treatment remains confidential. The downside is that the individual may not be able to withstand the pressure of combining work and treatment as mentioned above, and she may not receive either payment for the treatment or any supportive services she would need while in treatment, if her treatment is not a part of her plan.

**iv. Disability Exemption and Voluntary Participation In Treatment and Work Activities.**

A fourth option is available for those participants whose substance abuse/learning disabilities/mental health issue rises to the level of a disability. Individuals with disabilities are exempt from work requirements, if the disability significantly impairs the person's ability to be regularly employed or participate in welfare-to-work activities.<sup>504</sup> However, people with disabilities can voluntarily participate in a welfare-to-work activity.<sup>505</sup> These participants can have the best of both worlds: they receive the benefits of participation in a work activity *and* the supportive services that enable them to participate,<sup>506</sup> yet their exempt status stops their clock from running.<sup>507</sup>

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<sup>504</sup> WIC § 11320.3(b)(3)(A); MPP § 42-712.44. The disability must also be expected to last at least 30 days. The state has indicated that if a recipient is unable to participate 32 hours per week in welfare-to-work activities, she should be exempt. See DSS letter to Jodie Berger in Appendix F. Call Jodie at (707) 643-0054 X 302.

<sup>505</sup> WIC § 11320.3(c); MPP § 42-712.5.

<sup>506</sup> MPP § 42-750.11 (“necessary supportive services shall be available to *every* participant . . .”) (emphasis added.); ACL 04-04 at 4.

<sup>507</sup> WIC § 11454.5(a); MPP § 42-712.62. See also Section B of this chapter for more on exemptions.

**ADVOCACY TIP**

If a participant needs a significant number of substance abuse, mental health, or domestic abuse services, she should be exempt because her condition significantly impairs her ability to regularly work or participate. While exempt, the months do not count against the 60-month limit on aid, but she may volunteer to participate in education or other welfare-to-work activities, receive mental health, substance abuse, and domestic abuse services, and also receive supportive services necessary to participate in these activities.

For many participants, who need mental health or substance abuse treatment services, the intervention of advocates will be key in ensuring they receive all services to which they are entitled.

**d. Low Usage by Counties of Mental Health and Substance Abuse Funds.**

Although an exhaustive analysis of the guidelines is beyond the scope of this manual, there are a few issues that are worthy of note. It is widely believed, and widely reported by advocates, that participants are not seeking treatment due to fears that they will be stigmatized for needing treatment services, or that their children will be taken away from them by Child Protective Services, if they identify themselves as needing mental health or substance abuse treatment.<sup>508</sup> In addition, there are concerns that counties have set up their outreach, screening, and referral systems in such a way as to discourage participants from disclosing a potential mental health and/or substance abuse issue and receiving the treatment that they need.<sup>509</sup>

The guidelines urge counties to address participant concerns regarding confidentiality and potential reprisals resulting from disclosure in a number of ways:

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<sup>508</sup> ACIN I-82-99 at 2, ACIN I-16-00 at 12.

<sup>509</sup> ACIN I-82-99 at 4.

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- Inform participants of their right to confidentiality<sup>510</sup> and the fact that, with the exception of the counties' mandated reporting requirements, such as reports to CPS, the county will exchange information with other agencies only with participants' written consent and only on a "need to know basis";<sup>511</sup>
- Ensure that assessments and other discussions regarding these issues take place in a safe, comfortable, and private place, so as to encourage disclosure without risking confidentiality;<sup>512</sup>
- Clearly inform participants when county staff would be required to report to CPS, to reassure them that self-disclosure regarding mental health or substance abuse issues may not be enough to require a report;<sup>513</sup>
- At all stages of CalWORKs eligibility, provide clearly understandable resource material regarding substance abuse/mental health issues so that participants understand the issues and the program choices available to them.<sup>514</sup>

With respect to the organizational barriers to treatment access, the guidelines recommend that counties consider the following:

- Implementing a community outreach program to identify early those participants with mental health and/or substance abuse treatment needs and to engage non-responsive participants in treatment;<sup>515</sup>

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<sup>510</sup> ACIN I-16-00 at 13, 15.

<sup>511</sup> ACIN I-16-00 at 15.

<sup>512</sup> ACIN I-16-00 at 15, 17.

<sup>513</sup> ACIN I-16-00 at 13.

<sup>514</sup> ACIN I-16-00 at 18-19.

