VOLUNTARY COMPLIANCE AGREEMENT

BETWEEN THE

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS

AND THE

WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES

TRANSACTION NUMBERS:

02-00727
02-00728
02-00729
02-00730
02-00731
02-00734

TABLE OF CONTENTS

I. Introduction 1

II. Parties to the Agreement 3

III. Jurisdiction 3

IV. General Provisions 4

V. Definitions 7

VI. Specific Provisions 11

- A. Notification of the Provisions of this Agreement 11
- B. Section 504 and ADA Compliance and Grievance Procedures 11
- C. Title VI Compliance and Complaint Resolution Procedures 12
- D. Preventing and Addressing Allegations of Discrimination Based on Disability in W-2 Programs 13
- E. Preventing and Addressing Allegations of Discrimination Based on Race, Color, or National Origin in W-2 Programs 30
- F. DCF W-2 Program Manuals 33

VII. Data Collection and Reporting Requirements 33

VIII. Signatures 36

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Between the

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OFFICE FOR CIVIL RIGHTS

And the

WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES

I. Introduction

A. This Voluntary Compliance Agreement (hereinafter the Agreement) is entered into by the United States Department of Health and Human Services, Office for Civil Rights (OCR), and the Wisconsin Department of Children and Families (DCF),[1] to resolve race and disability discrimination complaints alleging that the DCF's administration of the Federally-funded Temporary Assistance to Needy Families (TANF) Program (known as Wisconsin Works or the W-2 Program) violates Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990.

B. This Agreement resolves OCR Complaint Nos. 02-00727, 02-00728, 02-00729, 02-00730, and 02-00731, filed on February 13, 2002, by Legal Action of Wisconsin, Inc. (LAW). In the complaints, LAW alleged that the administration of the W-2 Program in Wisconsin violates Section 504 and the ADA because, among other things, DCF:

- designates applicants as "job ready" without screening or assessing them to determine if any disability affects their ability to work;
- has not developed and utilized effective screening tools;
- has not sufficiently trained Resource Specialists and Financial and Employment Planners (FEPS) to identify disabilities;
- has not afforded applicants and participants the opportunity for a timely,

[1] On June 30, 2008, Wisconsin combined the Wisconsin Department of Health and Family Services and the Wisconsin Department of Workforce Development to form the Wisconsin Department of Children and Families (DCF). Throughout this agreement, we will use the term "DCF" to refer to both the Wisconsin Department of Children and Families and its predecessor agency, the Wisconsin Department of Workforce Development.

comprehensive assessment when the intake interview indicates the presence of a disability;

- has not developed guidelines as to what a comprehensive assessment should include;

- has not provided reasonable accommodations to participants with disabilities and participants who have family members with disabilities;

- has not developed specialized education and training programs for participants with mental impairments and learning disabilities;

- has not adequately trained FEPS to work with applicants and participants with disabilities;

- does not regularly assess a participant's progress in activities to determine if a participant has a disability that requires reasonable accommodations, or whether the needs of a family member with a disability interfere with the participant's ability to participate in, and benefit from, the W-2 Program;

- does not adequately train and oversee W-2 Agencies with respect to compliance with Section 504 and the ADA, and otherwise fails to take corrective action with respect to W-2 Agency compliance violations; and

- does not provide written materials that contain adequate information regarding an applicant's or participant's rights under Section 504 and the ADA, including, but not limited to, the right to file a complaint.

C. This Agreement also resolves OCR Complaint No. 02-00734 filed against DCF on February 18, 2002, by the American Civil Liberties Union of Wisconsin Foundation (ACLU-WIF) and the National Association for the Advancement of Colored People Milwaukee Branch (NAACP). The ACLU-WIF and the NAACP alleged, among other things, that DCF:

- does not have in place sufficient intake, screening, and assessment procedures to properly identify and evaluate the needs of W-2 applicants and participants with disabilities, all in violation of Section 504 and the ADA;

- fails to ensure that the W-2 Program is accessible to and accommodates persons with disabilities and persons who have household members with disabilities, in violation of Section 504 and the ADA, because DCF:

- fails to conduct proper reviews of the W-2 Program's intake, screening, and assessment procedures;
- uses inadequate notices;
- imposes excessive verification requirements;
- fails to ensure appropriate assignments; and
- implements inappropriate policies and practices regarding sanctions, case closures, and time limit extensions;

- discriminates *per se* against persons with disabilities in certain aspects of its W-2 Program; and
- extends time limits in its W-2 Program in a racially discriminatory manner for W-2 participants in violation of Title VI of the Civil Rights Act of 1964.

II. Parties to the Agreement

A. United States Department of Health and Human Services, Office for Civil Rights; and the

B. State of Wisconsin Department of Children and Families, the state agency responsible for the administration of the Wisconsin Works (W-2 Program), a program that is funded in part by the Temporary Assistance for Needy Families Block Grant that provides services to low-income adults with custodial children to help them move toward self-sufficiency through employment.

III. Jurisdiction

A. OCR is the HHS office charged with enforcing civil rights laws as they pertain to programs funded by HHS, and so has jurisdiction over these complaints pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C.§ 2000d, and its implementing regulations at 45 C.F.R. Part 80 (collectively, "Title VI"). Title VI prohibits discrimination on the basis of race, color, and national origin by recipients of Federal financial assistance. All entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract, or subcontract, are obligated to comply with, among other things, Title VI.

