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Reference- Pre-Penalty and Work Penalty

**Final Guidance
Welfare Transition Program
Work Penalties and Pre-Penalty Counseling**

Of Interest To:

Workforce Florida, Inc., all Regional Workforce Boards (RWB), and other entities engaged in implementing programs under Temporary Assistance to Needy Families (TANF) Act and Welfare Transition.

Subject:

To revise the guidance for Work Penalties and Pre-Penalty Counseling and documentation requirements.

Background:

During the 2000 legislative session, the Florida Legislature amended 414.065 F. S. in regards to work related sanctions for Temporary Cash Assistance (TCA). The Department of Children and Families (DCF) administers penalties for such nonparticipation at the request of the RWB provider. The Florida Statutes and the Florida Administrative Code provides for sanction procedures to be implemented to create a seamless provision of services and participant engagement. Recently, the Agency for Workforce Innovation (AWI) and the Department of Children and Families (DCF) met to: (1) clarify specific provisions of the law; (2) develop integrated and consistent procedures to implement sanctions; (3) to clarify the provision to deny transitional childcare to sanctioned persons; and (4) to establish verification procedures of the correct implementation of sanction procedures in the event a Fair Hearing is requested.

Program Guidance:

Florida Statutes section 445.024, Work Requirements, list the work activities that a participant must be engaged in, individually or in combination, to satisfy the work requirements for a participant in the Temporary Cash Assistance work program, the WT program. Each individual who is not exempt from the work activity requirements by DCF must participate in a work activity for the minimum number of hours required under federal law but no more than 40 hours per week per mandatory adult referred.

There are exceptions to non-compliance penalties. Individuals who have good cause may be excused from participation in the work activities. Individuals who have on-going good cause may be excused from participation in the work activities and must be assigned to an Alternative Requirement Plan if the participant has demonstrated limitations to work requirements and Individual Responsibility Plan requirements. However, penalties will be applied to a case according to the Work Penalty Pre-Penalty Process if the participant fails to complete the Alternative Plan Requirements.

I. Sanction Penalties:

An individual receiving Temporary Cash Assistance (TCA), who is subject to work requirements, shall have the following penalties applied if (s)he fails to comply with work requirements or the Alternative Requirement Plan without good cause:

First non-compliance:

Temporary cash assistance shall be terminated for the entire family for a minimum of 10 days from the effective date of the sanction or until the individual who failed to comply with the work requirement does so, whichever is later.

Example 1

A sanction is requested on June 2nd, the Economic Self-sufficiency Specialist (ESS) takes action on June 5th to terminate cash assistance effective July 1st. The individual complies on June 10th. The individual's cash assistance must be terminated for a minimum of ten days; therefore, the penalty period would be July 1st through July 10th. Benefits could be reinstated effective July 11th.

Example 2

A sanction is requested on June 2nd; the ESS takes action on June 5th to terminate the benefits effective July 1st. The individual does not comply until July 20th. An alert is generated to the FLORIDA worker indicating compliance. The sanction would remain in effect until July 20th, as this is the date of compliance.

A Request for Assistance (RFA) is not required in these two examples because the cash assistance has not been closed for more than 30 days.

Second non-compliance:

TCA shall be terminated for the family for 1 month from the effective date of the sanction or until the individual who failed to comply does so, whichever is later. The non-compliant individual must comply with the required work activity upon completion of the one-month penalty period before temporary cash assistance can be reinstated. Upon meeting the work requirements, TCA shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

Example 1

A sanction is requested on June 2nd. The ESS takes action on June 5th to terminate benefits effective July 1st. The individual must serve a minimum one-month penalty period, which

would be the month of July. August 1st is the earliest date the individual could comply to have the sanction lifted. The individual subsequently complies on August 1st. Benefits cannot be reinstated before August 1st. The penalty period is July 1st through July 31st.

Example 2

A sanction is requested on June 21st the ESS takes action to terminate benefits June 25th. The first month that benefits could be terminated would be August. Therefore the penalty period is August 1st through August 31st. The individual complies on September 10th, therefore, benefits will be reinstated effective September 10th, the date of compliance, as this, is later than the first day of the month following the penalty period.

In these examples, the individual must submit a new Request for Assistance (RFA) and have a face-to-face interview prior to having benefits reinstated as the cash assistance has been cancelled for more than 30 days.

