COMMITTEE ON SOCIAL WELFARE LAW

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Hon. Andrew M. Cuomo
Governor
State Capitol
Executive Chamber
Albany, New York 12224

Re: Support for A.4250 (AM Wright) / S.3596 (Sen. Savino), which concerns the conciliation and the sanction process in New York City

Dear Governor Cuomo:

The New York City Bar Association's Social Welfare Committee ("the Committee") supports A.4250 (AM Wright) / S.3596 (Sen. Savino), and urges you to sign it into law.[1] The legislation amends section 341 and 342 of the Social Services Law to enable the local social services district in New York City to promote re-engagement of welfare recipients in welfare-to-work activities by either preventing or ending sanctions upon the recipient's compliance with program rules. The bill accomplishes this by, among other things: (1) assuring that the social service district meets its obligation to only initiate sanctions against persons who are not already exempt from welfare-to-work activities due to disability, or who lack work supports they have already been approved for – e.g., transportation allowance and carfare; (2) enabling clients to prevent sanctions before they go into effect by complying with welfare-to-work rules; and (3) ending mandatory, minimum durational sanctions in favor of sanctions that last until compliance.

BACKGROUND

New Yorkers seek out welfare or "cash assistance," as it is generally known in New York, to get through difficult times that are often caused by a change of circumstances such as unemployment, the onset of disabling medical and mental health conditions, domestic violence, homelessness or even the unmet need for child care. In the short-term, these individuals seek to obtain and maintain subsistence income so they can keep a roof over their heads or end a period of homelessness and feed their children. In the long-term, welfare recipients seek a path to a more stable income, whether through acquiring skills and education that will facilitate employment, finding paid employment directly or obtaining a more adequate level of assistance under another benefit program, such as Social Security.

[1] The legislation passed the Senate on May 28, 2015 by a vote of 57-1 and passed the Assembly on June 16, 2015 by a vote of 100-48.

With the advent of welfare reform brought about by the Personal Responsibility and Work Opportunity Reconciliation Act ("PRA") of 1996,[2] states have enjoyed increased flexibility in the ways in which assistance is administered. The primary constraint imposed upon the states is the mandate to meet work participation rates imposed by the PRA at the risk of financial penalty for noncompliance.[3] The ways in which local social services districts, including New York City, meet these goals are largely prescribed by State law. This bill would make various amendments to the State's Social Services law to ensure compliance with employment program requirements without unfairly sanctioning New York's neediest citizens.

When a client is sanctioned, he or she loses assistance for up to six months or more for failure to comply with public assistance employment programs, even if the client is willing to comply with work rules immediately and, in many cases, even though he or she had a good reason for missing an appointment or a day of a work assignment. The duration of the sanction depends on how many prior sanctions have been imposed on the case.[4] There is a mandatory, minimum period plus any additional time it takes until the sanctioned individual "is willing to comply" for families with children,[5] and "until the failure or refusal ceases," for individuals without children.[6] A client with a family loses his or her pro rata share of assistance during the duration of the sanction; whereas a single-person household has his or her case closed.[7] According to New York City Human Resources Administration (HRA) data, as of August 2, 2015, the caseload work activities engagement report reveals that of those clients engaged in welfare work programs in New York City, 13.7% are either sanctioned or in the sanction process.

There is ample evidence that sanctions are often imposed in error, especially in New York City. For example, in State administered fair hearings, New York City has a poor track record in defending its decisions to sanction. According to OTDA 2014 statistics,[8] in Fiscal Year 2014, 91% of the fair hearings requested related to sanctions State-wide were requested by residents of New York City.[9] The outcome for appellants was favorable in over 90% of the hearings, more than half of which were as a result of a settlement.[10] In other words, many of these hearings were unnecessary. The City could have resolved many of the underlying issues by taking a closer look at the case at an earlier stage, before a fair hearing was even requested.