B. OCR also has jurisdiction over these complaints pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulations at 45 C.F.R. Part 84 (collectively, "Section 504"). Section 504 prohibits

discrimination on the basis of disability by recipients of Federal financial assistance. All entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract, or subcontract, are obligated to comply with, among other things, Section 504.

C. In addition, OCR has jurisdiction pursuant to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., and its implementing regulations at 28 C.F.R. Part 35 (collectively, "the ADA"). The ADA prohibits discrimination on the basis of disability in State and local government programs and services and requires public entities to make reasonable modifications in policies, practices, and procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the program, service, or activity. OCR is the designated agency responsible for investigating ADA complaints against State and local governments with regard to the administration of social service programs or activities. See 28 C.F.R. § 35.190(b)(3).

D. DCF is responsible for administering the State of Wisconsin's TANF Program. As an instrumentality of the State, DCF is obligated to comply with the ADA. As a recipient of Federal financial assistance from HHS in the form of a TANF Block Grant, DCF must comply with Section 504 and Title VI.

E. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. § 1305, specifically requires States to operate their TANF programs in compliance with Section 504, the ADA, and Title VI.

IV. General Provisions

A. The terms of this Agreement do not prejudice any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be currently pending before OCR. Any unrelated compliance matters arising from subsequent reviews or investigations may be resolved separately. Nothing in this Agreement shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct future complaint investigations and compliance reviews related to DCF and the subject matter of this Agreement.

B. This Agreement does not address or resolve issues involved in any complaint investigation, compliance review, or administrative action under Federal laws by other Federal agencies, including any action or investigation under Title II of the ADA, Section 504 of the Rehabilitation Act, or Title VI of the Civil Rights Act.

C. DCF's execution of this Agreement shall not be construed as an admission of liability by DCF, or as evidence that it has not complied with Section 504, the

ADA, or Title VI; and further shall not constitute a waiver of any defense DCF may assert in any judicial or administrative proceedings.

D. Nothing in this Agreement is intended to relieve DCF of its obligation to comply with other applicable nondiscrimination statutes and their implementing regulations.

E. When requested by DCF, OCR will, at its discretion, provide technical assistance to assist DCF in implementing this Agreement.

F. OCR agrees to bring to the attention of DCF any complaints, related to the matters herein and filed with OCR against DCF, for the period of three (3) years from the Effective Date of this Agreement; and to attempt resolution of such complaints within the framework of this Agreement before initiating an investigation.

G. DCF shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint or grievance, or otherwise participated in any manner in the matters addressed in, or covered by, this Agreement.

H. OCR places no restriction on the publication of the terms of this Agreement, and DCF acknowledges that the Agreement may be published on OCR's website and disseminated by OCR to the public. In addition, OCR may be required to release the Agreement and all related materials to any person, upon request, consistent with the requirements of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulation, 45 C.F.R. Part 5. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

I. OCR may, at any time, investigate DCF's compliance with this Agreement.

J. DCF shall, if requested, provide OCR with access to information and resources that OCR deems necessary to determine DCF's compliance with the terms of this Agreement. DCF specifically shall permit OCR to inspect premises, interview witnesses, and examine and copy documents as is necessary to monitor this Agreement.

K. If at any time OCR determines that DCF has failed to comply with the terms of this Agreement, OCR shall notify DCF in writing. The notice shall include a statement of the basis for OCR's determination and allow DCF fifteen (15) business days either: (a) to explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement; or (b) to dispute the accuracy and/or legal sufficiency of OCR's finding. On notice to DCF, OCR may shorten the fifteen

(15) day period if it determines that a delay would result in irreparable injury to affected parties. If DCF does not respond to the notice, or if, upon review of DCF's response, OCR determines that DCF has not complied with the terms of the Agreement, OCR reserves the right to reopen its review of DCF's compliance with Section 504, the ADA, and Title VI, with respect to the W-2 Program. OCR may incorporate into its reopened compliance review any relevant evidence of noncompliance with this Agreement, and any relevant evidence gathered by OCR prior to the signing of this Agreement.

L. Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of OCR's right to enforce other deadlines and provisions of this Agreement.

M. This Agreement constitutes the entire agreement between DCF and OCR on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement, shall be enforceable.

N. This Agreement may be modified by mutual agreement of the parties in writing.

O. This Agreement shall become effective on the date it is signed by OCR and DCF (the "Effective Date") and shall remain in effect for three (3) years after the Effective date ("the Term"). If, at any time, OCR determines that DCF is not in compliance, OCR will provide DCF with information concerning its noncompliance as required by Section IV(K) of this Agreement. At the completion of each year's monitoring, OCR will provide written confirmation as to whether DCF is in compliance with the terms of the Agreement at that point. Three years after the Effective Date, at which point if OCR determines that DCF has complied with the terms of this Agreement, OCR's review and monitoring of this Agreement shall terminate. Notwithstanding the Term of this Agreement, DCF acknowledges that it continues to be obligated to comply with Section 504 and Title VI for as long as it continues to receive Federal financial assistance, and that it continues to be obligated to comply with the ADA as an entity of State government.[2]

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[2] OCR has issued policy guidance that clarifies the obligations Title II of the ADA and Section 504 impose on State and local government entities, and on recipients of Federal financial assistance from HHS involved in the administration of TANF programs. See U.S. Department of Health and Human Services, Office for Civil Rights Prohibition Against Discrimination on the Basis of Disability in the Administration of TANF (Temporary Assistance for Needy Families) (July 19, 2007), http://www.hhs.gov/ocr/prohibition.html, cited in Administration for Children and Families, U.S. Department of Health and Human Services, Reauthorization of the Temporary Assistance for Needy Families (TANF) Program; Final Rule, 73 Fed. Reg. 6772, 6775 (Feb. 5, 2008).