Third non-compliance:

TCA shall be terminated for the family for a period of 3-months or until the individual who failed to comply does so, whichever is later. The non-compliant individual must comply with the required work activity upon completion of the 3-month penalty period before temporary cash assistance can be reinstated. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

Example

A sanction is requested on June 2nd and is imposed with an effective date of July 1st. The individual cannot comply until the 3-month penalty period has been served. Therefore, the individual may not receive cash assistance for July, August and September. If the individual complies on October 1st, cash assistance can be re-approved on that date if all other factors of eligibility are met. If the individual did not comply until October 20th, benefits could be received effective October 20th, if eligible, as the date of compliance is later than the first day of the month following the compliance period.

The individual must submit a RFA before benefits can be reinstated since there has been a break in receipt of temporary cash assistance of more than 30 days.

NOTE: If an individual's cash assistance case is closed due to a sanction and the individual reapplies for cash assistance, the ESS will refer the individual to the Regional Workforce Board (RWB) provider to comply. The ESS will not lift the sanction and approve benefits until the request to lift the sanction has been sent by the RWB provider.

II. Forgiveness Policy

Florida Statute 414.065 provides for forgiveness of penalties and puts a participant who has complied for six months back into full compliance standing in the WT program. If an individual is compliant for six months after a sanction is lifted due to compliance, any subsequent sanction would be treated as a level one. Example, if an individual fully complies for a minimum of six months after complying to have a level three sanction lifted, the next sanction would be considered a level one.

The compliance for the forgiveness policy does not have to be for six consecutive months. If the mandatory participant's case closes for any reason, other than a work penalty, the time the participant was in compliance with the WT program is counted towards the forgiveness period. The receipt of transitional services or a time to which the participant is in "transitional status" does not count as compliance towards the forgiveness period. Example: A participant in the WT program just lifted a level two sanction during May 2003. She started receiving TCA June 1, 2003 and was in compliance until her case closed due to earned income September 30, 2003. The participant earned 4 months of participation towards the forgiveness period. Once her case reopens, she will only have to be in compliance for the remainder of two months to meet the six-month requirement. Once she meets the six months, a subsequent penalty would start at level one. If she does not meet the six-month requirement, a subsequent penalty would be a level three.

Food stamp sanctions will be applied in accordance with the current food stamp policy for work sanctions in Policy Transmittal P99-11-0046.

III. Exceptions to Non-compliance Penalties:

The following are good cause exceptions to the non-compliance penalties; however, they do not constitute exceptions to the applicable time limits for receipt of TCA. Before the RWB designee requests a sanction, an individual may be allowed to request an exception to a penalty based on the following reasons (F.S. 414.065 (4)):

a) Non-compliance related to childcare. Temporary cash assistance may not be terminated for refusal to participate in work activities if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the adult proves to the RWB provider an inability to obtain the needed childcare.

b) Non-compliance related to domestic violence. An individual who is determined unable to comply with the work requirements because such compliance would make it probable that the individual would be unable to escape domestic violence shall be exempt from work requirements. However, the individual shall comply with a plan that specifies alternative requirements that prepare the individual for self-sufficiency while providing for the safety of the individual and the individual's dependents.

c) Non-compliance related to past effects of domestic violence. An individual who is determined to be unable to comply with the work requirements due to mental or physical impairment related to past incidents of domestic violence may be exempt from work requirements. The individual shall comply with a plan that specifies alternative requirements that prepare the individual for self-sufficiency while providing for the safety of the individual and the individual's dependents.

d) Non-compliance related to medical incapacity. If an individual cannot participate in assigned work activities due to a medical incapacity, the individual may be exempted from the activity for a specific period of time, except that the individual shall be required to comply with the course of treatment necessary for the individual to resume participation. The medical

incapacity must be verified by a physician licensed under chapter **458 or 459 F.S.** This does not include chiropractors and nurse practitioners.

e) Non-compliance related to outpatient mental health or substance abuse treatment. If an individual cannot participate in the required hours or work activity due to a need to become or remain involved in outpatient mental health or substance abuse counseling or treatment, the individual may be exempted. The exemption from the work activity may be for up to 5 hours per week, not to exceed 100 hours per year. An individual may not be excused from a work activity unless a mental health or substance abuse professional, recognized by the DCF or RWB provider, certifies the treatment protocol and provides verification of attendance at the counseling or treatment sessions each week.

f) Non-compliance due to medical incapacity by applicants for Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). An individual subject to work activity requirements may be exempted from those requirements if the individual provides information verifying that he or she filed an application for SSI or SSDI benefits and the decision is pending. The decision may be pending awaiting development and evaluation under social security disability law, rules, and regulations. While awaiting the final determination, the individual must continue to meet all program requirements assigned to the participant based on their ability to comply (F.S. 414.105 (11)).

g) Other good cause exceptions for non-compliance. Individuals who are temporarily unable to participate due to circumstances beyond their control may be exempted from the non-compliance penalties. These situations must include temporarily caring for a disabled family member when the need for the care has been verified and alternate care is not available.