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[2] Pub. L. 104-193, 110 Stat 2105 (Aug. 22, 1996).

[3] 42 U.S.C. § 607(a)(i)(2).

[4] Soc. Serv. L. § 342.

[5] Soc. Serv. L. § 342 (2)(a)-(c).

[6] Soc. Serv. L. § 342(3)(a)-(c).

[7] Id.

[8] "2014 Statistical Report On the Operations of New York State Public Assistance Programs," Prepared By: New York State Office of Temporary and Disability Assistance Bureau of Data Management and Analysis, available at https://otda.ny.gov/resources/legislative-report/2014-Legislative-Report.pdf.

[9] Id. at 51.

[10] Id. at 55-61 (tables reflecting fair hearing outcomes).

Sanctions often result in a loss of any momentum the employable client has found toward employment and self-sufficiency. Sanctioned clients who are engaged in job training, job search, and even paid employment lose their child care and other work supports, making continued attendance at jobs, job interviews, and training programs nearly impossible. Disqualification for lengthy periods of time runs counter to the goal of assisting clients in enhancing their work skills and maintaining or moving expeditiously into private, full-time paid employment. Needless to say, sanction also represents a crushing hardship for individuals who lose all cash aid for periods of three, five or six months and for families who lose all aid for the sanctioned individual for a minimum period of up to six months. Sanctions also disproportionately impact clients with disabilities and other vulnerable clients.[11] When such clients are sanctioned, not only do they lose benefits, they are disconnected from the very district programs that are supposed to address barriers to employment, such as programs for people with disabilities.

In addition to these individual costs, sanctions impose a real cost on society.[12] Sanctions are associated with a higher risk of housing instability, eviction and homelessness.[13] It costs the City and State approximately $3,000 a month to shelter a homeless family.[14] In turn, homelessness puts families at risk of child welfare interventions such as foster care.[15] Costs for hospitalization and emergency room visits also increase due to health consequences of

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[11] See, e.g., V. Lens, "Work Sanctions Under Welfare Reform: Are They Helping Women Achieve Self-Sufficiency?", 13 Duke J. of Gender L. & Pol'y 255, 269-70 (Spring 2006) (summarizing social science research on characteristics of sanctioned families, including that they are younger, include more children, are likely to have never married, have health problems, experience domestic violence, have lower levels of education, less work experience and longer periods of time on public assistance); L. Pavetti, et al., "The Use of TANF Work-Oriented Sanctions in Illinois, New Jersey and North Carolina," Mathmatica Policy Research, Inc. (April 2004) (finding that recipients with mental and physical health issue, those caring for family members or friends with health problems and those with less education are likely to be sanctioned).

[12] Mandatory minimum sanctions can also make it harder for the state to meet the federally mandated participation rates. The participation rate is calculated by dividing a numerator consisting of families engaged in federally recognized work requirements by a denominator consisting of the total number of families receiving TANF or state funded cash assistance that counts toward "Maintenance of Effort" requirements. See generally 42 U.S.C. § 607(b)(1)(B); see 42 U.S.C. § 609(a)(7)(B); 45 C.F.R. § 263.1 (explaining what qualifies as a "maintenance of effort" expenditure). If a household has been subject to sanction for longer than three months (whether or not consecutive) within the preceding 12 months, the household is included in the denominator. 42 U.S.C. § 607(b)(1)(B)(ii)(II). If the household has been subject to sanction for less than three months, it is excluded from the denominator. Accordingly, since the more often people are sanctioned, the more likely they are to be sanctioned for a minimum of six months, the high sanction rate means more sanctioned households are included in the participation rate denominator. Since they are not able to participate while sanctioned, these sanctioned households make it harder for the State to meet the participation rate. Indeed, the fact that such sanctioned households get included in the denominator creates an incentive to close their cases. When their cases are closed the sanctioned households get taken out of the denominator.