V. Definitions

In this Agreement, the terms listed below shall have the following meaning:

A. Disability and Barrier to Participation in the W-2 Program or Employment

1. The term "disability" in this Agreement is synonymous with the definition of "disability" (with respect to an individual) contained in the ADA. 42 U.S.C. § 12102(1). See also the definition of "individual with a disability" contained in Section 504. 29 U.S.C. §§ 705(20)(B) and 794(a);

2. For purposes of this Agreement, the term "barrier to participation in the W-2 program or employment" would include, but not be limited to, situations where an applicant or participant has a family member included in the W-2 group living in the home who has a disability that poses a barrier to the applicant's or participant's participation in the W-2 Program or employment. Medical documentation must be provided to support the applicant's or participant's need to remain in the home to provide care for the W-2 group family member.

3. The term "W-2 group" includes an adult custodial parent, all dependent children with respect to whom the individual[3] is a legal custodial parent, and all minor children with respect to whom the individual's dependent child is a custodial parent. W-2 group includes any nonmarital co-parent or any spouse of the individual who resides in the same household as the individual and any minor children with respect to whom the spouse or nonmarital co-parent is a custodial parent.

B. Reasonable Modification and Reasonable Accommodation

1. The terms "reasonable modification" and "reasonable accommodation" are defined as changes or adjustments to a covered entity's policies or procedures to avoid discrimination on the basis of disability and to afford qualified individuals with disabilities an equal opportunity to participate in, and benefit from, services provided under a covered program or activity. These terms are often used interchangeably in practice and may be used interchangeably in this Agreement.

2. The provision of reasonable modifications/accommodations may take many forms, including, but not limited to, the TANF application process, notifications to beneficiaries of their rights and requirements under the

[3] The terms "individual" and "person" as used in this section have the same meaning as "applicant" or "participant" as used throughout this Agreement.

TANF program, assistance in completing forms and collecting verifications, and the provision of auxiliary aids and services.

C. "W-2 Program" refers to DCF's Wisconsin Works Program and its component parts

1. "Unsubsidized Employment": Employment for which a W-2 Agency or contractor provides no subsidy to the employer, including self-employment and entrepreneurship.

2. "Trial Job": A W-2 subsidized employment position that provides work experience and training which may become permanent unsubsidized employment. The W-2 subsidy for Trial Job participants is paid directly to the employer.

3. "Community Service Job (CSJ)": A W-2 work-readiness practice placement designed to improve the employability of participants by providing work experience and training in the public and private sectors.

4. "W-2 Transition (W-2 T)": A W-2 T employment position is for participants who have been determined not ready for unsubsidized employment and unable to successfully participate in one of the other W-2 employment positions for reasons such as a participant's incapacitation or the need to remain in the home to care for another W-2 group member who is incapacitated or disabled.

D. W-2 Agency

"W-2 Agency" or "W-2 Agencies" refers to entities with which DCF contracts to administer the W-2 Program and related services to assist individuals to obtain full time employment.

E. Applicant and Participant

1. An "applicant" is any individual who has applied for W-2 services.

2. A "participant" is any individual who participates in any component of W-2.

F. Informal Assessment

"Informal Assessment" is a process to gather information about an individual and his or her family to determine the:

- Individual's ability to become employed and remain employed;

- Services and activities necessary for the individual to become employed and remain employed;
- Appropriate placement of a participant on the W-2 employment ladder;
- Need for further career assessment and planning;
- Need for vocational evaluation;
- Existence of potential disabilities or other specific limitations through screening with a validated screening tool; and
- Need for a formal assessment of any disabilities or other employment barriers by a Qualified Assessing Agency or Individual.

G. Formal Assessment

"Formal Assessment" is the process of establishing the:

- Extent and severity of any disabilities or other conditions (*e.g.*, domestic violence, learning needs, or need to care for disabled child) that may interfere with normal functioning in an employment setting or with a person's ability to meet W-2 program requirements;
- Effect of a disability or other potential barrier on the person's capacity to obtain and maintain unsubsidized employment, participate in employment-related activities (*e.g.*, employment training or education) or otherwise meet W-2 program requirements;
- Need for supportive services, reasonable accommodations, auxiliary aids, or communication assistance;
- Conditions under which the person is capable of employment or employment-related activities;
- Need to make reasonable modifications to policies, practices, and procedures when necessary to ensure equal opportunity for persons with disabilities; and
- Appropriateness of specific assignments in the W-2 program.

H. Qualified Assessing Agency or Individual

A "Qualified Assessing Agency or Individual" is a professional qualified to perform a formal assessment and may include a medical or mental health professional, social worker, psychologist, neuro-psychologist, Division of Vocational Rehabilitation counselor or similar qualified assessing agency or individual. Characteristics required of the Qualified Assessing Agency or Individual include:

1. Demonstrates a competency or successful completion of training in the appropriate field and is certified by an appropriate accreditation organization.

2. Demonstrates an understanding of the objectives of the formal assessment based on W-2 referral information, referral questions, the initial interview, and stated purpose of the evaluation.

The Qualified Assessing Agency or Individual must provide an individualized written assessment that enables the FEP to adapt W-2 activities to accommodate the needs of the applicant or participant.

I. Resource Specialist and Financial and Employment Planner

1. A "Resource Specialist" is a W-2 Agency employee or contracted employee who makes an assessment of needs, performs initial referrals to service providers, and evaluates the need for W-2 services.

