

P A T H

Department of Prevention, Assistance, Transition, and Health Access

BULLETIN NO. 00-22F

FROM Eileen I. Elliott, Commissioner
for the Secretary

DATE

SUBJECTS Implementation of the Reach Up Program Services Component
and Related Changes to ANFC Policy

CHANGES ADOPTED EFFECTIVE 7/01/2001

INSTRUCTIONS

X Maintain Manual - See instructions below.
____ Proposed Regulation - Retain bulletin
and attachments until you receive
Manual Maintenance Bulletin: 00-22F
____ Information or Instructions - Retain until

MANUAL REFERENCES

T.O.C.	2340 – 2399		
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This bulletin replaces existing rules for the welfare-to-work component of the Aid to Needy Families with Children (ANFC) program with new rules that implement the new Reach Up Program services component that goes into effect on July 1, 2001. It also replaces the name *ANFC* with the name *Reach Up*, which was formerly the name of the ANFC welfare-to-work component. These changes represent the most extensive part of the modification of current regulations required by Vermont's comprehensive welfare reform law, Act 147, enacted by the Vermont General Assembly in May 2000. In addition to introducing the new Reach Up services component rules, this bulletin continues the implementation of the transition of families from the current program that was begun in November 2000.

Reach Up Services Component Policy

In May 2000, the Vermont General Assembly enacted Act 147, an "Act Relating to Assisting Families to Attain Self-Sufficiency." Act 147 establishes the new Reach Up Program, the program that on July 1, 2001, will replace the Welfare Restructuring Project (WRP). The new Reach Up Program has two components: the financial assistance component and the services component. This bulletin establishes the rules for the services component by replacing or substantially modifying the three sets of ANFC rules applicable to the three groups of families during WRP.

WRP is a seven-year demonstration project that allowed the Department of Social Welfare, now Department of Prevention, Assistance, Transition, and Health Access (department), to establish different policies and apply them to ANFC assistance groups based on their random assignment into one of three groups. This project is operating under the authority of Act 106 (1994) and federal waivers. On the basis of these waivers, Vermont has been exempted from the work participation requirements of the federal Temporary Assistance for Needy Families (TANF) law. On July 1, 2001, WRP ends, the federal waivers and the applicable provisions of Act 106 expire, and Vermont must comply with the TANF law and Act 147.

Because Vermont could not afford to wait until July 1, 2001, to engage families in the current caseload in work activities that meet the federal work requirements, the legislature enacted section 1133 to create a transition period. The transition period began in November 2000 with the rules established in Bulletin 00-19. This bulletin provides the rules for completion of the transition for all WRP families and establishes the rules of the new program.

This bulletin implements the Reach Up Program services component effective July 1, 2001, by establishing:

- a. the transition rules to move all remaining WRP families to the new program; and
- b. the Reach Up Program's services component, including:
 - the phases used to chart participants' timely progress through the program;
 - the mandatory participation requirements applicable to all adults;
 - the sanction rules applicable to adults who fail to comply with services component requirements;
 - the work requirement hours;
 - the acceptable work activities for meeting the work requirement; and
 - a notice and appeal section.

New Policy Sections

The changes and additions in this bulletin are a comprehensive revision and renaming of the ANFC rules. The new policy sections are as follows:

TOC	2340 – 2399
2341	Definitions – Consistent with Act 147, adds definitions of terms used in Reach Up services component rules.
2350	Case Management – Consistent with Act 147, adds a description of the case management program model and the related assessments. Establishes a limitation on caseload size and case manager responsibilities and incorporates an expanded version of WAM 2345.1 notification requirements.

- 2351 Support Services to Participating Families – Incorporates and modifies WAM 2347, consistent with Act 147, to explain the types of support services available, their relationship to the program, and how and when they may be provided to program participants.
- 2352 Child Care Assistance – Incorporates and modifies WAM 2348, consistent with Act 147, to explain eligibility criteria for child care assistance, allowable expenses, and the payment rate in the limited circumstances when the department covers the child care expense.
- 2353 Incentive Payments – Incorporates WAM 2245.23 (incentive payments for certain parenting activities) and WAM 2354 (teen parent education incentive) with minimal modification to make them consistent with new program.
- 2360 Participation in the Services Component – Explains the mandatory participation aspect of the services component, drawing from WAM 2343. Establishes the services component phases, the framework that defines the required progression for adult participants receiving financial assistance.
- 2361 Family Development Plans (FDP) – Consistent with Act 147, explains the family development plan, its contents and development, and when the FDP shall be reviewed. Establishes the concept of the employment goal as it relates to the participant’s FDP and the progression through the program phases.
- 2362 Family Development Plan Requirements – Consistent with Act 147, establishes mandatory FDP requirements for adult participants and incorporates WAM 2242.3 (requirements for minor parents) and WAM 2343.3 (requirements for 16- and 17-year-old out-of-school youth) with minimal modification.
- 2363 Work Requirements – Consistent with Act 147, establishes the work requirements for all adult participants.
- 2364 Work and Work Activities Described – Consistent with the requirements of federal law and Act 147, describes the general categories of work activities and explains which participants may count their participation in an activity toward their work requirement hours.
- 2365 Deferments and Modifications – Establishes the Act 147 modifications to and deferments from the work requirement including a medical deferment (modified from WAM 2344.2) and an unmodified domestic violence modification or deferment (WAM 2344.2).
- 2370 Noncompliance, Good Cause Criteria, and Determination of Good Cause – Retains the substance of addressing noncompliance and good cause in policy sections WAM 2349 – 2349.4 and WAM 2351.1 and 2351.2, but restructures the contents to improve clarity and make them consistent with the new program.

- 2371 Conciliation – Retains and incorporates most of the substance of WAM 2350 with some modification to improve clarity and to make it consistent with the new program.
- 2372 Sanctions for Failure to Comply with FDP or Work Requirements – Establishes the Act 147 fiscal sanctions, along with the associated procedures for sanction imposition, housing costs protection, and vendor payments.
- 2373 Sanctions – Cure and Forgiveness – Establishes the Act 147 procedures and standards for curing sanctions and for having past sanctions forgiven.
- 2380 Notice and Appeal – Consistent with Act 147, establishes a section pertaining to notice and appeal of adverse actions by the department.

Specific Changes and Additions to Policy Pages

After filing the final proposed rule on April 30, 2001, and before the hearing of the Joint Legislative Committee on Administrative Rules, advocates who provided public input on the proposed rule were invited to meet with the department to discuss ongoing concerns. The department met with representatives from Vermont Legal Aid, the Vermont Coalition for Disability Rights, and the Vermont Children’s Forum. Several changes to the rule were made in response to concerns raised by these commenters. The department also has made several changes on its own initiative since the filing of the final proposed rule. All substantive changes that have been made since the filing of the final proposed rule are indicated below as occurring “***[s]ince the last filing and with the approval of the Joint Legislative Committee on Administrative Rules.***”

Since the filing of the proposed rule and receipt and consideration of public comment, the following changes have been made to the rule:

- TOC Rearranged and changed numbers for section 2364 subsections.
- 2341 P.2 Revised the definition of domestic violence in 2341 (10) to be consistent with the Vermont statute governing relief from abuse orders. Added definition of homeless at 2341(12).
- 2350 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, added language clarifying the application of section 2350.1.
- 2351 Extended support services to participants who have completed all FDP activities leading to the employment goal but who are still receiving financial assistance (2351.1).
- 2351.41 Clarified that there is no requirement for participants to obtain private health insurance.
- 2351.5 P.2 Expanded policy to allow reimbursement of travel expenses to and from employment under certain circumstances.

- 2351.5 P.4 Clarified the circumstances under which clothing may be purchased for participants.
- 2352.3 Clarified that specified child care payments are made only to providers who are ineligible for child care reimbursement from SRS.
- 2353 In section 2353.1, increased the amount case managers may award as a parenting education incentive and replaced the lifetime maximum of three such incentive payments with a maximum of \$300.
- 2360.2 P.2 Clarified in 2360.22 that assignment to an appropriate phase takes place no later than 30 days after the participant's first meeting with a case manager.
- 2360.22 P.2 Added section 2360.24 on the employment phase.
- 2360.25 Clarified that principal-earner parents and parents sharing the work requirement should not be assigned to the pre-work-ready phase.
- 2361 Revised the time frame for the family development plan to comply with Act 147.
- 2361.3 Added a requirement to reassess certain participants for barriers and make appropriate referrals.
- 2362 Added to 2362.1 that case managers shall assist participants having difficulty providing verification of participation.
- 2362.11 Clarified that adult applicants include adults joining an ongoing financial assistance case.
- 2362.3 P.2 Clarified that the restrictions on participation in work activities specified in section 2364 are not applicable to out-of-school youth.
- 2363.14 Added criteria for decisions on extending the pre-work-ready phase.
- 2363.3 P.2 Clarified the circumstances under which parents in a two-parent family may change the designation of the principal-earner parent.
- 2363.31 P.2 – P.3 Clarified in 2363.31 A.1 that the second parent in a two-parent family with two able-to-work parents does not have a work requirement. Removed the requirement in 2363.31 A. 2 that the principal-earner parent must have lost employment for good cause to establish a sharing arrangement to meet the work requirement.
- 2363.33 Added alternative work requirement for participants under 20 years old. Clarified in 2363.34 that participants who progress to the employment phase but are unable to obtain employment shall accept a community service placement or engage in job search.

- 2363.35 Eliminated a restriction on the conditions under which certain participants may refuse job offers.
- 2364.3 P.3 Eliminated a confusing paragraph in 2364.3. Moved and renumbered Self-Employment subsection from 2364.9 to 2364.4.
- 2364.45 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, modified the criteria for an extension in 2364.46 to allow the consideration of unsubsidized self-employment hours.
- 2364.5 Renumbered Work, Training, and Education Placement subsection from 2364.4 to 2364.5. Clarified that WTE placements represent 20 or 30 hours of work experience, depending on family circumstances, plus an education and training component. Renumbered Community Service Placement subsection from 2364.5 to 2364.6.
- 2364.6 P.2 Renumbered Work Experience subsection from 2364.6 to 2364.7. Moved and renumbered Vocational Education subsection from 2364.6 to 2364.8. Removed the requirement in 2364.8 that minor parents be work-ready to participate in vocational education as part of their secondary school program
- 2364.9 Renumbered Job Skills Training subsection from 2364.7 to 2364.9 and the Basic Education Directly Related to Employment subsection from 2364.8 to 2364.10. Added certain parents under 20 to the list of participants in basic education directly related to employment at 2364.10.
- 2364.11 Renumbered Work Activity Displacement Policy subsection from 2364.10 to 2364.11. Added reduced hours to the prohibition against placing participants in work sites where employers have created vacancies by eliminating positions. Added a prohibition against placing participants at work sites as a result of a labor dispute. Added a requirement for a sign-off by the bargaining unit at a work site. Added section 2364.12 on the application of the Fair Labor Standards Act.
- 2365.3 P.2 Modified language in 2365.3(6) to allow a deferment or modification for someone needed at home to care for a relative under certain circumstances.
- 2365.3 P.3 Added a deferment or modification at 2365.3(10) for participants entitled to leave under the Family Leave Act.
- 2365.31P.3 Added participants determined disabled for the purposes of the Medicaid program to the list of participants not required to accept a referral to vocational rehabilitation services in 2365.32.
- 2370.2 Added language at 2370.31(3) to include the employer's conduct at a job interview to the situations in which discrimination is grounds for good cause for refusing a job offer.