When an individual is unable to participate in work requirements due to domestic violence, including the treatment, remediation of the past effects of domestic violence, medical incapacity, or pending application(s) for SSI or SSDI, an Alternative Requirement Plan (ARP) must be completed. ARPs may be used for remediation or other assessments necessary to facilitate cooperation and compliance with work requirements. If individuals assigned to an alternative requirement plan fail to comply with the required alternative plan, the individuals will be subject to the appropriate work penalties.

IV. Emphasis on Counseling

Prior to taking action to impose a penalty, the RWB provider is required to notify the participant that (s)he is subject to a penalty for failing to comply with work requirements or the ARP requirements. The notification attempts must be **both oral and written**. The participant shall be counseled as to the consequences of non-compliance and, if appropriate, shall be referred for services that could assist the participant to fully comply with program requirements.

If the participant has good cause for non-compliance or demonstrates satisfactory compliance, the penalty must not be imposed. It is extremely important that no sanctions are imposed when the

participant has good cause for failing to comply.

If the participant has subsequently obtained employment, the RWB provider shall counsel the participant regarding transitional and cash assistance severance benefits that may be available to them. The provider will also provide the information about how to access these benefits. The RWB provider should continue to follow current procedures when determining if the employment meets the required Welfare Transition program work participation requirements.

V. Procedures for Regional Workforce Board Providers:

A. If an individual is non-compliant with a work requirement or the Alternative Requirement Plan:

- Mail the Notice of Failure to Participate and Possible Sanction, form AWI-WTP 2290, to the individual within two working days after the first failure.
- Attempt oral contact via phone or through another locally determined method and document the results of such attempt in the One Stop Service Tracking (OSST) system. If the participant does not have a phone, or the number is disconnected, document that an attempt was made in the *Case Notes*.
- If the oral attempt to contact the individual is not successful, allow the individual 10 calendar days after the "date mailed" on the 2290 to respond about the reason for non-compliance.

B. If the oral attempt to contact the participant is not successful and if the participant does not respond to the Notice of Failure to Participate and Possible Sanction, AWI-WTP 2290:

- A sanction must be requested after allowing the 10 calendar days for the participant to respond.
- It is not necessary to mail the Notice of Failure to Demonstrate Satisfactory Compliance (AWI-WTP 2292) at this time, as the participant has already been notified of the failure and the date it occurred.

C. If the oral contact is successful or the individual responds prior to the 10 calendar days ending, the RWB provider must:

- Determine if good cause exists for the failure and clearly document this in OSST.

If good cause is determined:

The sanction process ends. The pre-penalty request is ended in OSST appropriately. A sanction should not be requested if good cause is established. Good cause reasons for failing to comply include, but are not limited to the following:

- A single custodial parent caring for a child under six years of age who can prove they are unable to obtain needed child care within a reasonable distance from their home or worksite, child care by a relative or others is unavailable or unsuitable, or there is no affordable formal child care;
- **Reasons related to domestic violence or treatment or remediation of the past effects of domestic violence;**
- A medical incapacity and the individual is willing to comply with the course of treatment needed so they can participate in work activities or an ARP. Individuals who have medically verified limitations shall be assigned to activities consistent with their limitations; and
- Circumstances beyond the control of the individual.

If good cause is not determined but the individual agrees to demonstrate satisfactory compliance:

1. Provide counseling regarding the consequences of non-compliance and determine services the participant may need that would assist him or her in becoming compliant.
2. Assign the participant to an activity or other work requirement. End the pre-penalty with “compliance” once the individual begins complying using the date they agreed to comply as the end date. It is important to develop an Alternative Requirement Plan if appropriate.
3. If the individual complies and does not have another failure without good cause within 30 calendar days from the date of the first failure, the sanction process ends. A sanction is not requested.

During the counseling session, the participant must be told that a sanction will be requested if they are non-compliant again, without good cause, within 30 calendar days of the first failure.