2. A "Financial and Employment Planner" (FEP) is a case manager employed by, or who has contracted with, a W-2 Agency. The FEP provides eligibility determinations, job readiness screening, employability planning, and financial and employment case management services; makes referrals to other public or private assistance programs or resources; and determines eligibility for supportive services, such as food stamps, medical assistance, job access loans, child care, and emergency assistance.

J. Employability Plan

An "Employability Plan" (EP) is a written agreement developed by a FEP in consultation with the participant. It is a case management tool that details a logical, sequential series of actions and becomes a blueprint for change to move the participant from dependency to self-sufficiency. The participant's occupational goal, precise tasks required of both the W-2 Agency and the participant, and the supportive services needed are identified in the EP.

VI. Specific Provisions

A. Notification of the Provisions of this Agreement

Within sixty (60) days of the Effective Date of this Agreement, DCF shall provide notification in memorandum form to all W-2 Agencies that identifies the terms of this Agreement including, but not limited to, the availability of informal and formal assessments as described below in Section VI(D)(2) and (3).

B. Section 504 and ADA Compliance and Grievance Procedures

1. Within thirty (30) days of the Effective Date of this Agreement, DCF agrees to designate a staff person to oversee DCF's compliance with Section 504 and the ADA in its implementation of the W-2 Program (hereinafter the "Equal Opportunity Specialist/Equal Opportunity Officer (EOS/EOO)"). The EOS/EOO shall report directly to the Deputy Secretary of DCF, and not to any intermediary, to ensure that any issues of non-compliance with this Agreement are addressed in a timely and efficient manner.

2. The EOS/EOO shall, at a minimum, be responsible for:

   a. conducting periodic reviews of DCF policies and procedures to determine whether reasonable modifications of programs, policies, and procedures are required to ensure compliance with Section 504 and the ADA;

   b. providing advice and technical assistance to W-2 Agencies regarding compliance with Section 504 and the ADA;

   c. overseeing the Section 504 grievance process and the ADA grievance process, including ensuring the appropriate and timely resolution of grievances, and submitting and implementing a corrective action plan if a grievance is determined to be well-founded;

   d. maintaining records of all Section 504 grievances and ADA grievances filed with DCF in relation to the W-2 Program along with records showing resolution of those grievances;

   e. assisting in the development and coordination of training of W-2 Agency staff and contractors regarding the requirements of Section 504 and the ADA in the administration of the W-2 Program; and

f. monitoring DCF's compliance with the provisions of Section 504 and the ADA, including the compliance of its contractors with Section 504 and the ADA as that compliance relates to the W-2 Program, and providing technical assistance to DCF when necessary to obtain compliance.

3. Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall review and revise (as necessary) its Section 504 Grievance Procedures and its ADA Grievance Procedures so that they meet the standards set forth in 45 C.F.R. Part 84 and 28 C.F.R. Part 35, respectively. The Section 504 Grievance Procedures and the ADA Grievance Procedures must be made available to applicants and participants to ensure that they are aware of their right to file grievances alleging denials of reasonable accommodations/modifications or equal opportunities to receive benefits or services under the W-2 Program. DCF shall make available its Section 504 Grievance Procedures and its ADA Grievance Procedures in alternative formats so that they are accessible to persons with disabilities upon request.

C. Title VI Compliance and Complaint Resolution Procedures

1. Within thirty (30) days of the Effective Date of this Agreement, DCF agrees to designate a staff person to oversee DCF's compliance with Title VI in its implementation of the W-2 Program (hereinafter the "EOS/EOO"). The EOS/EOO shall report directly to the Deputy Secretary of DCF, and not to any intermediary, to ensure that any issues of non-compliance with this Agreement are addressed in a timely and efficient manner. The EOS/EOO responsible for Title VI compliance may be, but is not required to be, the same EOS/EOO responsible for Section 504/ADA compliance.

2. The EOS/EOO shall, at a minimum, be responsible for:

a. conducting periodic reviews of DCF policies and procedures to determine whether changes to DCF programs, policies, and procedures are required to ensure compliance with Title VI;

b. providing advice and technical assistance to W-2 Agencies regarding compliance with Title VI;

c. overseeing the Title VI complaint process and ensuring appropriate and timely resolution of Title VI complaints, and submitting and implementing a corrective action plan if a complaint is determined to be well-founded;

d. maintaining records of all Title VI complaints filed with DCF in relation to the W-2 Program along with records showing resolution of those complaints;

e. assisting in the development and coordination of training of W-2 Agency staff and contractors regarding the requirements of Title VI in the administration of the W-2 Program; and

f. monitoring DCF's compliance with the provisions of Title VI, including the compliance of its contractors with Title VI as that compliance relates to the W-2 Program, and providing technical assistance to DCF when necessary to obtain compliance.

3. Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall review and revise (as necessary) its Title VI complaint resolution procedures so that they are in compliance with Title VI. The Title VI complaint resolution procedures must be made available to applicants and participants to ensure that they are aware of their right to file complaints alleging denials of equal opportunities to receive benefits or services under the W-2 Program. DCF shall present its Title VI complaint resolution procedures in alternative formats so that they are accessible to persons with disabilities upon request.