2370.31 P.2 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, added language to 2370.31(6) allowing a good cause determination for a participant who lacks transportation to child care.

2370.31 P.3 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, removed the language “documented and” from first bullet of 2370.31(13) and added 2370.31(15) allowing a good cause determination for participants who must attend to a school emergency related to their child.

Added 2370.31(12) allowing good cause determination for participants unable to comply due to the effects of domestic violence. Added 2370.31(13) allowing a good cause determination when a participant asserts that a previously unacknowledged medical condition was the direct cause of noncompliance and takes steps to address that condition. Added 2370.31(14) allowing a good cause determination when a participant is terminated from employment due to the serious illness of the participant or a member of the participant’s family.

2370.32 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, modified 2370.32(1) to allow a good cause determination for a participant who lacks transportation to child care.

2370.32 P.2 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, removed language “documented and” from first bullet of 2370.32(11) and added 2370.32(12) allowing a good cause determination for participants who must attend to a school emergency related to their child.

Added 2370.32(11) allowing a good cause determination when a participant asserts that a previously unacknowledged medical condition was the direct cause of noncompliance and takes steps to address that condition.

2371 Modified conciliation policy in 2371 and 2371.1 to nullify conciliations that took place prior to July 1, 2001, for the purpose of the limit of two conciliations in a 60-month period. Added a requirement for the case manager to help the participant obtain verification of good cause, when requested.

2372 Clarified that the good cause determination related to noncompliance may occur after sanctions have been initiated.

2372.21 P.2 Clarified the language in 2372.21 describing the circumstances under which a sanctioned participant can qualify for an additional period of housing protection. Eliminated the \$10 deduction from vendored rent payment paid to sanctioned families.

2373 ***Since the last filing and with the approval of the Joint Legislative Committee on Administrative Rules***, modified language in the third paragraph of 2373.12 to clarify the process to cure sanctions in families with two able-to-work parents.

Clarified in 2373.12 that the primary caretaker parent may cure the sanction by fulfilling the other parent's work requirement in unsubsidized work for at least two weeks.

2380 Added the failure to take action to the definition of actions the participant may appeal.

In addition, the department has made numerous editorial revisions to the rule without changing its content.

Summary of Public Hearing and Written Comments

A public hearing was held on April 9, 2001, at 9:00 a.m., in the Secretary's Conference Room at the Agency of Human Services, State Office Complex, Waterbury, Vermont. Two people attended to listen. Two people testified.

Written comments were received from six advocacy groups, including Vermont Legal Aid on behalf of the Vermont Low Income Advocacy Council; Vermont Coalition for Disability Rights; the Vermont Children's Forum; the United Electrical, Radio and Machine Workers of America; the Addison County Women in Crisis Organization; the Vermont affiliate of the National Education Association; and the Hannaford Career Center. In addition, the department received comments from two individuals. The submitted comments are summarized below.

General Concerns Included in Public Comments

Comments: Two commenters expressed general concerns based on their concern that the proposed rules may not provide equal access to Reach Up for people with disabilities. These commenters cited the federal Office of Civil Rights (OCR) Policy Guidance: Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families). These commenters urge PATH to follow the OCR Policy Guidance.

Response: First, the department has made modifications to the proposed rules in some areas for the purpose of making them more responsive to the needs of people with disabilities. Second, PATH does not concur with the commenters' implied contention that PATH needs to adopt for Reach Up all practices affirmed by the OCR Policy Guidance in order for its rules to provide equal access to people with disabilities. Third, PATH has used and will continue to use the OCR Policy Guidance for what it is—guidance—and not a new set of legal mandates. Fourth, PATH will continue to be mindful of the full scope of the Act 147 and TANF requirements with which it must comply effective July 1, 2001.

In crafting Act 147 the General Assembly took significant risks in defining the statutory framework within which Vermont shall seek to comply with federal TANF requirements and operate the Reach Up program in a fiscally responsible and prudent manner. The risks referred to are associated with decisions made to preserve longstanding Vermont policies that cannot be funded with federal TANF dollars.

These policies include:

- The establishment of a separate state program that enables low-income Vermont parents to receive financial assistance stipends, case management, and support services while pursuing a two- or four-year postsecondary education degree.
- The establishment of a separate state program that enables the caretaker of a child under two years of age to have his or her work requirement deferred until the child is two years old (limited to 24 months in the caretaker's lifetime). TANF law limits this deferment to a child under the age of one and 12 months in the caretaker's lifetime.
- The establishment of a separate deferment from the work requirement for caretakers who have exhausted the deferment described immediately above that enables caretakers to care for infants under the age of 13 weeks.
- The establishment of a deferment from the work requirement, limited to six months, for adults age 20 or older who are engaged in classes and related learning activities 25 hours per week directed toward attaining a high school diploma or GED certificate. TANF does not allow an adult age 20 or older to fulfill the work requirement via participation in such activities.
- The decision to provide Reach Up financial assistance benefits on an entitlement basis, without a time limit on eligibility based solely on the cumulative number of months the family has received assistance. TANF funds can be used for only 60 cumulative months of assistance, with a 20 percent caseload exemption for hardship cases.
- The decision not to impose a full family grant termination, as half the states have elected to do, when an adult who receives assistance fails without good cause to comply with the applicable work requirement, even if the adult has multiple instances of such noncompliance.

PATH is obligated to administer Reach Up in a manner that “conserve(s) state public financial resources by operating the system of aid in a manner that is efficient and avoids federal fiscal sanction” (33 V.S.A. § 1102 (9)). To accomplish this and, at the same time, preserve the *special* Vermont policies described above, it will be necessary for PATH to view Reach Up participants with a bias toward capability, including participants with disabilities. During the drafting of Act 147, PATH stated, many times, that this bias would be necessary to be accountable to both Act 147 and TANF. In some respects this bias is written into Act 147 because, at 33 V.S.A. § 1114(c), the statute states as follows: “Absent an apparent condition or claimed physical, emotional or mental condition, participants are presumed to be able-to-work. A participant shall have the burden of demonstrating the existence of the circumstances or condition

asserted as the basis for a deferral or modification of the work requirement.”

PATH does not interpret this provision as a license not to be vigilant regarding individuals’ behavior that may be a symptom of a disability. PATH’s position is that these rules are responsive to disabilities in a manner that is respectful, compassionate, and fully compliant with legal requirements. On the other hand, PATH also believes that virtually all people with disabilities can work when there have been appropriate selection of an employment goal; opportunity for education or training when needed; provision of necessary support services; and reasonable disability-related accommodations.

Specific Comments and Responses by Proposed Regulations’ Sections

2341 Definitions

Comment: The definition of assessment (2341(4)) should include the statutory language that states, “where appropriate this process includes the use of tests, other standardized measurement tools, and referrals to relevant professionals for evaluation or diagnosis.”

Response: The definition of assessment is meant to define the general meaning of the term. The language referenced in the comment is in the rule at section 2350.3, a place where it has more practical prominence and is more pertinent to its application.

Comment: The definition of household member at section 2341 (10) should include adults who are in a dating relationship.

Response: The department has changed the language to include adults in a dating relationship. Now, as in the past, the department relies upon the language from Vermont statute that describes the conditions under which an individual may seek court-ordered relief from domestic abuse.

Comment: The definition of “participant” at section 2341(12) should include pregnant and parenting teens.

Response: These groups are included in the section 2341(12) definition because the word “adult,” defined at 2341(3), includes pregnant and parenting minors.

2350 Case Management

Comment: The caseload maximum of 80 cases is too high to provide adequate services to Reach Up participants, especially for those who have disabilities or are very young parents. The rule should follow the recommendations of the legislative testimony of vocational rehabilitation and parent-child center case managers to limit caseloads for special needs populations to 20 or 30.

Response: Even with the assistance of Manpower Demonstration Research Corporation (MDRC),

a research firm with a national reputation in welfare reform evaluation, the American Public Human Services Association, and the Center for Law and Social Policy, the department has been unable to identify any completed studies of optimal case management caseload sizes.

The department did research case management caseload sizes in twelve states with programs similar to Vermont's program. Of the twelve states polled, only two, Oregon and Indiana, had based their caseload sizes on quasi-objective measures. The other states determined caseload size based on available staff resources or decided on a number that seemed reasonable to them.

Indiana's case managers, who perform both eligibility and case management functions, have case management caseload sizes ranging from 60 to 80 cases. In Oregon, where workers also handle both eligibility and case management, the maximum case management caseload size is 90. At Ohio's Columbus site, which was evaluated by MDRC as a successful program, case managers handling eligibility and case management carry case management caseloads of 65. In Vermont, most case managers will perform both eligibility and case management functions.

The department found case management caseload sizes as low as 50, Vermont's current standard, only in programs offering intensive case management to hard-to-serve participants. Caseloads in Vermont will include a mix of participants in the pre-work-ready, work-ready, and employment phases.

The department believes that a maximum case management caseload of 80 cases is reasonable based on its research. The maximum caseload size of 80 would be less for those staff who perform both eligibility and case management functions. These case managers determine eligibility for Reach Up financial assistance for those families they case manage and also for some additional families. The maximum caseload size would be reduced according to the number of the additional families for whom the case manager determines financial eligibility.

Comment: The section on assessments does not adequately describe what the department must provide, particularly in regard to assessments for latent disabilities. The assessment section (2350.3) should follow the recommendations of the Office of Civil Rights Policy Guidelines in offering recipients the opportunity to report known disabilities and be screened by trained staff for disability issues.

Response: PATH staff will use only screening and assessment tools that they have been trained to administer. The procedures department staff will follow will offer participants the opportunity to report known disabilities and collect information about indicators of possible disabilities. Those participants who provide information that indicates eligibility for vocational rehabilitation services will be referred to trained vocational rehabilitation staff for further assessment.

Comment: The case management responsibilities in section 2350.4 should include assessment.

Response: Section 2350.4 includes a reference to section 2361, where assessment is specified as a requirement.

2351 Support Services to Participating Families

Comment: This section requires assessment of what services are needed but does not obligate the department to provide them.