<sup>515</sup> ACIN I-16-00 at 7. The emphasis is on information at all stages of CalWORKs eligibility and for as many CalWORKs participants as possible. Thus, the guidelines call for frequent informing of all CalWORKs participants that is in a format that is culturally- and language- specific and easily understood by participants, that explains to them the multiple opportunities for disclosure at all stages of CalWORKs eligibility, and that reassures participants that their use of services will not negatively impact their benefits. ACIN I-16-00 at 8, 18. The

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- Assessing the training needs of staff on substance abuse and mental health treatment services and providing the necessary training to ensure that staff will be able to provide “quality identification, intervention and referral services” to participants;<sup>516</sup>
- Creating a “seamless” service delivery system by co-locating mental health and substance abuse treatment services within the welfare department and ensuring that information about treatment services is “readily available and easily understandable”;<sup>517</sup>
- Exploring innovative solutions towards meeting the child care and transportation needs of treatment participants;<sup>518</sup> and
- Designing a program that allows for multiple opportunities for a referral for service and for ongoing contact with the welfare department so that a participant’s welfare-to-work plan can be easily revised.<sup>519</sup>

Advocates should work with their counties to ensure that the county’s system will achieve the goals of the guidelines and that participants receive the mental health and substance abuse services they need from a “seamless system” that is designed to protect their confidentiality. Advocates should also review the county’s annual civil rights plan to see how the county offers and provides accommodations for disabilities.<sup>520</sup>

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guidelines also call for a broad-based outreach effort to reach more participants through the use of radio and television ads, billboards, community newsletters, and appearances at ethnic and cultural events, among other measures. ACIN I-16-00 at 8.

<sup>516</sup> ACIN I-16-00 at 4.

<sup>517</sup> ACIN I-16-00 at 6.

<sup>518</sup> ACIN I-16-00 at 7.

<sup>519</sup> ACIN I-16-00 at 8.

<sup>520</sup> Counties are required to file a civil rights plan each year. The CDSS Civil Rights Bureau has posted Guidelines for these plans, available at <http://www.dss.cahwnet.gov/civilrights/res/pdf/CR28%20ANNUAL%20PLAN%20July%202000>

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Finally, advocates should note that not everything in the guidelines is as benign as the recommendations cited above. For example, the guidelines urge counties to consider implementing a home visit program “to gather additional information to assist in the determination of whether the participant has a good reason for not complying with the program requirements.”<sup>521</sup> Advocates in counties that are considering implementing such programs should review them carefully to ensure that they comply with CalWORKs regulations and are narrowly tailored to protect the interests and confidentiality of participants.

### **6. Services for Victims of Domestic Abuse.**<sup>522</sup>

The CalWORKs law contains numerous special provisions dealing with domestic abuse, including in particular the provision that **any** program requirement can be waived for domestic abuse survivors.<sup>523</sup> As discussed above in this chapter, this means domestic abuse survivors can have their clock stopped and their hours of required participation limited or eliminated, if

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[1.pdf](#). Advocates can obtain the county’s Civil Rights plan by asking the local Civil Rights coordinator, or if they will not provide it, by contacting the DSS Civil Rights Bureau.

<sup>521</sup> ACINI-16-00 at 8. Some counties have initiated mandatory home visit programs that go beyond what the state regulations describe. Sacramento County’s home visit policy was initially enjoined by the court, and then abandoned as part of a settlement agreement. *See Poladyan v. Davis*, No. 98CS02862 (Super. Ct. 1998). For more information about *Poladyan*, contact Legal Services of Northern California at (916) 551-2150. The challenges to the Los Angeles County’s program and the San Diego County programs have been unsuccessful. *Smith v. Board of Supervisors*, 104 Cal. App. 4th 1104 (2002); *Sanchez v. County of San Diego*, 464 F.3d 916, 918-20, 931 (9<sup>th</sup> Cir. 2006). For more information about the *Smith* and *Sanchez* lawsuits or county-specific home visit policies, contact Bob Newman at Western Center, [rnewman@wclp.org](mailto:rnewman@wclp.org).

<sup>522</sup> Appendix I contains a detailed memo on CalWORKs domestic abuse issues.

<sup>523</sup> WIC § 11495.15; MPP § 42-715.51; ACINI-02-06 at 3. The regulations specify that eligibility requirements such as deprivation and financial eligibility criteria cannot be waived. MPP § 42-715.511.

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necessary.<sup>524</sup> Certain services must be considered for domestic abuse survivors, including but not limited to:

- community domestic abuse services;
- individual counseling of the participant and children;
- group counseling;
- substance abuse services;
- medical and public health service;
- mental health counseling;
- immigration services;
- parenting skills training;
- independent living skills training;
- financial planning;
- relocation activities; and
- legal services.<sup>525</sup>

In addition, persons with domestic abuse waivers can volunteer in welfare-to-work activities, and receive supportive services such as transportation, child care, and other ancillary services.<sup>526</sup>

Review welfare-to-work plans to ensure that these needs are addressed. If services specified in the plan or to which the recipient is otherwise referred are not available, good cause to waive welfare-to-work requirements exists.<sup>527</sup>

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<sup>524</sup> ACIN I-02-06 at 2. See Section C on good cause, and Section A.7 on hours of participation. If a domestic abuse survivor needs a significant number of hours of domestic abuse services, she should request a waiver of welfare-to-work requirements and the 60-month time limit so that her clock will stop running. ACIN I-02-06 at 2.

<sup>525</sup> MPP § 42-715.211(d). Unfortunately, no separate appropriation has been made at the state level to fund these services for CalWORKs participants, and counties are under no obligation to provide them.