D. Preventing and Addressing Allegations of Discrimination Based on Disability in W-2 Programs

1. Obligations

Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall ensure that its W-2 policies and procedures conform at a minimum with the requirements enumerated below to ensure that all applicants and participants are afforded an equal opportunity to participate in the W-2 Program, regardless of a disability or other barrier to participation in the W-2 program or employment. DCF shall further ensure that all applicants and participants are afforded individualized treatment and effective and meaningful opportunities under the W-2 Program.

a. "Effective and meaningful opportunity" requires that: all applicants and participants be afforded the same opportunity to benefit from the W-2 Program; all applicants and participants be provided meaningful access to the W-2 Program; and the methods of administration utilized by W-2 Agencies be non-discriminatory.

b. "Individualized treatment" requires that applicants and participants be treated on a case-by-case basis consistent with facts and objective evidence. Applicants and participants may not be treated on the basis of generalizations and stereotypes.

2. Informal Assessment and Screening for Barriers

a. DCF shall require that all W-2 Agencies conduct an informal assessment of each applicant at the time the applicant submits his or her application to participate in the W-2 Program and also before making a change in W-2 placement to determine the applicant's or participant's strengths and weaknesses and to determine if the applicant or participant has a disability or other barrier to participation in the W-2 program or employment. DCF shall require all W-2 agencies to administer an informal assessment at no cost to the applicant or participant.

i. Informal assessment shall cover all of the following:

- personal strengths, interests and goals;
- job skills (including transferable skills), prior education, and training;
- employment history and recent job search efforts;
- recent career assessment results, if any;
- emergency supportive service needs;
- current living situation and neighborhood environment and schools;
- household budgeting/money management strategies;
- if recent move, from where and when;
- involvement in legal system that may impact ability to work;
- employment support (*i.e.*, Work Connection and Retention Services);
- access to child care (including after-school);

- access to transportation, including current and valid driver's license;
- concerns related to personal and family health, including mental health;
- educational experience, including any diagnosis related to learning disabilities;
- behavioral and other issues that a child in the W-2 group may have that could impact W-2 participation;
- service needs and accommodations related to domestic violence and sexual assault;
- access to social supports (*e.g.*, family members, church, friends); and
- other needs or barriers identified by the participant that impede his or her ability to participate in W-2 activities or find and retain a job.

b. DCF shall require all W-2 agencies to offer the Barrier Screening Tool (BST) to all W-2 applicants and participants, in accordance with this subsection, to assist in identifying the potential presence or risk of a personal barrier to normal functioning in an employment setting. The responses to the BST questions provided by each applicant or participant will assist the W-2 agency in determining if the individual could benefit from a formal assessment by a professional. The BST is voluntary and applicants/participants may decline part or all of the BST.

The BST must be initially offered to all W-2 applicants during the time of application, and prior to placement on one of the rungs of the Employment Ladder. (See Section V(C)(1)-(4)). DCF shall require all W-2 agencies to offer the BST to a participant in any of the following additional situations:

i. when the participant requests to have the BST re-administered;

ii. when W-2 Agency staff and contractors believe that re-administering the BST may help identify a disability or

other barrier to participation in the W-2 program or employment (for example, when there is a pattern of nonparticipation, behavioral cues, or low test scores or poor performance in school or work assignments);

iii. when the applicant or participant returns to the W-2 Program after the applicant's or participant's previous case has been closed for a period of one year or longer; or

iv. before W-2 Agency staff and contractors deny an initial 24-month or 60-month extension, unless the BST has been completed or declined within 12 months of the 24th or 60th month.

c. In order to foster compliance with this requirement, DCF shall ensure that W-2 Agency staff and contractors review the W-2 Barrier Screening Tool Agreement form with the applicant/participant in order to:

i. explain the purpose of the BST to the applicant or participant and state that it is voluntary, and that the applicant or participant can decline to complete the BST in whole or in part without penalty. If the applicant or participant declines to complete the BST, then the W-2 Agency will make all W-2 placement decisions and activity assignments based on the information that is available to it;

ii. inform the applicant or participant of the potential advantages of the BST and how it can benefit the applicant or participant, and that it is offered at no cost to the applicant or participant;

iii. describe the BST in a manner that does not denigrate the process or dissuade the applicant or participant from completing the BST;

iv. explain that the answers provided and the results of the BST are confidential and will be shared only with other W-2 Agencies or with a Qualified Assessing Agency or Individual using a release of information signed by the applicant or participant;

v. explain that if the applicant or participant is willing to complete the BST, he or she will indicate this on the W-2 Barrier Screening Tool Agreement form;

vi. explain that if the applicant or participant declines to complete the BST, he or she will indicate this on the Barrier Screening Tool Agreement form;

vii. explain that if the applicant or participant declines to complete the BST he or she may still request to complete the BST at a later date if he or she believes his or her medical, emotional, or learning needs have changed;

viii. ensure that an applicant's or participant's file contains the signed Barrier Screening Tool Agreement form;

ix. explain to the applicant or participant that if he or she declines the BST, but presents other adequate information that indicates he or she has a disability or other barrier to participation in the W-2 program or employment, that such information will be used to determine the activities and services, including any reasonable modifications or accommodations, to be provided to the applicant or participant; and

x. post notices in an open and apparent location in the waiting area of all W-2 Agencies, advertising the availability of a free BST to all W-2 Program applicants and participants.

d. DCF shall require all W-2 Agencies to conduct an educational needs assessment with all new W-2 applicants and before making a change in W-2 placement. The assessment must:

i. identify the applicant's or participant's current educational levels, and

ii. determine the applicant's or participant's education and training needs. In making this determination, the agency must consider the following:

- the information gathered on the applicant's or participant's current educational levels;
- the level of education and training necessary to obtain full-time employment in the local labor market; and

- the applicant's or participant's personal employment goals. If the agency determines that the individual would benefit from education or training activities, including a course of study meeting the standards established for the granting of a declaration of high school graduation, the education and training activities must be included in the individual's EP.

e. Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall send written notice to all current W-2 participants, notifying them of the opportunity to have the BST administered, and shall establish and maintain policies and procedures, as necessary, for informally assessing all applicants and participants to identify a potential disability or other barrier to participation in the W-2 program or employment.