Response: This section of the rule is consistent with 33 V.S.A. §1106 (Required Services to Participating Families). In accordance with the law, the department is obligated to provide case manager services, initial assessment, periodic reassessment of service needs, and referral to any agency or programs that provide the services needed by the family. The department intends to continue to provide the services it has provided in the past and can continue to provide within budget constraints.

Comment: The support services should be provided for more than six months after completion of all required activities leading to the employment goal to ensure that a parent is stabilized in employment prior to removing the supports.

Response: The department has revised this provision to provide support services to participants meeting their full work requirement through unsubsidized employment for six months. In addition, PATH and the Department of Employment and Training have jointly implemented Job Keeper, a voluntary program providing job retention and enhancement services to participants whose financial assistance grant closes due to employment for up to 12 months.

Comment: The requirement that the participant must cooperate in developing an alternative FDP when support services are not available within cost constraints is too limiting. It should be clear that the department must take family members' disabilities into account and accommodate them where possible to avoid illegal discrimination under the ADA.

Response: This section is not intended to allow PATH to take the least expensive route or to avoid consideration of the participants' disabilities. The section simply acknowledges that PATH's resources are not infinite, and the department must operate the program in an efficient manner designed to conserve state public financial resources and avoid federal fiscal sanctions. See 33 V.S.A. § 1102(a)(9). The department is committed to providing support to families to the full extent of its fiscal capacity in a manner equitable to all participants and in compliance with the law.

Comment: The definition of "unavailable support services" should be broadened to include services that cannot be obtained within an hour's commute if the parent cannot make such a commute and other reasons, including a catchall provision.

Response: The department believes that the context in which the phrase "unavailable support

services” appears makes it clear that the intent of the provision is to set a limit on the length of the commute participants can generally be expected to make. The provision is not intended as an all-inclusive list of conditions under which services can be considered unavailable.

Participants unable to make such a commute due to a lack of transportation may be able to access the service by using transportation enabling their participation (2351.3(2)). In addition, lack of transportation is considered good cause for deferment or modification of the work requirement (2365.3(2)) and for noncompliance (2370.31-2370.32). The department believes that, taken as a whole, the rule provides protection for participants in the circumstance that concerns the commenter.

Since this provision is in current policy and the department is not aware of a need to change it, no catchall provision has been added.

Comment: Section 2351.3(8) should include evaluation for disabilities.

Response: It is possible that the assistance described at section 2351.3(8) may, under certain circumstances, include an evaluation for disabilities. This determination would be made on a case-by-case basis, as the rule states. The department believes that evaluation for disabilities belongs more properly in the assessment section (2350.3), where it is addressed, rather than in the support services section. Because the department will be doing screening for disabilities and referring those who seem to be eligible for vocational rehabilitation services to specialists for further assessment, it is likely that the commenter’s concern is addressed by these other provisions.

Comment: The case manager should assist the family in obtaining alternative payment for support services where that funding is available. Also the references to financial limitations and the support services matrix cannot be evaluated because the information referenced is not provided.

Response: For those participants who need assistance in obtaining alternative payment for support services, the case managers’ general responsibilities include assisting in the preparation and implementation of the family development plan (2341(7)). If the participant needs assistance in accessing available alternative funding for needed services related to implementation of the FDP, the case managers’ responsibilities include providing such assistance. Determinations of the responsibilities of the participant and the case manager must be made on an individualized case-by-case basis and be included in the FDP.

In keeping with its responsibility to ensure the appropriate and equitable use of support services monies, the department has developed a schedule of the maximum amount that can be paid for each type of support service (e.g., clothing and personal appearance, mileage, vehicle repair, and tools and equipment) for each participant during the fiscal year. Exceptions to the maximums can be made with supervisory approval. The schedule, called the support services matrix, is included in the Reach Up procedures

manual.

Comment: The case manager should assist the family in obtaining support services from another agency and have the flexibility to order supplemental payment for services when necessary to ensure the family's participation in the program.

Response: As stated above, the case managers' responsibilities include assisting the participant in implementing the FDP in any manner consistent with these rules. Because the needs of each participant will vary, the rules are designed to allow assistance when it is needed and to promote the flexibility to individualize the FDP to each individual's needs. Participants have an active part in the development of the FDP and input into the delegation of responsibilities. The monthly contact between the participant and the case manager to review the FDP (2361.3) provides the necessary checks and balances to monitor that the participant's needs for services are being met.

Comment: Participants eligible for health insurance who cannot afford it should not be denied payment for medical expenses.

Response: The language has been modified to address the concern of the commenter.

Comment: PATH should assist in the payment of transportation costs for those in subsidized or unsubsidized employment where the lack of assistance would result in a job loss.

Response: In response to the comment, the department has added language to the rule to allow case managers to pay the costs of transportation to and from a job under certain limited circumstances.

Comment: The department should make exceptions to the limitations on payment of tuition when the participant could pursue another employment goal without tuition.

Response: The department has limited such exceptions to situations in which the participant cannot pursue another employment goal to be consistent with its understanding of legislative intent. During the legislative process related to enactment of Act 147, the legislature repeatedly made it clear that it was not the purpose of the Reach Up Program, or the Postsecondary Education Program, to provide tuition costs. Rather, these programs are to provide living expense supports and case management to those who want to pursue postsecondary education using traditional methods of student loans and grants to fund their tuition. The department believes that expansion of the rule would be contrary to the legislative intent and the program's purpose.

Comment: The department should pay for medical services necessary to employment when such services are not covered by the recipient's health care coverage.

Response: All Reach Up participants have broad health care coverage under the Medicaid program, which is funded with both federal and state funds. Since federal law prohibits PATH from using federal TANF money to pay for medical expenses, medical expenses

not covered under Medicaid would have to be paid with general fund money. The department believes it would be fiscally irresponsible to pay--with general fund--expenses the legislature has not funded under Medicaid.

2352 Child Care Assistance

Comment: The first bullet of section 2352.3 should be changed to reflect what PATH currently does, cover the cost of a legally exempt child care (LECC) provider until SRS makes a determination, which often does not happen within a three-week period.

Response: This is not a change from what PATH currently does. PATH pays up to three weeks for child care with a provider whose application for legally exempt child care certification is denied by SRS. This is because those who do get certification are paid retroactively to the time they filed their application.

Comment: Criterion 7 in section 2352.1 is not an appropriate consideration in the basic eligibility criteria for child care assistance. Instead, a lack of appropriate child care should constitute a barrier to fulfilling or good cause for not complying with program requirements.

Response: Criterion 7 is an appropriate consideration because it addresses the need for the placement to be appropriate to the needs of the particular child. The lack of appropriate child care is included as a good cause basis for not fulfilling program requirements in sections 2370.31(10), 2370.32(9), and 2370.33. It is also included as a barrier to employment at 2341(5).

Comment: The department should extend the breadth of child care assistance covered by PATH beyond that normally covered by SRS to children from 13 and over who are in need of after school activities.

Response: PATH is not in a position to unilaterally expand the breadth of child care assistance beyond the services normally covered by SRS. With the exception of payments for child care while a provider is awaiting LECC certification and short-term, sporadic child care needs, payment for child care for families in our TANF program comes entirely from the SRS Child Care Program. Under the Child Care and Development Fund (CCDF) rules, PATH cannot give preferential treatment to families in our TANF program by paying for services for them with CCDF dollars when those same services are not available for other families with the same needs and financial resources, but who are not receiving TANF program benefits. The commenter's suggestion presents a significant policy issue that would need to be addressed at the Agency of Human Services level because of the potential effect it could have on the current seamless child care system that treats TANF program families the same as other similarly situated families who do not receive TANF benefits.

Comment: PATH should not encourage participants who are receiving child care assistance payments for short-term, sporadic or generally nonrecurring Reach Up activities (section 2352.3) to use unlicensed or unregulated care.

Response: The department will modify procedures to include a requirement for case managers to encourage participants to use licensed and regulated care by providing them with information about child care resources and referrals. In addition, PATH limits the use of unlicensed and unregulated care by limiting the amount of payment and the circumstances in which the department will provide payment for such care. The department has modified the language in section 2352.3 to clarify the existence of this limitation.

2353 Incentive Payments

Comment: In section 2353.1, it is not clear whether the maximum number of three parenting education incentive payments is an annual or a lifetime limit.

Response: In considering the comment, the department has decided to clarify the limitations for parenting education incentive payments and modify the amounts. The section is changed to allow parenting incentive payments in the amounts of \$20 to \$100 with a cumulative lifetime limit of \$300.

2360 Participation in the Services Component

Comment: The participation phases do not provide for a phase after one is job-ready or for families who leave assistance and then must reapply at sometime in the future. In addition, there should be a phase for someone who has become job-ready but still receives services.

Response: The department has clarified the rule by naming this phase the employment phase and adding it to the rule.

Comment: The time limits should not be lifetime limits, nor should there be a limit to the work-ready phase. If there is a time limit, the deferrals and modifications should stop the clock of any time limits. It is also unclear what happens when a family has left assistance for a period of time and must return.

Response: The statutory 12-month limit on the pre-work-ready phase derives from the statutory limitations reflected in the assignment of work-ready dates and the definition of “work-ready” at 33 V.S.A. §1101(28), which sets the outside limit at 12 cumulative months of receipt of financial aid before a participant must be work-ready. Because the months are cumulative and not consecutive, the only possible interpretation is that it applies to the participant’s adult lifetime receipt of assistance.

PATH is required to develop a program that gives participants opportunities to address barriers, set realistic goals, and establish plans for achieving their goals within a

reasonable time. 33 V.S.A. §1102(b). In developing the program, the department also must take into consideration the 60-month limit on families' receipt of TANF funding and the necessity to design an efficient program consistent with the statutory obligation to conserve state public financial resources and avoid federal fiscal sanctions. 33 V.S.A. §1102(a)(9). The program phases accomplish these ends by establishing a framework for cooperative and realistic goal setting in an efficient program designed to keep participants moving forward toward self-sufficiency while conserving state resources.

Participants with barriers in the work-ready phase will be deferred from the work requirement and must continue to work toward their goals to the extent they can. Participants with deferments who are satisfactorily participating in the vocational rehabilitation program will have the time they need to complete the program and achieve their employment goal.

Participants who leave assistance and return later will be reassessed and return to the phase they were in when they were last receiving assistance. Participants with barriers in a phase with a work requirement will be eligible for a deferment or modification.

Comment: The regulations go beyond the enabling statute by requiring that parents move from "work-readiness" to "job-readiness" in one year. Parents should only have to engage in unsubsidized employment when they are actually ready to do so. The proposed language essentially creates a lifetime limit on the receipt of assistance.