[13] In 2014 City Council testimony, HRA estimated that 9.7% of recipients who were sanctioned or had their case closed (in 2012-2013) applied for DHS shelter after HRA took the adverse action. See http://www1.nyc.gov/html/hra/downloads/pdf/news/testimonies/2014/may_2014/HRA_Executive_Budget_Testimony_2015.pdf at 5.

[14] "Preliminary Mayor's Management Report" February 2015, accessible at http://www.nyc.gov/html/ops/downloads/pdf/pmmr2015/2015_pmmr.pdf at 164.

[15] Culhane, J.F., et al., "Prevalence of child welfare services involvement among homeless and low-income mothers: A five year birth cohort study," Journal of Sociology and Social Welfare, 30 (3), 79-96.

sanctions.[16]

THE PROBLEM WITH CONCILIATION APPOINTMENTS

As it currently stands, a conciliation appointment is automatically generated without any investigation by the agency into whether the alleged non-compliance was "willful" – an investigation required by State law.[17] Although a client may resolve the infraction by demonstrating "good cause" at the conciliation, many clients do not attend the conciliation appointment. The current HRA conciliation notice suggests that the appointment is not mandatory. Some disabled clients cannot get to the conciliation appointment for the same reasons they could not get to the original appointment. And, it is always a possibility that the original appointment notice and the conciliation notice were sent to the wrong address. Whatever the reason, an automated computer practice known as "autoposting" is used to *automatically* determine that the client did not prove good cause if he or she does not show up to the conciliation. From that point, the only way for the client to avoid the sanction is to request a fair hearing, or self-initiate a conference with the Job Center at which the client can try to persuade the agency that a mistake was made.

Because the system of autoposting has been programmed to automatically assume a client has not attended an appointment unless a worker corrects the system and ensures that attendance was recorded, all errors in this system run against the client rather than HRA. Indeed, many sanctions could be avoided if HRA exercised careful review of facts and circumstances prior to initiating a sanction, and if, consistent with federal and State law, offered individuals the opportunity to comply with program requirements before imposing public assistance sanctions.

PROPOSED LEGISLATION

The proposed legislation effectively addresses the high rate of baseless sanctions (resolved at fair hearing) and the negative effects of lengthy, mandatory minimum durational sanctions while promoting the re-engagement of individuals into self-sufficiency and ensuring access to assistance to meet the basic needs of individuals and families with children for food, clothing and shelter.

First, the bill prevents baseless sanctions by assuring that the social service district meets its obligation to initiate sanctions only against persons who are not already exempt from work activities due to disability or who lack other work supports for which they have already been approved. Second, the bill enables the district to resolve sanctions before a fair hearing can even be requested by enabling clients to resolve the threat of sanction through compliance, a preventative tool not currently available. Providing individuals with an opportunity to "re-

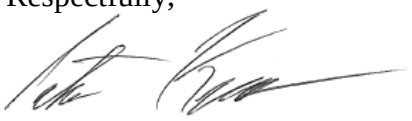
[16] See, e.g., Children's Health Watch: The Impact of Welfare Sanctions on the Health of Infants and Toddlers. (2002, July 1). *Children's Health Watch*, accessible at http://www.childrenshealthwatch.org/upload/resource/welfare_7_02.pdf; Federation of Protestant Welfare Agencies (2012) "Guilty Until Proven Innocent: Sanctions, Agency Error, and Financial Punishment Within New York State's Welfare System."

[17] Soc. Serv. L. § 341.

engage" in employment-related activities to avoid sanction will reduce the rate of sanction and also allow individuals and families who desperately need assistance to maintain their safety net while they work to become independent. Third, by ending mandatory minimum durational sanctions in favor of sanctions that last until compliance, the bill gives clients who want to comply the opportunity to do so and, in turn, get the benefit of their full grant as well as the benefits of participation in work, education and training activities.

For these reasons, the Committee supports A.4250/S.3596 and urges you to sign it into law.

Respectfully,



Peter Kempner