3. Formal assessment

a. Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall require all W-2 Agencies to offer a formal assessment to any applicant or participant, within thirty (30) days of any of the following situations:

i. when the results of informal assessment and/or the BST, indicates a need for further evaluation for identification of a disability or other barrier to participation in the W-2 program or employment;

ii. when W-2 Agency staff and contractors observe behavior that indicates the need for a formal assessment;

iii. when a participant is placed in a W-2 Transitions placement; or

iv. when an applicant or participant presents medical or other information, including the applicant's or participant's own statements that indicate he or she may have a disability or other barrier to participation in the W-2 program or employment.

b. A formal assessment, at a minimum, shall determine:

i. whether the applicant or participant has personal conditions/diagnoses that impact his or her ability to

function in activities of daily living and ability to perform work;

ii. functional abilities;

iii. functional limitations related to employment and employability, and implications of those limitations on finding and maintaining a job;

iv. for those with learning needs and traumatic brain injury, general aptitude/cognitive level;

v. areas of deficit;

vi. range of recommended reasonable modifications and accommodations/assistive technology for the participant's EP (*i.e.*, both work training under W-2 and in unsubsidized employment);

vii. the ability to engage in training and education prior to employment; and

viii. summary of findings, including rationale for any disability determinations/diagnosis; prognosis; and recommendations for additional services as appropriate.

c. DCF shall require all W-2 Agencies to assist the applicant or participant with obtaining the formal assessment at no cost to the applicant or participant. In order to foster compliance with this requirement, DCF shall ensure that W-2 Agency staff and contractors:

i. explain the purpose of the formal assessment to the applicant or participant and state that it is voluntary, and that the applicant or participant can decline to complete the formal assessment without penalty;

ii. inform the applicant or participant of the potential advantages of the formal assessment, how it can benefit the applicant or participant, and that when the cost of a formal assessment is not covered by a third-party source, such as Medicaid, the W-2 agency will pay for the applicant's or participant's assessment;

iii. describe the formal assessment in a manner that does not denigrate the process or dissuade the applicant or participant from participating in the formal assessment;

iv. explain that the answers provided and the results of the formal assessment are confidential and will be shared only with other W-2 Agencies;

v. explain that if the applicant or participant is willing to be formally assessed, he or she will be asked to sign a consent form that W-2 Agency staff and contractors shall review orally with him or her;

vi. explain that if the applicant or participant is not willing to be formally assessed, he or she will indicate that he or she has declined the formal assessment on the consent form described above;

vii. ensure that an applicant's or participant's file contains the signed consent form or declination of the formal assessment; and

viii. explain to the applicant or participant that the self-report of a disability or other barrier to participation in the W-2 program or employment, or the statement of a service provider, which statement does not meet the definition of a formal assessment (see Section V(G)), as to the inability to participate is not sufficient by itself to confirm the existence of a disability or other barrier to participation in the W-2 program or employment. However, this information will be considered as part of the process of assessing for disabilities or other barriers to participation in the W-2 program or employment. DCF shall ensure that the W-2 Agency utilizes this information in conjunction with a formal assessment (including formal assessment completed within past twelve months) and other substantiating information (*e.g.*, behavioral cues, low Test of Adult Basic Education (TABE) score, pattern of non-participation without good cause) to make a factual determination of a disability or other barrier to participation in the W-2 program or employment.

If the participant declines a formal assessment and there are unresolved factual issues as to the participant's disability or other barrier to participation in the W-2 program or

employment, the W-2 agency will proceed to work with the individual as though he or she does not have a disability or other barrier to participation in the W-2 program or employment. If the participant refuses to cooperate with obtaining formal assessment information, the W-2 Agency must continue to informally assess and revisit the importance of cooperating with assessment at each review of the participant's Employability Plan.

d. DCF shall require that formal assessments be conducted by a Qualified Assessing Agency or Individual. DCF shall require that each W-2 Agency employ staff persons and contractors who are qualified to conduct formal assessments or has access to agencies with individuals who are qualified to conduct such assessments. DCF shall require that all W-2 Agencies inform an applicant or participant of his or her right to receive reasonable modifications or accommodations for attendance at the formal assessment, and shall further provide or require the provision of such reasonable modifications or accommodations as needed.

e. DCF shall require W-2 Agencies to make their staff and contractors available to explain the content of the consent form and the ramifications of signing the form in the event that an informal assessment and/or BST indicates that an applicant or participant has a potential disability or other barrier to participation in the W-2 program or employment which could impact his or her ability to understand the information provided in the consent form.

f. The terms of this Agreement shall not be construed as precluding DCF from offering formal assessments to applicants or participants on any other basis consistent with DCF's existing legal obligations.