Response: The language in the rule does not create a lifetime limit on the receipt of assistance; it just limits the time that participants may spend in the work-ready phase. As explained in an earlier comment, participants who have used all their allowed time in the work-ready phase proceed to the employment phase. Eligible participants unable to secure unsubsidized employment after completing their work-ready phase who continue to comply with program requirements by participating in designated program activities shall continue to receive financial assistance. Eligible participants who, after completing their work-ready phase, have barriers to work are eligible for deferments and modifications and also continue to be eligible for financial assistance

Following the intent and purpose of the enabling legislation, the department designed the Reach Up Program so it would assist families to obtain opportunities and skills necessary for self-sufficiency, including the opportunity and obligation to work for those parents who are able to do so. The program must also provide cooperative and realistic goal setting and do it all in an efficient manner that conserves public state funds. 33 V.S.A. § 1102. The program's phase structure, and the work-ready phase in particular, is the method for fulfilling the statutory requirements of involving participants in planning their goals, setting the parameters for realistic goal setting and providing opportunities and skills development to participants in a way that is efficient and conserves public state funds. By involving participants in setting the employment goal and the plan for its achievement, the program includes their input into the determination of when the commissioner deems them ready to seek unsubsidized

employment. 33 V.S.A. §§ 1101(14) and 33 V.S.A. § 1113(e)(2).

Comment: The reference that states some participants “will skip the work-ready phase” should be “will skip the pre-work-ready phase” instead.

Response: The reference is correct as written. All first-time participants must go through the application phase and spend at least some brief time in the pre-work-ready phase so they can undergo assessment. Those participants who meet certain criteria (see the second bullet under 2360.25) will skip the work-ready phase.

The department has replaced the phrase, “skip the work-ready phase,” with “move to the employment phase,” however.

Comment: Sections 2360.2 through 2360.25 contain very rigid time lines. The time frames should be changed to accommodate those with a disability in compliance with the ADA and section 504. The rule as written could result in someone who is unable to work or engage in work activities for 12 months due to accident or illness being expected to be work-ready and given none of the work preparation supports available to other recipients.

Response: Participants with disabilities who qualify for and are actively participating in vocational rehabilitation services will have a deferment or modification of the work requirement and be able to continue to work toward their employment goal beyond the time periods established for the phases.

2361 Family Development Plans

Comment: To ensure the safety of battered parents, each parent should meet individually with the case manager so that the case manager can determine that it is safe to proceed with a joint meeting on the development of the family development plan.

Response: The department agrees with the commenter’s concern and will review its domestic violence procedures for ways to modify them to address it.

Comment: It is not fair to allow the case manager’s supervisor to decide a participant’s employment goal when the participant and case manager cannot agree.

Response: Section 2361.1 requires the supervisor’s involvement only when the case manager and participant cannot agree on the employment goal or plan for its attainment. The supervisor will work diligently to resolve the disagreement by consensus and will make a final determination only if the parties cannot agree.

- Comment: Title 33 section §1107(c) of the Vermont law requires the FDP to be completed within 30 days of the first meeting, not of the date the family is found eligible. Section 2361 conflicts with 2361.2, which does comply with the statutory requirement.
- Response: The department agrees and has corrected 2361.
- Comment: The department should add language to the second bullet in section 2361 to the effect that, if the case manager suspects a participant may have a disability that will limit employment, the case manager will evaluate the participant or refer them for evaluation services to determine the disability and needed accommodations.
- Response: The second bullet in section 2361 already addresses the commenter's concern. Section 2361 requires that the FDP include an assessment of each adult's limitations and barriers to employment and referral to appropriate resource or program, if needed. The terms barriers and limitations include any disability limiting the participant's ability to work. Barriers are defined to include any category of disability (2341(5)).
- Comment: The third sentence in 2361.1, which defines an initial goal as any job in the area, will tend to push parents into jobs that do not pay a living wage rather than encourage training or education to achieve the goals of real family self-sufficiency and improved family well-being.
- Response: This section does not define the initial goal as any job in the area. It is meant to say that, for some participants, the initial goal may be any unsubsidized job in the area. Such participants may need more exposure to the options available to them and more assessment of their capabilities before they can specify their employment goal more precisely.
- Comment: The 12-month limitation on the work-ready phase and requirement that the family opt for the "most expeditious route to the goal" may discriminate against people with disabilities.
- Response: The most expeditious route standard is the most expeditious route as it applies to each participant to meet the employment goal. It is a critical element in realistic goal setting and moving participants toward achieving their employment goals in the time frames allowed. Participants with disabilities are likely to have deferments from and modifications to the work requirement. Deferments and modifications that are not time-limited continue for as long as the grounds exist (2365). During deferments and modifications, participants continue to work toward their employment goal through participating in FDP activities to the extent they can. Those eligible for and making progress with vocational rehabilitation services will continue to have as much time as needed until they are meeting their work requirement (2365.32).

Comment: In section 2361.3, reviews of the FDP should require further evaluation for disabilities if suspected as a problem within the family.

Response: The department has added language to 2361.3 explicitly requiring reassessment for barriers when the participant fails to comply or make progress toward attainment of the goals of the plan.

2362 Family Development Plan (FDP) Requirements

Comment: The section about adult participants' FDP requirements (2362.1) should include a defined standard about when and how frequently written verification from a service provider is required. Written verification should only be provided when a case manager has reason to believe that the family is not attending or participating as required. The case manager should assist in getting this verification and the participant should not be penalized if the failure to provide the verification is due to the service provider and not the participant.

Response: The department has modified the fifth bullet at 2362.1 to require the case manager to help a participant having difficulty obtaining verification from the service provider at the participant's request. The department is not willing, however, to include a defined standard about when and how frequently written verification is provided because the requirement will vary among participants and circumstances.

Comment: When applicants are referred to DET, care should be taken not to force people into taking any unsubsidized job at the start of eligibility where recent work was part-time or seasonal.

Response: The commenter's suggestion is contrary to the law. Those participants referred to DET in compliance with section 2362.11 are referred for job search because the statute presumes that they are able to fulfill the work requirement. In compliance with 33 V.S.A. § 1113(d)(1), these participants are required to accept any unsubsidized job the participant is capable of performing unless they fall within the exceptions in subsections (d)(2) and (3) (section 2363.34 in the rule).

Comment: PATH should eliminate family development plan requirements for 16- and 17-year-old out-of-school youth because federal and state laws do not require such participation. The possible closure of financial assistance is too punitive.

Response: During development of the proposed rule, PATH consulted with case managers in the field and the Welfare Reform Advisory Group (WRAG). The out-of-school youth provision is a part of the current regulations that received general support from those consulted, who viewed it as an effective tool for working with these teens.

This section of the rule is not new, and it was retained during the Welfare Restructuring Demonstration Project after the federal law that originally enabled it was repealed. This section is consistent with the purposes of the policies of the state and the Reach

Up Program's purposes of moving families toward self-sufficiency. The provision requires out-of-school youth to be involved in training, education or employment to prevent dependency and social maladjustment consistent with the policy of the state. 33 V.S.A. §101. Retaining this provision in the regulations is within the proper exercise of the commissioner's statutory powers. 33 V.S.A. § 105.

While the grant closure may seem too punitive, it would only occur in families where the out-of-school youth is the only dependent child or when family income exceeds their budgeted need, once the youth's needs have been removed. The removal of the amount equivalent to the youth's needs is not progressively increased, as it is in section 2372.2.

2363 Work Requirements

Comment: It is unclear how the participant's "highest level of capability," referenced in 2363, will be determined.

Response: The participant's highest level of capability is determined individually through reference to the participant's assessment and progress in program activities. The degree of success participating in a particular activity also provides information about the participant's appropriate level of capability and readiness to advance to the next level.

Comment: Where there has been a significant period of time off assistance, work-readiness should be redetermined upon application.

Response: Participants assigned to the work-ready phase or the employment phase based upon prior participation are reassessed pursuant to section 2350.3 and determined eligible for a modification or deferment of their work requirement (2365) if they are unable to fulfill the work requirement due to a barrier that has intervened since the participant's last participation in the program.

Comment: The criteria in 2363.14 for getting an extension should be elaborated upon.

Response: The department agrees with the commenter's recommendation that a standard should be in place and has modified the language of 2363 to make it consistent with the statute.

Comment: Although the section 2363.14 limit to a six-month extension is in the statute, it may violate civil rights laws by failing to accommodate people with disabilities.

Response: People with disabilities are further accommodated by deferments from and modifications to the work requirement. During the period of deferment or modification, participants are not subject to the full work requirement and can work at FDP activities designed to address their barriers.

Comment: Section 2363.14 and 2363.15 should provide for extension of the work-ready date when needed to accommodate a disability, and the extension should last longer than six months if needed.

Response: As addressed in the previous response, people with disabilities are further accommodated by deferments from and modifications to the work requirement. During the period of deferment or modification, participants are not subject to the full work requirement and can work at FDP activities designed to address their barriers.

Comment: The provision in section 2363.3, which states that there is no change in the hours of a second parent's work requirement when the other parent is unable to work due to a medical condition lasting less than three months, is contrary to the statute, which does not distinguish between short- and long-term inability to work.

Response: This provision has been added to avoid disruption of the other parent's responsibilities and maintain consistency in the family by retaining the status quo during short-term changes. It allows, for example, a primary caretaker parent to remain at home caring for the children when the principal earner parent has a temporary medical condition. It also allows a parent sharing the work requirement to continue working without increasing hours of employment when the other parent has a temporary medical condition. The department believes that this purpose is consistent with the statute.

Comment: The part of the rule assigning work-ready dates for families who have received ANFC and are making the transition to the new program is complicated and difficult to understand.

Response: Because the transition families represent several different types of family configurations subject to three different sets of rules during WRP, the process for transition, as established in Act 147 and implemented in this rule, is inherently complicated and difficult to understand. PATH started the transition process with the implementation of the rule in Bulletin 00-19 and continues it in this rule through to its completion in May 2002. PATH has been and continues to be providing intensive training to the staff members who must understand the section and implement it. In addition, every effort is being made to clearly explain to each family affected by the transition how it actually applies to them and changes their current circumstances.

Comment: If the principal-earner parent is sanctioned for noncompliance, the primary caretaker parent should not be required to add the principal earner parent's responsibilities to the tasks of being primary caretaker.

Response: The rule follows the statute, which requires the primary caretaker to fulfill the work requirement of the principal-earner parent when the principal-earner parent in a two-parent family is sanctioned for failing to meet the work requirement. 33 V.S.A. § 1113(c)(1) and (2).

Comment: The family development plan requirements for primary caretaker parents in section 2362.12 have no basis in the federal TANF law or in Vermont's Act 147 if the principal earner parent is fulfilling the Reach Up requirements.