VI. Need for the Career Plan (Individual Responsibility Plan):

The career plan, also known as the Individual Responsibility Plan (IRP), must be completed for all participants. Because TANF Reauthorization focuses on universal engagement and self-sufficiency plans, the career plan must be developed on the foundation of the assessment to move the participant to self-sufficiency as soon as possible. Those that are deferred from full-time countable work activities may require an Alternative Requirement Plan (ARP). The ARP is a career plan with alternative requirements based on the limitations the participant has provided verification for. The alternative plan may include a vocational or educational assessment, childcare services, assistance with healthcare needs or transportation.

The career plan or IRP is regionally designed. The foundation of the career plan is located in the

OSST system. Utilizing the information entered in OSST based on the initial assessment of the participant's skills, prior work experience and employability, the IRP can be utilized to focus goals, barriers to employment and the steps the participant will take to self-sufficiency. The RWB provider should determine how to utilize the Career Plan tool (IRP Wizard), establish an IRP with each participant and update the information located on the Career Plan frequently. Updates must be signed and retained in the case file. The RWB should develop a local operating procedure regarding the IRP:

- Will the entire updated IRP be copied and placed in the case file?
- Will the IRP receipt or signature page be retained in the case file as documentation that the participant received a copy of the IRP?
- Will a locally developed document, e.g. a signature log, be utilized to verify the participant received the IRP and/or updates?

VII. Failure to Demonstrate Satisfactory Compliance

Demonstrating satisfactory compliance is defined as having no more than one failure without good cause within a 30 calendar day period. It is extremely important that sanctions are not imposed if the participant has good cause, or demonstrates satisfactory compliance.

If there is a second failure within the 30 day compliance period:

- If the individual is non-compliant again within 30 calendar days of the first failure, allow three working days after the date of the second failure for the individual to report good cause. Document the second failure and date of the second failure in OSST.
- If good cause is reported, update the case notes in OSST, and do not request a sanction.
- If good cause is not reported/determined within the three working days, a sanction must be requested and the Notice of Failure to Demonstrate Satisfactory Compliance form (AWI-WTP 2292) must be mailed immediately to the individual.
- It is a good practice to set a future case alert or "To Do" in OSST for three working days after the failure to be reminded of the impending sanction request.

If the client has obtained employment:

- Encourage the participant to contact the Department of Children and Families to report their employment.
- Verify the employment and enter the information in OSST.
- Update OSST "Case Notes" with information regarding the employment.
- Assign the participant to additional work activity hours if they are not employed a

minimum of 30 hours per week and remain TCA eligible.

- Discuss transitional benefits, which will be available, if their cash assistance is cancelled or they opt not to receive in conjunction with the verification of earned income. The discussion should include an explanation of how to access these benefits.

VIII. Sanctions and Transitional Benefits

Sanctioned individuals are not eligible for transitional benefits such as transportation, education and training, or childcare during the sanction period. In the past, if a participant lifted the sanction with compliance and provided documentation of employment, (s)he was eligible to receive transitional benefits. According to Florida Statutes, a participant's whose assistance is terminated due to a work program sanction is not eligible for TCC. A Welfare Transition participant's case must close with earned income to receive transitional benefits and services. If a participant lifts the work sanction, does not return to assistance and subsequently obtains or provides documentation of employment, (s)he should be provided with referrals to agencies for community assistance, including but not limited to the IV-C Agency in the area. Because the participant's TCA did not terminate with one of the approved reasons for transitional benefits and services, (s)he is not eligible for transitional benefits and services (including a referral for TCC).

IX. Protective Payee

Persons who are sanctioned under a level two or three penalty may request a protective payee to receive TCA on behalf of the children (414.065 (2), F.S.). The Department of Children and Families (DCF) will designate the protective payee. The participant who is sanctioned for non-compliance is not receiving the assistance. Therefore, the participant who is under a work program sanction is not eligible for transitional service or benefits if (s)he secures employment and reports employment to DCF and the RWB provider.

If a sanctioned participant of the WT program has secured a protective payee to receive cash assistance for the family's children and subsequently obtained employment, (s)he is not eligible for transitional benefits or services. Even if the income is enough to terminate the TCA amount for the children, the participant is not eligible for transitional benefits and services. If the sanctioned participant reports the employment to the RWB provider, (s)he should be advised to comply to lift the sanction once the penalty period has been served. The WT program provider may provide referrals to community agencies to assist the participant with securing support for retaining employment.