4. Obtaining a Complete Assessment

DCF requires that specific information be gathered as part of a formal assessment. The process for gathering formal assessment information will vary depending on the medical condition being addressed:

a. For a learning or cognitive disability the W-2 Agency will specify in writing to the Qualified Assessing Agency or Individual the information that is needed. This may include:

i. specific diagnoses;

ii. test findings that document both the nature and severity of the disability;

iii. any limitations to learning or other major life activities resulting from the disability and the degree to which it impacts the individual in the context of work and learning; and/or

iv. specific recommendations for accommodations as well as an explanation as to why each accommodation is recommended. The Qualified Assessing Agency or Individual should describe the impact the diagnosed learning or cognitive disability has on a specific major life activity.

b. For a mental health condition and/or alcohol and other drug abuse (AODA) assessment, information may be gathered by the Qualified Assessing Agency or Individual using the DCF form titled *Mental Health Report* (see Attachment I). If the assessment information is collected through other methods, such as a written evaluation developed by the Qualified Assessing Agency or Individual, it is important that the document covers the same content as the *Mental Health Report* to ensure that the W-2 Agency is receiving adequate information to make case management decisions with the participant.

c. For other types of medical conditions, including any disabilities not covered by subsections (a) and (b) above, assessment information may be gathered by the Qualified Assessing Agency or Individual using DCF's recently updated *Medical Examination and Capacity* form (see Attachment II). If the assessment information is collected through other methods, such as a written evaluation developed by the Qualified Assessing Agency or Individual, it is important that the document covers the same content as the *Medical Examination and Capacity* form to ensure that the W-2 Agency is receiving adequate information to make case management decisions with the participant. Medical conditions that could be appropriately documented with the *Medical Examination and Capacity* form may include, but are not limited to:

i. short-term medical conditions and injuries that may require surgery, medical treatment, and/or physical rehabilitation;

ii. pregnancies;

iii. long-term medical conditions which may be disabling, such as multiple sclerosis, fibromyalgia, arthritis, etc.;

iv. when a participant presents him or herself as unable to participate due to a medical problem(s), but the individual is unable or unwilling to articulate what the medical condition is; and

v. when the BST instructs the case worker to refer the participant to a physician.

W-2 Agencies shall consider all information provided in the formal assessment in developing and updating the applicant's or participant's Employability Plan.

5. Employability Plans (EPs)

a. Within thirty (30) days of an applicant or participant receiving a formal assessment, DCF shall require W-2 Agencies to develop or revise an EP for that applicant or participant based on the formal assessment(s), and in accordance with the requirements of Federal law. As part of the process of developing the EP, the W-2 Agency shall provide in writing to the applicant or participant a description of any necessary services, activities, and reasonable modifications or accommodations. When a W-2 Agency does not incorporate all of the recommended accommodations or modifications into the participant's EP, DCF shall require the W-2 Agency to document in the applicant's or participant's case file the reason(s) the recommendation(s) was/were not incorporated.

b. DCF shall require that W-2 Agencies base work placement decisions on the best information available to them if an applicant or participant declines a formal assessment(s). The self-report of a disability or other barrier to participation in the W-2 program or employment, or the statement of a service provider, which statement does not meet the definition of a formal assessment (see Section V(G)), as to the inability to participate will be considered as part of the process of assessing for disabilities or other barriers to participation in the W-2 program or employment. DCF shall ensure that the W-2 Agency utilizes this information in conjunction with a formal assessment (including formal assessment completed within past twelve months) and other substantiating information (*e.g.*, behavioral cues, low Test of Adult Basic Education (TABE) score, pattern of non-participation without good cause) to make a

factual determination of a disability or other barrier to participation in the W-2 program or employment.

If the participant declines a formal assessment and there are unresolved factual issues as to the participant's disability or other barrier to participation in the W-2 program or employment, the W-2 agency will proceed to work with the individual as though he or she does not have a disability or other barrier to participation in the W-2 program or employment. If the participant refuses to cooperate with obtaining formal assessment information, the W-2 Agency must continue to informally assess and revisit the importance of cooperating with assessment at each review of the participant's EP.

c. DCF shall require that a participant be given the opportunity to disclose a disability or other barrier to participation in the W-2 program or employment before payment reductions are imposed. The following W-2 policies provide these assurances to participants:

i. W-2 payment reduction cannot be imposed on a participant for declining to complete a formal assessment;

ii. a participant placed in W-2 T or CSJ may not receive a payment reduction for failing to participate in any assigned activity prior to completing or declining the BST; and

iii. a participant placed in W-2 T or CSJ who has agreed to and is referred for a formal assessment may not receive a payment reduction for any assigned activity until:

- the formal assessment results are received by the W-2 Agency and the formal assessment activity has been end-dated on CARES screen WPCS; or

- the W-2 Agency has determined that the participant will not comply with the assigned formal assessment activity and the activity has been end-dated on CARES screen WPCS.

After the formal assessment has been completed and end-dated in CARES, and the W-2 Agency, in consultation with the participant, has made necessary adjustments to the participant's Employability Plan, the participant may receive a payment reduction for failing to participate in assigned W-2 activities without good cause. This

may include an activity recommended by the Qualified Assessing Agency or Individual such as mental health counseling or physical therapy.

d. DCF shall emphasize through policy that informal assessment is an on-going process and not a one-time event. DCF shall establish guidelines to determine when W-2 Agency staff and contractors shall conduct additional informal and formal assessments and intensive case management before taking any action against a participant that would result in a reduction of 20 percent or more in the participant's benefits or in termination of the participant's eligibility to participate in W-2.

e. If an applicant's or participant's case is transferred to another W-2 Agency, or another W-2 Agency staff person or contractor, DCF shall offer the newly-assigned W-2 Agency or W-2 Agency staff person or contractor the results of the informal and/or formal assessments, medical documents, and other information relating to the applicant's or participant's disability or other barrier to participation in the W-2 program or employment. DCF shall require the transferring W-2 Agency to cooperate in the transfer, and promptly forward copies of all file documents to the newly-assigned W-2 Agency, staff person, or contractor.