Response: Under certain circumstances, the federal TANF law does require the primary caretaker parent to participate in the state's TANF program. If the family receives federally funded child care, both parents must fulfill a combined work requirement of 55 hours per week. If they are not using the federally funded child care, then they are expected to fulfill a work requirement of no fewer than 35 hours per week. Act 147 also requires some level of participation by the primary caretaker parent, even when the principal earner parent is fulfilling the program requirements. Section 1112(a) specifically requires that each participating adult in a Reach Up applicant or participant family shall comply with the family development plan requirements and subsection (b)(6) requires each participating adult to participate in the development of a family development plan.

While Act 147 specifically excuses primary caretaker parents from the work requirement as long as the other parent is meeting the program requirements (33 V.S.A. §1113 (c)(2)), it does not excuse them from FDP requirements.

Comment: The work requirement sections (2363.31-2363.32) should include a section detailing how the modification of hours will be calculated when the Fair Labor Standards Act applies.

Response: The department believes that addressing the requirements of the Fair Labor Standards Act would be inappropriate in these sections, which simply set out the number of hours participants are required to work. The department has added a new section, 2364.12, to address the requirements of the Fair Labor Standards Act.

Comment: Title 33 V.S.A. § 1113(c)(1)(C) allows two able-to-work parent families to modify the shared work requirement upon unemployment of either parent. This should be included in the regulation.

Response: This is included in the regulation at section 2363.31 A.2.

Comment: Title 33 V.S.A. § 1113 does not require that the onset of unemployment or reduced hours be for good cause or limit this only to the principal-earner parent. The last paragraph of this section should be removed. But if not, then "immediately" is not a realistic time frame.

Response: The department has removed the good cause language related to the onset of unemployment or reduced hours in 2363.31 A.2. The last paragraph has been modified to clarify that conciliation is initiated immediately if the unemployment or reduced hours were without good cause. If parents re-establish a shared arrangement within the required time frame, they may successfully resolve conciliation according to 2371.3.

Comment: Section 2363.32 A.1. has a typographical error and lists the maximum hours as 35, instead of 34.

Response: The language of the section tracks the language of 33 V.S.A. §1113(c)(3)(A).

Comment: Section 2363.33 should clearly allow a participant to have an opportunity to find work in the type of employment specified as their employment goal. In section 2363.34, Exceptions to the Requirement to Accept a Suitable Unsubsidized Job, there should be exceptions for participants who might not want to accept a job outside of their specified employment field if they had a reasonable expectation that they might receive a job offer within their field shortly.

Response: Section 2363.33 is consistent with statutory requirements that participants who must fulfill the work requirement with unsubsidized work must accept any unsubsidized job they are capable of performing, unless they qualify for an exception allowing them to refuse certain jobs for a limited period. 33 V.S.A. § 1113(d). Like many individuals in the job market, participants may not be able to obtain the ideal position immediately and must work in another position while continuing to search for the job that fits their employment goal.

The categories specified in section 2363.34 were specifically authorized by statute. 33 V.S.A. §1113(d)(2) and (3). The department is not in a position to expand the statute's categories of exceptions, especially when such an expansion is counterproductive to achieving federal participation rates and may require use of general funds earmarked to meet statutory obligations.

Comment: The names of the activities in paragraph two of section 2363.33 should mirror the defined work activities in the statute.

Response: The language defining work activities in the statute follows the language in federal law defining what work activities are countable toward the TANF work participation rate and the conditions under which they are counted. Since the language in federal law is purposefully general, to allow states the flexibility to define the work activities according to their own needs, the department has used language specific to Vermont programs and tailored to the needs of case managers, who rely on the rules to carry out their responsibilities.

Comment: All of the good cause reasons for quitting a job in §2370.31 should apply to conduct in a job interview.

Response: The department has modified section 2370.31(3) on discrimination so it applies to situations related to conduct at an interview. The department believes, however, that a similar modification of the remaining good cause reasons would be inappropriate.

Comment: The department should not include unemployment insurance requirements in section 2363.34 A.1.

Response: Section 2363.34 A1 of the rule follows 33 V.S.A. § 1113(d)(2)(A) of the law. According to the law, the exception only will apply if the participant “has not been disqualified within the prior six months from receiving unemployment compensation benefits for failing, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner of employment and training, or to accept suitable work when offered.” The statutory intent is clear; PATH has no authority to substitute a different standard.

Comment: Sections 2363.34 A.5 and B4 should clarify that this only applies when the work activities are available to the participant.

Response: PATH declines to add the requested qualifying language because that language does not appear in the statute, and its addition may be an expansion of the exception not intended by the legislature.

Comment: Sections 2363.34 A7 and B6 are not included in the statute and should not be included here.

Response: The department agrees and has deleted these provisions.

2364 Work and Work Activities Described

Comment: The expeditious attainment of the participant's employment goal should be secondary to the successful attainment of employment that will last for families when state support is withdrawn.

Response: The most expeditious route standard is the most expeditious route as it applies to each participant to meet the employment goal. The department believes it is a critical element in realistic goal setting and moving participants toward achieving their employment goals in the time frames allowed.

Comment: All work activities listed in Act 147, including on-the-job training and secondary school, should be included in this section.

Response: With respect to the work activities specified as countable in federal law and Act 147 for the purpose of calculating a state's TANF participation rate, the TANF work activity, on-the-job training, is either subsidized employment or unsubsidized employment. Its classification would depend on whether the source of the subsidy is Reach Up funds or non-Reach Up funds and, if Reach Up funds, the percentage level of the subsidy.

Basic education directly related to employment (2364.8) incorporates both education directly related to employment (V.S.A. §1101(27)(j)) and secondary school attendance (V.S.A. § 1101(27)(k)) within its definition.

Comment: The time limitations on the various activities should be more flexible.

Response: The department believes that the limitations specified for each type of work activity will help the participant and the case manager choose activities appropriate for the participants. In addition, the department is mindful of its responsibility to preserve federal funding by meeting federal participation targets and moving participants toward self-sufficiency within the 60-month window during which federal funds may be used to provide assistance to families. The department believes that this rule strikes a compassionate balance between supporting families in ways that address their needs and decreasing their reliance on public assistance.

2364.2 Job Search

Comment: Housing search, work-search training, and resume and application preparation should be included as a countable activity under work experience or job skills training or perhaps a new category of work activity such as a job readiness activity.

Response: The department does intend to include the activities cited by the commenter as part of work, training, and education activities and other countable work activities whenever possible.

Since job skills training cannot be counted under federal law unless the participant spends at least 20 hours per week in employment, work experience, on-the-job training, job search, community service, or vocational education, the department has elected to include the activities cited by the commenters under job search, where they logically belong.

Under federal law, job readiness activities are combined with job search and subject to a single limitation. For this reason, defining a new type of work activity that includes job readiness activities would not provide any advantage in meeting federal participation rates.

Comment: Homelessness should be defined and include temporarily living with other people as well as staying in a shelter or hotel. Imminent homelessness requiring a housing search, such as when a family is in the eviction process should also be included.

Response: The department has added the Food Stamp Program's definition of "homeless" to 2341, in response to the commenter's request.

2364.3 Subsidized Employment

Comment: For subsidized jobs (2364.3) in the public or private nonprofit sector for which more than 75 percent of wages are subsidized, the participant should be considered an employee and paid the starting wage for the job being subsidized.

Response: Subsidized jobs for which more than 75 percent of wages are subsidized are comparable to the Community Service Employment component of the current Reach Up program. After July 1, 2001, Reach Up will place participating adults in these positions when no subsidized job is available; no unsubsidized job with a commitment to hire can be secured; and the case manager, in consultation with the participant, concludes it would be beneficial for the family to have the ANFC/Reach Up grant diverted to a paycheck so the family can learn, enhance, and practice money management within the context of receiving most family income via a paycheck; or when the first two conditions apply and the case manager concludes that the participant's experience of applying his or her skills at the work site in the context of being compensated for this work via a paycheck will strengthen the participant's capability of obtaining and retaining a subsidized job with a commitment to hire or an unsubsidized job.

In addition, the minimum wage is necessary because the more than 75 percent subsidy level means that each hour of subsidized work consumes more of the ANFC/Reach Up grant that is available to divert to pay the wage. Since the participant must work a minimum number of hours to meet the work requirement, paying the starting wage could result in the ANFC/Reach Up grant not being enough to subsidize the participant's full work requirement.

When Reach Up places a participant in a subsidized job for which there is no commitment to hire, the case manager shall be required to document the conditions that make it impossible or imprudent to secure a commitment to hire and the marketable work-related skills the participant will learn, or enhance, and apply during this placement.

Comment: It is hard to see the value of a six-month subsidized job without the employer's commitment to hire.

Response: Given the developmental nature of these placements, a six-month time frame seems appropriate. In the event that, during this time frame, the work site has a vacant position for which the participant might compete, the department did not want to preclude the use of a traditional on-the-job training placement to support the participant in achieving unsubsidized employment.

Comment: It is not clear which rules are referred to in the last paragraph of 2364.3.

Response: The department has deleted this paragraph, which was meant to clarify rather than confuse.

Comment: It appears from the language of the regulation at section 2364.3 that the employer would control hiring, firing, scheduling and maintenance of employee records. Is this the intention?

Response: As the rule states, PATH and the employer or work site organization make the hiring decision jointly. The decision regarding scheduling would be included in the hiring decision. The participant's schedule would need to meet the needs of the employer or work site organization and the participant's circumstances. For example, a 3 to 11 afternoon and evening schedule would be unworkable for single parents unable to secure child care for their children during those hours. In addition, the participant is entitled to refuse to work more than the maximum number of hours specified for his or her work requirement.

When a participant's work activity is subsidized employment, it is anticipated that regular contact will occur between the participant's work site supervisor and the case manager. In addition, there will be documentation required of the employer or work site organization for subsidized employment placements. Since Reach Up has an investment in the successful performance of each participant placed in subsidized employment, it is anticipated that a decision by an employer or work site organization to terminate a participant will include consultation with the participant's case manager.

It would be inaccurate to characterize Reach Up's role as solely that of providing the subsidy, being involved at the beginning when the placement is established, and then leaving the employer or work site organization to fend for itself relative to the participant's success in the placement. Moreover, in the case of jobs with wages subsidized more than 75 percent with Reach Up funds, the payroll function is performed by PATH.

Comment: The rule should comply with the federal regulations implementing TANF, which provide that federal employment laws, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), unemployment insurance (UI) and nondiscrimination laws apply to TANF beneficiaries in the same manner as they apply to other workers.

In addition, the rules should apply the same standards as the Workforce Investment Act, which requires that participants be compensated at the same rates as employees who are similarly situated in similar occupations by the same employer.

It should be clear that subsidized employment in both the private and public sector is covered by the state occupational safety and health law and should require that workers' compensation be provided.