<sup>526</sup> ACIN I-02-06, #7.

<sup>527</sup> MPP § 42-715.212.

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**PRACTICE TIP**

When working with a domestic abuse survivor, always assess whether it is best for her to have a welfare-to-work plan that includes a component of domestic abuse services, or whether she should request a domestic abuse waiver of the welfare-to-work plan and volunteer for work activities—particularly if she can obtain a waiver of the 60 month time limit.

Counties must provide survivors of domestic abuse with opportunities to self-identify,<sup>528</sup> and must inform participants that disclosing abuse will not have a negative effect upon the person’s ability to participate in CalWORKs.<sup>529</sup> In addition, counties must preserve confidentiality by safeguarding personally identifying information of domestic abuse survivors.<sup>530</sup> Counties have a duty to train county staff serving domestic abuse survivors.<sup>531</sup>

**G. The County’s CalWORKs Plan.**

Each county must create a CalWORKs plan, approved by the County Welfare Director and the Board of Supervisors,<sup>532</sup> which “describes how the county intends to deliver the full range of activities and services necessary to move CalWORKs participants from welfare to work.”<sup>533</sup> The plan and any revisions or addenda to it, no matter how minor, must be submitted to DSS.<sup>534</sup> DSS has posted county plans on its website at [www.dss.cahwnet.gov/cdsweb/CountyPlan\\_283.htm](http://www.dss.cahwnet.gov/cdsweb/CountyPlan_283.htm).

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<sup>528</sup> MPP § 42-715.12; ACIN I-02-06, #4.

<sup>529</sup> MPP § 42-715.14.

<sup>530</sup> ACIN I-52-08.

<sup>531</sup> MPP § 42-715.6(1); ACIN I-02-06 at 4. A comprehensive memorandum discussing domestic abuse issues in connection with CalWORKs is in Appendix I.

<sup>532</sup> WIC §§ 10531 *et seq.*; MPP § 42-780.5.

<sup>533</sup> MPP § 42-780.1. DSS issued a suggested format for the plan in ACL 97-54.

<sup>534</sup> MPP § 42-780.51. The regulation specifies that the county may implement revisions or addenda when they are submitted to DSS, suggesting that the county may *not* implement those that have not been submitted. MPP § 42-780.53.

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County CalWORKs plans must include:<sup>535</sup>

- How the county will collaborate with public and private agencies to provide for all necessary training and support services;
- The county's partnerships with the private sector;
- Other means the county will use to identify local labor market needs;
- The range of welfare-to-work activities the county will offer and any allowable activities that will not be offered;
- The process the county will use to provide for the availability of substance abuse and mental health treatment services;
- The process the county will use to provide child care and transportation services;
- The county's community service plan;
- How the county will provide training for workers who work with victims of domestic abuse;
- The performance outcomes the county will track;
- How the county obtained public input into the plan's development;
- A budget;
- How the county will assist families transitioning off aid;
- The county's job creation plan;
- Other elements identified by the state welfare director;
- How the county will comply with federal TANF requirements;
- How the county will coordinate welfare-to-work activities with local private industry councils (an addendum updating this information must be submitted by September 1 of each year);<sup>536</sup>
- Local outcomes to be tracked;<sup>537</sup>

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<sup>535</sup> See WIC § 10531 (listing required elements).

<sup>536</sup> WIC § 10531(q).

<sup>537</sup> WIC §§ 10542, 10531(j).

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- Whether and how the program applies to General Assistance (GA) recipients or refugees;<sup>538</sup>
- What post-employment services will be offered to participants who leave aid for employment;<sup>539</sup>
- The county's grievance procedure;<sup>540</sup>
- Provisions regarding tribal TANF programs and equitable access for tribal members;<sup>541</sup>
- The criteria for reducing or extending the exemptions for those providing care to newborns.<sup>542</sup>

To address changes in federal TANF reauthorization, Counties had to turn in plan addendums in January 2007. These addendums to the County CalWORKs plans must include a description of how it will provide:

- Up-front engagement activities;
- Engagement of non-complaint and sanctioned cases;
- Activities to encourage participation and prevent sanctions;
- Engagement of partially participating cases or cases between activities; and
- Other activities designed to improve work participation.<sup>543</sup>

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<sup>538</sup> WIC § 11321.6. The county may not spend CalWORKs funds on GA recipients. WIC § 11321.6(a). *See also* WIC § 13280 (plan must include provision for how counties receiving federal refugee social services or targeted assistance funds will serve refugees).

<sup>539</sup> WIC § 11323.2(b). *See also* Section F.3 in this chapter on post-employment services.

<sup>540</sup> WIC § 11327.8(a).

<sup>541</sup> MPP § 42-780.3.

<sup>542</sup> MPP § 42-780.4. *See* Section B in this chapter and Chapter VII (Child Care) for more on the infant exemption.

<sup>543</sup> ACL 06-46 at 6.

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Counties must also describe, how the plan will impact (increase) county work participation, how county will measure progress in this goal, and how the county will collaborate with other local public and private agencies.