X. Fair Hearings and Documentation of the Sanction Process

According to Florida Statute 409.285, persons whose assistance is canceled or modified may appeal the decision to the Department of Children and Families. The individual may request an Administrative Fair Hearing in accordance with the Florida Administrative Code (FAC) 65-2.042-.066. If an individual requests a Fair Hearing regarding a Welfare Transition sanction imposed by the RWB provider, the provider may be requested to attend the hearing as a witness. Although the adverse action to terminate the cash assistance is imposed by DCF, the sanction is requested by the WT provider. The burden of proof is on DCF. The DCF must provide verification that the sanction was

implemented appropriately and according to guidance and statutes. Therefore, as the department's witness, the RWB provider must be prepared to present verification of the following:

- The participant was counseled (or provided a counseling time period);
- The sanction was imposed correctly;
- The participant failed to comply with work requirements or alternative plan requirements;
- The participant was notified of the failure;
- The participant was notified of the penalties for failure;
- The guidance regarding sanctions; and
- The statutes regarding sanctions.

There are several ways to provide verification regarding the sanction process. The WT program currently utilizes an advanced computer system, the One-Stop Service Tracking (OSST) system. OSST provides "system notes" in the *Case Notes* feature of the program for each informational entry and case action taken by the OSST user on a case. To avoid duplication of information regarding sanctions (e.g. correspondence, sanction information, the IRP, etc.), the RWB may develop a local operating procedure utilizing the OSST system in the documentation process. Regions may choose to print and copy the 2290, 2292 and the IRP to document the process in the hard file. However, regions may choose to utilize the system notes in the event a Fair Hearing or grievance is filed.

System Notes:

A case note that is generated by user action is called a "system note" that will be located on the *Case Note* screen. The system will generate a note regarding the entry of a pre-penalty request, the termination of a pre-penalty request, a sanction request and the termination of a sanction into OSST.

- The pre-penalty note will include the participant's name, the failure entered on the Alternative Plan screen, the date of failure as entered on the Alternative Plan screen, the user signed in on OSST and the primary unit of the user.
- The system note generated when the pre-penalty is lifted with good cause, compliance or "other" will describe why the pre-penalty was lifted or ended, the date it was lifted/ended and the user logged in to the OSST system.
- The system note generated when a penalty is requested will provide the current sanction level, the date the sanction was requested and the user logged in to the OSST system.

Notice of Failure to Participate and Possible Sanction (AWI-WTP 2290) and the Failure to Demonstrate Satisfactory Compliance (AWI-WTP 2292) forms: if the user chooses to print the 2290 or the 2292 at the system's generated request, OSST will generate a system note. The note will give the participant's address that is on the *Case at a Glance* screen as provided by the FLORIDA system, the user signed-in to OSST and the primary unit of the user. The note will also provide the date and time the system generated the alert. **NOTE: If the user alters the address on the form, the address change will not be saved in the system note. The 10 calendar days provided to the participant as printed on the 2290 is not saved in the system note. Penalty information provided on the 2290 or 2292 is not saved by the system note.**

Therefore, if the Hearings Officer requests specific information that is provided on the 2290 or

2292 to ensure that the participant was given the correct information regarding the counseling time period, the failure, the right to provide good cause, the contact information for the RWB provider and the sanction level, only a saved document or printed document will provide the information.

Alternative Plan Screen

The *Alternative Plan* screen only retains pre-penalty information until the pre-penalty is ended with good cause or the reason “other.” Once the pre-penalty is lifted with good cause or “other” reason, the information is not available for selection by a hyperlink. The details cannot be reviewed on the *Alternative Plan* screen. If the pre-penalty is lifted with complied, the pre-penalty information can only be viewed by selected the “*Request Penalty*” hyperlink on the *Alternative Plan* screen. The hyperlink is only available for selection 30 days from the original date of failure as entered on the *Alternative Plan* screen. If the participant is sanctioned, the pre-penalty and sanction details are retained until six months after the sanction is lifted. Therefore, the user must be cautious when relying on the *Alternative Plan* screen as a primary source of information.

Saving the Generated Forms:

Some regions have opted to print the system notes and detailed personal case notes for the Fair Hearing to demonstrate the date, time and forms that were printed and provided to the participant (by mail, hand delivery, etc). In conjunction with the system and personal case notes, some regions are opting to store an electronic file for the customer in the event the form is required for a Fair Hearing. Once the form was modified and printed, the form is saved for future reference. All documentation and case information is subject to the rules of retaining case files. All information must be retained according to law and guidance and are subject to confidentiality laws.

SUPERCESSION: WFI 00-10-005 Work Penalties and Pre-Penalty Counseling, August 30, 2000

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