Response: The department has added section 2364.12 to the rules relating to the interaction between the Fair Labor Standards Act (FLSA) and the work activities included in these rules. In addition, two of the good cause criteria for refusing a job offer, quitting a job, or being terminated from a job address the commenter's concerns. These criteria

(2370.31 2. and 3.) give the participant the right to refuse or leave a job or have good cause for being fired from a job that involved conditions in violation of applicable health, safety, or workers' compensation laws or regulations or of the FLSA; or illegal discrimination.

Participants who are employees of work site organizations will receive unemployment insurance coverage and workers' compensation coverage along with the unsubsidized employees at the same work site. Participants in subsidized employment in which the subsidy is more than 75 percent and who are not employees of the work site organization are an exception under the unemployment insurance law, the same as participants in the current community service employment (CSE) component of Reach Up are and have been. PATH maintains workers' compensation coverage for individuals participating in work activities at work sites where they are not employees.

Because PATH's obligations under TANF and Act 147 differ from the Department of Employment and Training's obligations under the Workforce Investment Act (WIA), the department does not believe it is prudent to adopt all WIA standards for the Reach Up program and has, therefore, not done so.

2364.4 Self-Employment (previously 2364.9)

Comment: The department should take a more flexible approach to judging progress on the business plan and not simply rely on a time line.

If a particular milestone is not met, it should be an opportunity to conference with the participant and a business professional to iron out suggestions for reaching the next milestone.

Suspension of a milestone requirement should be permitted based on general good faith and good cause principles. The good faith and sound business effort conclusion should be made by the case manager in consultation with a small business professional knowledgeable in the field being pursued by the participant.

Response: The department acknowledges that the likelihood of success in self-employment is difficult to judge. In general, however, the likelihood of success is relatively low. In light of the riskiness of such efforts and the department's responsibility to minimize long-term reliance on limited federal and state funding for assistance, the department has limited the allowable time frame for subsidizing self-employment efforts to 12 months.

During the work-ready phase and the employment phase, participants whose net income from self-employment is less than their work requirement hours times the Vermont minimum wage may work in unsubsidized wage-paying employment to meet the unfulfilled hours. The department believes that this approach mirrors the steps a family not receiving assistance would take in a similar situation.

2364.41 Self-Employment Business Plan (previously 2364.91)

Comment: Every participant who wants to create a self-employment business plan should be offered the help of someone with experience in creating and developing business plans.

If the business plan review team (BPR) does not approve a particular business plan, then the BPR should state in writing and with specificity the problems with the plan and the specific steps the participant can take to make the plan acceptable.

The participant should have a right to appeal a second denial of their proposed business plan, and the department should give the participant notice of the right to appeal the denial.

Response: While PATH does not consider this service to be an entitlement for Reach Up participants, the department is currently one of the sources of funding of the statewide Job Start program administered locally by Vermont's five community action programs. The purpose of Job Start is to support low-income Vermonters in microenterprise development. Participants seeking to develop a self-employment business plan will be referred to the Job Start or comparable program for assistance.

The notice informing the participant that the plan has not been approved will specify the basis for the disapproval decision and encourage the participant to meet with his or her case manager to discuss possible ways of improving the plan. PATH does not consider it feasible to ask the business plan review team to anticipate and specify how each participant would go about modifying the plan to bring it to an approvable status. These situations are likely to be highly individualistic.

In light of the limited amount of time that a participant has to achieve the employment goal, PATH has concluded that it would be imprudent to modify the rule to allow for a third review of the participant's business plan. However, the decision to disapprove the plan when it is reviewed the second time is an appealable decision, as are all adverse department actions relating to the participant's family development plan. The participant will be expected to participate in activities directed toward achievement of a new employment goal while the appeal is pending. In light of the time limits referenced above, it will be to the participant's advantage to do so.

2364.43 Limitation on Countable Hours of Self-Employment (previously 2364.93)

Comment: Only counting in-kind income from self-employment if it reduces the grant is an illogical and unnecessary restriction.

Response: This restriction on in-kind income is in current policy. The department is not aware of any evidence showing it to be illogical and unnecessary.

2364.46 Extension of Period Allowed to Meet Full Work Requirement (previously 2364.96)

Comment: The department should not require participants to have met their unsubsidized employment hours outside of their self-employment plan every month since implementing the plan.

Response: The department agrees with the commenter and has clarified the requirement to include unsubsidized self-employment hours as well as unsubsidized wage-paying employment.

2364.5 Work, Training, and Education Placement (previously 2364.4)

Comment: WTE participants should be considered employees so that they are covered by workers' compensation and other protections afforded an employee. They should also be eligible for the earned income tax credit. Participants should be allowed to spend more time in a WTE placement in some instances.

Response: PATH has workers' compensation coverage for all participants whose work activity includes placement at a work site, except for participants paid wages, considered employees of the work site organization, and covered by their employers' workers' compensation policy. Participants in WTE placements are not eligible for EITC because they do not receive compensation in the form of wages for their work.

WTE placements are highly structured, supervised work settings. Participants are expected to learn and apply sector-specific job skills, as well as work-related behaviors and attitudes. Specific training objectives are developed for each participant at a WTE work site.

Given that most participants have one year in the work-ready phase in which to complete the activities required to achieve their employment goal, PATH considers it prudent to review progress at three months and limit the use of these placements to six months. If it is not possible to move the participant into unsubsidized employment or subsidized employment within six months and developmental needs remain that additional time in the WTE placement can be reasonably expected to address, a six-month extension is allowed.

Comment: It is not clear how WTE relates to the work activities listed in Act 147.

Response: WTE placements are a combination of work experience and job skills training directly related to employment or education directly related to employment when the participant does not have a high school diploma or equivalency certificate.

2364.6 Community Service Placement (previously 2364.5)

Comment: The comments made regarding subsidized employment and WTE apply to the section on community service placement, as well. The language requiring five hours a week in job search and other hours in "countable activities" is unclear.

Response: Individuals with a 40-hour-per-week requirement spend five of those hours in job search. The other 35 hours are met with community service placement, which may be in combination with unsubsidized or subsidized employment or self-employment.

Individuals with less than a 40-hour requirement must meet their full work requirement through the activities stated in the paragraph above and perform job search for an additional five hours per week.

Although job search while in a community service placement may exhaust the six weeks generally allowed, case managers may approve subsequent job search to be countable toward the work requirement under the conditions at 2364.2.

2364.7 Work Experience (previously 2364.6)

Comment: It is unclear what the differences between community service placements, work experience, and WTE placements are.

Response: Community service placements are, by definition, not primarily developmental. Participants placed in these positions will be individuals who should be in unsubsidized employment and would be in unsubsidized employment, except for economic conditions. Community service placements ensure that participants fulfill their work requirement and maintain employment skills and practices while also engaging in job search for unsubsidized or subsidized work.

Work experience placements are reserved for individuals who cannot be placed in any other activities because of personal or family circumstances. These placements may not fully utilize or develop participants' employment-related skills, but they will accommodate a court-ordered work assignment or other personal or family circumstances that make it impossible to place the individual in any other placement, while providing the requisite number of hours to insure these participants meet their work requirements. These placements will be reviewed often to insure that as soon as reasonably possible individuals will be moved into placements that will enhance their ability to gain employment. The focus of development within these placements is to mitigate the circumstances that made this type of placement necessary in the first place.

Comment: There are too many limitations on participation in vocational education as a countable work activity.

Response: The department has modified the rule to clarify that minor parents engaged in vocational education as part of their secondary school program are not required to be work-ready. Such parents, along with 18- and 19-year-olds, can meet their work requirement by participating in basic education directly related to employment, which can include a vocational education component.

Participation in vocational education remains limited to the specified groups for several reasons. TANF prohibits states from counting any more than 30 percent of its caseload engaged in vocational education as engaged in work for purposes of the federal participation rate. In addition, under Act 147 PATH must provide a higher level of services to a greater number of participants without an increase in financial resources. Currently PATH does not have the data to predict how different services and supports will be used when all adults are required to participate in the services component.

During the start-up stage, PATH is taking a cautious approach to ensure compliance with state and federal laws, meet participation levels, and avoid federal fiscal sanctions. PATH will be monitoring participation and the program's effectiveness. Adjustments will be made as needed to ensure PATH's compliance with the law and to expand opportunities to Reach Up participants whenever it is possible within the department's budgetary constraints.

If, after a reasonable period of data collection and program review, it is clear that PATH can open participation in vocational education to more participants, PATH will consider the recommendations of the commenter and modify the rules to accomplish that end. In addition, PATH is already working on programs to help working participants advance their career objectives in a variety of ways, including the pursuit of vocational education for those who do not qualify during the work-ready phase.

Comment: The 16- and 17-year-old out-of-school youth should be added as a group permitted to participate in vocational education as an approved FDP requirement.

Response: PATH never intended for 16- and 17-year-old out-of-school youth to be treated the same as adult participants. The requirements and limitations of participation that apply to adult participants are not applicable to 16- and 17-year-old out-of-school youth. The department has modified 2362.3 to clarify that the restrictions and limitations on adults' participation in work activities are not applicable to these teenagers.

Comment: The allowed extension of 12 months to complete a vocational education program for participants with learning disabilities should not preclude a longer period of accommodation, if needed.

Response: The situation the commenters describe would constitute an exception that, instead of expanding the rule, would merit its suspension. In the case of a participant who has a documented learning disability and needs reasonable accommodations to complete an approved education program that the individual is unable to complete on schedule due to the effects of the learning disability, the commissioner has the authority to suspend the

rule in order to provide the reasonable accommodation in compliance with the ADA.
2364.8 Vocational Education (previously 2364.6)

Comment: The requirements for a detailed vocational education plan are too restrictive.

Response: The department has already explained above the need to limit the number of participants in the vocational education work activity. The vocational education plan is an important part of determining that the time a participant devotes to participation in the plan and the resources used to support this participation are used efficiently, increasing the likelihood that participation in the activity will have the desired result of preparing the participant for a career she or he can pursue in the current job market. The plan should not be too onerous a requirement for the motivated participant, and the participant shall receive the assistance of the case manager in developing the vocational education plan.

Comment: In subsection 2364.81 B.4, if a longer program is substantially better than the shorter program, the longer program should be approved.

Response: Given the statutory purpose of conserving state public financial resources by operating the program in a manner that is efficient and avoids fiscal sanctions, 33 V.S.A. § 1102(a)(9), the department does not think at this point it would be prudent to permit the additional use of public funds to support participation in a program when the ends achieved can be achieved through another program that is more in keeping with the statutory purpose.

Comment: In subsection 2364.81 B.8, the department should not judge satisfactory performance but should rely on the educational institution to determine whether a parent should continue in the program.

Response: Subsection B.8 requires the participant provide documentation to the case manager, but it is the educational institution's assessments, grades, and evaluations that are the basis for the determination of whether the parent continues in the program. Satisfactory performance in the program is based on the school's assessment and evaluation of the participant showing that they are on track to complete the program in the time allotted.

2364.9 Job Skills Training (previously 2364.7)

Comment: The hours of participation in job skills training should be countable toward the work requirement, no matter how many hours a participant spends in other countable activities.

Response: Because of the TANF restrictions on counting the number of hours of participation in certain activities that have a direct effect on the federal participation rates, the department cannot approve the job skills training work activity as a countable activity beyond the federal amounts. Depending on the availability of funding, the department may provide support services to those individuals who choose to pursue hours that

cannot be applied toward their work requirement provided they are meeting their full requirement in countable activities.

Comment: Adult education should not be required to be directly related to employment. Minor parents in high school should not be required to work 20 hours per week or be engaged in 30 hours per week of work activity in addition to attending high school.

Response: The rule is not as restrictive in application as the name of the work activity suggests. The rule does not state that adult education must be directly related to employment. Rather, the rule states that the pre-work-ready participants and work-ready participants may pursue this work activity of basic education if it is needed to pursue and attain their employment goal. Participation in any work activity should be related to attainment of the participant's employment goal.

When the participant is in the pre-work ready phase, the number of hours of participation in this activity is not limited as it is when the participant reaches the work-ready phase. Once the participant is work-ready, the individual can continue to participate in the activity within the hourly limitation as long as it is related to attainment of the employment goal.

Alternatively, a participant who has attained 20 years of age and who is engaged in at least 25 hours per week of classes and related learning activities for the purpose of attaining a high school diploma or general educational development (GED) certificate is eligible for a deferment from or modification to the work requirement for up to six months (2365.3(7)), provided that the participant is making satisfactory progress toward the attainment of such diploma or certificate.

Participants younger than 20 may meet their work requirement if they maintain satisfactory attendance at secondary school or its equivalent during the month or participate in education directly related to employment for an average of 20 or more hours per week during the month. This provision was inadvertently deleted in the proposed rule and has been added back into the rule.

2364.11 Work Activity Displacement Policy (previously 2364.10)

Comment: The work activity displacement policy should prohibit placement of participants in a work activity when the employer has caused an involuntary reduction in the number of hours worked by existing employees. It should require the union in an organized workplace to sign off on allowing the placement of participants at the work site.

Response: The department has modified this section to address the commenter's concerns explicitly.

Comment: The displacement policy should mirror the Welfare to Work law and the Workforce Investment Act regarding this issue to facilitate cooperation between DET and PATH in placing participants in work activities. Placement of a participant with an employer engaged in a strike, lockout or other form of labor dispute should be prohibited.

Response: The displacement policy in the proposed rule tracks the language in the federal law applicable to the TANF program. In response to the comments, the department has modified the rule to address the commenter's concern about placement of participants with an employer engaged in a labor dispute and an employer who has reduced the hours of regular employees to create a vacancy for a subsidized Reach Up placement. In addition, in subsidized placements in work sites where there is a union, the department will secure approval from the union representative prior to placement of a participant at the work site.

2365 Deferments and Modifications

Comment: The section on deferments and modifications does not take into consideration that there are nonmedical reasons that might reduce someone's ability to meet the work requirement. Deferments or modifications should be allowed for FDP activities, too. The date the participant must complete activities leading to an employment goal should be delayed when there is a modification or deferment.

Response: The department contends that this section does take nonmedical reasons for deferments or modifications into account. Only two of the ten grounds for deferment or modifications listed in 2365.3 are medical reasons.

The commenter does not specify why deferments or modifications might be needed for FDP activities. The department believes that the policy provides sufficient latitude for the participant and case manager to schedule appropriate activities in the participant's FDP within the allowable time frames.

The grounds for deferments and modifications included in section 2365 and authorized by Act 147 relate, with one exception, to deferments and modifications of the work requirement. Participants whose work requirement has been deferred or modified are nevertheless required to comply with other service component requirements, such as participation in the assessment, the development of the employment goal and the FDP, and the activities leading to the employment goal, to the extent they are able to participate. Moreover, the deferment or modification of the work requirement remains in place as long as the grounds for it continue to exist. The department believes that its policy will provide participants with continuing support during the period of modification or deferment as well as sufficient opportunity to participate in activities leading to their employment goal.

Comment: There is no modification or deferment for high school students under 20. This is required by 33 V.S.A. §1114(d).

Response: The department dropped this provision inadvertently during the drafting of the proposed policy. The department has incorporated it into the rule by adding a subsection to the work requirements section (2363.34) and modifying the requirements for participation in basic education directly related to employment.

Comment: There is no modification or deferment for participants in vocational training programs. This is required by 33 V.S.A. §1114(b)(9).

Response: The department believes that this provision, which originated in Vermont's 1993 welfare reform statute (Act 106), is no longer necessary under Act 147. Participants interested in two-year full-time vocational training programs shall be referred to PATH's postsecondary education program. The policy allows sufficient time during the work-ready phase for participants to finish a full-time vocational training program and meet their work requirement at the same time.

Comment: Section 2365.3, item 2 allows PATH to reject a participant's employment goal because services are not available. Participants should not be forced to modify their employment goals if PATH cannot provide the services on a short-term basis. It should be clear that this section only applies if PATH will be unable to provide the necessary service at all and it is unlikely that the service will be available in the near future.

Response: The department has modified this provision as the commenter has suggested.

Comment: Allowing principal earners to take the deferments in sections 2365.3 (4) and (5) only when they are able to take paid leave may violate the Family Leave Act.

Response: The department has deleted the language allowing the deferment or modification for the principal-earner when paid leave is available and added a separate deferment or modification for participants qualifying for family leave under the Family Leave Act.

Comment: Section 2365.3(6)'s addition of "when no alternative care can be arranged" is not in the statute and seems harsh. "Seriously injured" should be added to the "ill or disabled," and "partner" should be added to "parent, spouse, civil union partner, or child."

Response: The department has modified this provision to require the exploration of arrangements for alternative care only in circumstances expected to continue for at least 12 weeks. An exception to this requirement for cases of terminal illness has also been added, subject to review by PATH's medical review team.

2365.31 Domestic Violence Deferment or Modification

Comment: After the first sentence, we suggest inserting a modified version of the language that already exists at 2344.2.B.5.

Response: The department has inserted the language cited by the commenter (now at 2344.2.B.5), which was inadvertently omitted from proposed policy, with most of the commenter's suggested revisions.

Comment: The following sentence should be added to 2365.31: "Using a form provided by the department, the participant shall complete and sign a sworn affidavit providing information about the domestic violence itself and its effects." This sentence should also be added: "If, on the face of the affidavit, it appears that the participant or the participant's child(ren) are victims of domestic violence and that fulfillment of the work requirements would put them at risk of further harm, the department shall grant a deferment or modification of the work requirement." The words "and consistent" after "is sufficiently detailed" should be deleted. This sentence should also be added: "The department shall not require a victim of domestic violence to create documentation that does not already exist." In the last paragraph of this section, there should be a sentence that requires the case manager to consider the safety of the participant and the participant's children before requiring participation in FDP-approved activities.

Response: The department has not made the revisions of the domestic violence provision suggested by the commenter because (1) the department has not changed the substance or wording of this provision, agreed upon after considerable debate in 1998, and (2) the department is not aware of any problems attributable to the current language.

2365.32 Medical Deferment or Modification

Comment: Case managers should be required to ask participants about disabilities preventing or limiting hours of employment, and participants should be allowed to appeal the disability determination. Case managers are not qualified to make judgments about whether participants' medical conditions affect their ability to meet the work requirement or to help participants with such conditions develop their FDPs. Participants who claim a disability affecting their employability should be referred to vocational rehabilitation.

Response: The department believes that the case manager's responsibilities with respect to the identification of disabilities are adequately set forth in section 2350.3 (Assessment) and should not be repeated in this section.

Section 2350.3 also mentions the use of standardized evaluations as part of assessment. Case managers will use a simple screening tool, which requires no special medical expertise to administer, to identify disabilities. This screening tool has been developed by the division of vocational rehabilitation for use as the basis for referrals by other agencies. The screening tool asks participants a few simple questions about medical

conditions and their effect on the participants' ability to work.

Comment: Participants determined disabled for the purposes of Medicaid should be treated the same way as those determined disabled for the purposes of social security disability or supplemental security income. Any of these participants determined disabled should be given information about vocational rehabilitation and other services that might help them become employable.

Response: The department has modified the policy according to the commenter's suggestion.

Comment: Language in this section should be revised to make it clear that individuals with a short-term disability are entitled to a deferment or modification.

Response: The department disagrees with the commenter and asserts its right to review the basis of a participant's medical deferment or modification at any time.

2370 Noncompliance and Good Cause

Comment: Specific language should be added to require case managers to consider that noncompliance could be the result of a disability and that appropriate assessment and referral for treatment be made rather than beginning the conciliation or sanction process.

Response: The department has added good cause criteria to sections 2370.31 and 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied.

2370.12 Overt Refusal

Comment: The conciliation process should still be available to individuals who overtly refuse to comply with services component requirements. A case manager and a participant may have a heated discussion where a participant may say something out of anger that they should have the opportunity to rethink when tempers cool.

Response: The department has not changed the substance of its current policy governing the availability of conciliation to such individuals and is not aware of any problems associated with case managers mistaking angry outbursts made by otherwise cooperative participants for overt refusals on the part of uncooperative participants.

2370.3 Good Cause Criteria

Comment: A disability or barrier should constitute good cause.

Response: The department has added good cause criteria to sections 2370.31 and 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result

of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied.

2370.31 Good Cause for Refusing a Job Offer, Quitting a Job, or Being Terminated From a Job

Comment: It should be the responsibility of the program to ensure that employment conditions do not violate the Fair Labor Standards Act and that offers of employment or work activity placements are not the result of layoffs, strikes, lockouts, or other bona fide labor disputes.

Response: The department has modified the workplace displacement policy at 2364.11 to prohibit placements resulting from a strike, lockout, or other bona fide labor dispute. The department has also added a new section requiring compliance with the Fair Labor Standards Act.

Comment: Safety related to domestic violence should be added as a good cause for refusing a job offer, quitting a job, or being terminated from a job, and the participant should only be required to document the circumstances of the violence that contributed to the loss of employment.

Response: In its reorganization of the good cause reasons, the department inadvertently omitted the reason related to domestic violence in current policy from this list. The list has been revised to include this reason. The documentation requirements remain unchanged.

Comment: Sexual harassment should be a good cause reason included in section 2370.31(3) for quitting, refusing, or losing a job.

Response: The department understands that sexual harassment is included in 2370.31, item 3, as a type of sex discrimination.

Comment: This section should include a catchall provision for other circumstances that would lead a reasonable person to leave employment or be terminated from employment.

Response: The list of good cause reasons has not been substantially changed in this rule. The department is not aware of any direct evidence that the list of good cause reasons is inadequate or that a catchall provision is necessary.

Comment: An additional good cause reason should be added where the participant was unable to perform the job due to a disability.

Response: The department has added a good cause criterion to section 2370.31 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied.

Comment: In section 2370.31(7), the commuting time should include the time required to take a child to child care.

Response: The department has included the time for travel to child care in the commuting time.

Comment: It should be clarified that section 2370.31(9) applies to multiple jobs.

Response: The department believes that it is clear that 2370.31, item 9, applies to multiple jobs.

2370.32 Good Cause for Failing to Comply with FDP Requirements

Comment: There should be a catchall provision for circumstances not anticipated by PATH where a reasonable person would believe that the participant had a good reason for failing to comply.

Response: The list of good cause reasons has not been substantially changed in this rule. The department is not aware of any direct evidence that the list of good cause reasons is inadequate or that a catchall provision is necessary.

Comment: An additional good cause reason should be added where the participant was unable to perform the FDP requirement due to a disability.

Response: The department has added good cause criterion to section 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied.

Comment: The participant whose noncompliance is the result of the effects of domestic violence should not be required to make such a high showing of proof regarding the circumstances of the domestic violence.

Response: The department has not changed current language related to documentation in this provision in the absence of any evidence that this language has caused a problem for participants.

Comment: The good cause reason in section 2370.32(7) should be available to part-time workers as well as full-time workers.

Response: The department has not changed current language in this provision in the absence of any evidence that it has caused a problem for participants.

2370.33 Absence of Appropriate Child Care

Comment: A parent should not be required to accept an available slot in a child care center that a participant does not consider appropriate care, even if no complaint has been filed against the center.

Response: When a participant does not want to place the dependent child with a particular registered home or licensed child care center because the participant believes it is not appropriate child care, the child care services division of the department of social and rehabilitation services (CCSD) will make the final determination whether the provider is “appropriate child care” for purposes of Act 147 and the rule. The rule does not specify that a complaint had to have been filed against the provider because it is not necessary.

2371 Conciliation

Comment: Conciliation should be available for overt refusals and for additional employment-related noncompliance. Conciliation should be available to those who fail to report to DET.

Response: The department has not changed the substance of its current policy governing the availability of conciliation.

The department believes that the minimum level of cooperation required for successful conciliation is not present in cases of overt refusal. All participants are notified of their right to appeal any PATH decision.

Policy does not preclude conciliation in cases of employment-related noncompliance. PATH does not intend, however, to mediate employee-employer disputes except to the extent that such mediation occurs during the case manager’s determination of good cause. Case managers would be expected to make appropriate referrals to other agencies and service providers whose role includes such mediation.

Individuals who fail to report to DET are applicants who have not been determined eligible for Reach Up and are not subject to sanctions that reduce the financial assistance grant. Applicants denied assistance due to failure to report to DET can cure this instance of noncompliance by reapplying and meeting the reporting requirement. They may also appeal the denial. The process and time frames associated with conciliation would only serve to delay participation in the program for an otherwise eligible applicant.

Comment: Conciliation should not be limited to two disputes within five years.

Response: The department has modified policy so that conciliations conducted prior to July 1, 2001, do not count toward the limit.

Based on past experience, the department believes that providing an unlimited number of conciliation opportunities does not increase the case manager's chances of dealing successfully with families with multiple problems. Instead, unlimited conciliation makes it easier to delay the acknowledgment and resolution of problems.

Individuals for whom conciliation is not available have other opportunities to bring a good cause reason for noncompliance to light. They have the right to appeal any PATH decision, and policy governing fiscal sanctions requires the sanctioned individual to meet at least once a month to deal with noncompliance issues.

2371.1 Conciliation Process for Noncompliance

Comment: The time frames and other requirements of this section should be modified if necessary to accommodate a disability, and the case manager should be required to provide specific notice of the opportunity to request accommodations and assessment of a disability as part of the conciliation process. When a disability is identified, the case manager should be required to follow the procedures for determining whether a medical deferment or modification should be granted.

Response: The department has added good cause criteria to sections 2370.31 and 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied. In addition, the department will add language offering the opportunity to request accommodations to the conciliation notice.

Comment: As an element of due process, the conciliation notice should include that the participant has the right to appeal an unsuccessful conciliation and receive continuing benefits pending appeal.

Response: The sanctions notice, which is sent immediately after conciliation has been determined unsuccessful, includes language specifying the participant's rights to appeal. The notice also states that sanctions will not be imposed while the appeal is pending if the request for appeal is made before the sanctions were to go into effect.

Comment: The case manager should assist the participant in providing documentation of good cause, at least in circumstances where the noncompliance is disability- or barrier-related.

Response: Language has been added to policy to require the case manager to help the participant obtain documentation upon request.

2371.2 Conciliation Resolution Period

Comment: The case manager should inform the participant that terminating the conciliation process will result in a determination of unsuccessful resolution and immediate sanctioning.

Response: The conciliation letter, which is being revised, will contain this information.

2371.3 Successful Resolution

Comment: Compliance for three months before this period ends is too long. Current policy is up to eight weeks and is sufficiently long.

Response: In cases where the participant is engaging in an infrequent FDP activity (e.g., monthly), it may take three months to establish a pattern of compliance.

2372 Sanctions for Noncompliance with Services Component Requirements

Comment: The time frames and other requirements of this section should be modified if necessary to accommodate a disability, and the case manager should be required to provide specific notice of the opportunity to request accommodations and assessment of a disability as part of the sanction process. When a disability is identified, the case manager should be required to follow the procedures for determining whether a medical deferment or modification should be granted.

Response: The department will add language to the notice of sanctions offering the opportunity to request an accommodation. The department has added good cause criteria to sections 2370.31 and 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied.

Comment: The six-month housing protection should be longer, and the renewal of the protection should be consecutive, creating a 12-month housing protection.

Response: The rule on the 6-month housing protection and the requirement of the 36-month compliance period to renew availability of the housing protection follows explicit language in Act 147 (33 V.S.A. §1116(g)). PATH is bound by and cannot modify this provision of the law.

Comment: During sanction periods, a family receives its housing costs by vendor payment (2372.3). The commenter believes that PATH should delete this section's provision that requires a reduction of the vendor payment by \$10 and providing it to the family for discretionary spending because it will jeopardize the family's housing by creating underpayment of the rent.

Response: The department has deleted the provision.

2372.1 Independent Review and Notice

Comment: The independent review process should include a consideration of whether a disability may be causing the noncompliance, and the notice should explicitly reference the right to disability accommodations.

Response: The department has added good cause criteria to sections 2370.31 and 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied.

2372.2 Sanction Amounts

Comment: The statute does not authorize the months of sanction to be counted cumulatively.

Response: The department acknowledges that, in the sanctions section of the statute (§1116), the word "cumulative" only appears in subsection (e), which requires a \$225 sanction for families receiving 60 or more cumulative months of financial assistance. Subsection (c), which requires a \$75 sanction during the first three months of an adult's noncompliance and a \$150 sanction during the fourth and subsequent months (up to 60 months), is silent with respect to whether the months are counted cumulatively. Subsection (d), however, sets forth the conditions under which, during the first 60 months, the adult may have all previous sanctions forgiven. Since the forgiveness of sanctions is unnecessary and irrelevant unless the months specified in subsection (c) are counted cumulatively, the department believes that the months should be counted cumulatively and finds nothing in the statute to preclude this interpretation.

2372.21 Housing Protection Limitation on Sanction Amounts

Comment: The last paragraph is not clear that grant closure for any reason is counted towards the 36-month period as required by 33 V.S.A. 1116(g).

Response: The department has modified the last sentence in the paragraph slightly to make its meaning clearer.

2372.4 Meeting With Case Manager

Comment: The statute does not authorize a full family sanction as outlined in this section. In addition, the time line outlined in this section does not appear to allow for sufficient notice with an option of appealing with continuing benefits. There should be a provision in this section that protects a family should the lateness of a meeting occur due to a case manager's inability to meet prior to the 16th.

Response: The department contends that §1116(h), which begins, “[t]o receive payments during the fiscal sanction period, an adult who is the subject of the sanction shall meet not less than once each month,” does authorize a full family sanction for failure to meet with the case manager. This part of the sanction process remains unchanged from the sanction policy used under WRP, except that the WRP rule requires three meetings per month.

The notice requirement and the right to continuing benefits while the appeal is pending associated with this part of the sanction process also remains unchanged. Section 2228.1 identifies closure due the failure to meet with the case manager as one of the decisions exempt from minimum advance (10-day) notice requirements. Section 2218.2 defines the circumstances under which participants may request reinstatement of benefits pending the outcome of the appeal.

The department believes that case managers’ obligation to make themselves available for a meeting by the 16th and protection for participants who fail to attend the meeting due to circumstances beyond their control are adequately represented in the policy. The meeting, which must take place by the 16th, is scheduled, and rescheduled if necessary, by the case manager. The case manager may waive the meeting requirement if a compelling reason that prevented the participant from meeting anytime from the 1st to the 16th of the month warrants such action.

Comment: If the case manager determines that the reason for noncompliance was a barrier or undiagnosed disability, the sanction should not count and should be cured.

Response: The department has added good cause criteria to sections 2370.31 and 2370.32 for circumstances when a participant asserts that the noncompliance was the direct result of a previously unacknowledged medical condition that would qualify the participant for a deferment or modification, provided three specified conditions are satisfied. Language providing for the reversal of sanctions when good cause for noncompliance is determined after sanctions have been imposed has been added to 2372.

2380 Notice and Appeal

Comment: Participants and applicants should have a right to appeal any lack of action by PATH, such as a failure to process an application or the failure of a case manager to do an action.

Response: The department has modified the policy to provide for such appeals.

2380.1 Notice

Comment: The notice section (2380.1) should specify that, where an appeal is made within 10 days, the benefits will continue at the same rate. The notice should also include language about accommodations as suggested in the OCR Guidance at page 26, second bullet. This section should include the recommendations by OCR regarding notice.

Response: This section already includes an explicit reference to 2218, where the conditions under which benefits may be continued pending the outcome of the appeal are specified. The department believes it unnecessary and inadvisable to repeat that policy in this section.

PATH will review the OCR guidance and consider incorporating its recommendations into notices being revised for the implementation of Act 147.

Vertical and dotted lines are not included in the left margins of the pages of this bulletin because the changes to current policy are substantial or complete.

Manual Holders: Please maintain manuals assigned to you as follows:

MANUAL MAINTENANCE

Remove

TOC P.2 to P.4
(2340-2359)

2340 through 2356.4 P.3
(including all PP&Ds)

Insert

TOC P.1 to P.4
(2340–2399)

2340-2380.3 P.2
(84 pages)