f. When developing the EP, if an applicant or participant receives services from the DCF Division of Vocational Rehabilitation (DVR), the W-2 Agency must consider and may incorporate input from the work plan developed by DVR.

g. DCF shall require that, prior to assigning applicants or participants to a W-2 education, training, or work site, W-2 Agencies will advise the W-2 education, training, or work site of any needed reasonable modifications or accommodations to the W-2 education, training, or work site. W-2 Agencies shall monitor that participant's performance at the W-2 education, training, or work site to ensure that previously specified services, modifications, or accommodations set forth in the participant's EP are provided in accordance with this Agreement and Federal law. Specifically, DCF shall require:

    i. W-2 Agencies to place all EPs in the applicant's or participant's case file in accordance with DCF record retention policies;

ii. that, as part of the process of developing the EP, the W-2 Agency will provide in writing a description of any reasonable modifications or accommodations. When a W-2 Agency does not incorporate all of the recommended accommodations or modifications into the participant's EP, DCF shall require the W-2 Agency to document in the participant's case file the reason(s) the recommendation(s) was/were not incorporated.

iii. W-2 Agencies to work with local Job Center partner agencies and other available service providers to jointly serve individuals who are able to participate in more than one employment and training program. This includes agencies that assist people with disabilities. An existing DVR work-based or short-term training plan designed to result in entry level employment shall be considered in the development of the EP; and

iv. W-2 Agencies to administer the W-2 policies on payment reductions and case closures in a fair and accurate manner and, as described in detail in DCF Operations memos 04-23 (April 27, 2003) and 04-34 (July 6, 2004), and updated in the Wisconsin Works Manual, Chapter 11: Payment Reductions (Release 08-01, June 2, 2008).

h. The notice forms regarding changes in W-2 status and/or benefits shall include, but not be limited to, a statement indicating that a participant may request a BST or a formal assessment.

6. W-2 Agency Resources

Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall develop specific policies and procedures to ensure that W-2 Agencies have the necessary resources to provide reasonable modifications or accommodations to applicants and participants with a disability or other barrier to participation in the W-2 program or employment. Such policies and procedures shall include, but not be limited to, requirements that DCF:

a. provide information and resources to W-2 Agencies that will assist in providing reasonable modifications or accommodations;

b. require utilization of qualified and appropriate Qualified Assessing Agencies or Individuals in the formal assessment process;

c. require that case files be documented regarding the need for reasonable modifications or accommodations; and

d. require that reasonable modifications or accommodations be provided based on an applicant's or participant's individual need.

7. Sanctions

a. DCF shall define what activities can be sanctioned and DCF shall train W-2 Agency staff and contractors to assist applicants and participants with compliance.

b. Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall develop specific procedures to ensure that issues related to a disability or other barrier to participation in the W-2 program or employment are considered before W-2 Agencies take any action against a participant that would result in a reduction of 20 percent or more in the participant's benefits or in termination of the participant's eligibility to participate in W-2. This includes, but is not limited to, DCF taking action to:

i. review W-2 cases, using a sample size large enough to be statistically significant, that have had a reduction of 20 percent or more in benefits or have had eligibility for W-2 terminated, for issues related to a disability or other barrier to participation in the W-2 program;

ii. review W-2 cases, using a sample size large enough to be statistically significant, to determine whether a participant's non-cooperation was due to failure to offer or provide a reasonable modification or accommodation;

iii. ensure that W-2 Agencies include a disability or other barrier to participation in the W-2 program or employment as "good cause" reasons for non-cooperation;

iv. ensure that W-2 Agencies inform an applicant or participant of his or her right to file a grievance or complaint alleging discrimination based on disability, race, color, or national origin, when sanctions are imposed; and

v. ensure that W-2 Agencies consider DCF's obligation to make reasonable modifications and provide reasonable accommodations unless such action would result in a fundamental alteration of DCF's W-2 services, programs,

or activities or cause DCF an undue financial or administrative burden.

c. If DCF's activities and obligations pursuant to this subsection (7) indicate that a W-2 Agency has treated applicants or participants differently on the basis of disability, DCF shall investigate, and require the W-2 Agency to provide explanations and take appropriate steps to remedy any discrimination that is found to have occurred.

d. Within twelve (12) months of the Effective Date of this Agreement, and on an annual basis thereafter, DCF shall conduct an independent review of the basis for sanctions imposed on W-2 applicants or participants that ensures that no sanctions were imposed that may violate Section 504 and the ADA.

8. Section 504 and ADA Training

DCF shall require that all W-2 Agency staff and contractors responsible for administering the W-2 Program and related services receive training regarding DCF's obligations under this Agreement and changes in W-2 policy and procedure that result from this Agreement. Within twelve (12) months of the Effective Date of this Agreement, DCF shall train all current W-2 Agency staff and contractors. At a minimum, the training provided to W-2 Agency staff and contractors shall include the following:

a. the requirement to post notices in an open and apparent location in waiting areas of all W-2 Agencies, advertising the availability of the BST to all W-2 program applicants and participants;

b. the requirement for all W-2 Agencies to offer a formal assessment to any applicant or participant, within 30 days of any of the circumstances defined under Section VI(D)(3)(a);

c. the requirement to inform applicants and participants about the formal assessment process using a consent form as outlined under Section VI(D)(3)(c) and (e);

d. the requirement to develop or revise an EP for an applicant or participant within 30 days of receiving a formal assessment as outlined under Section VI(D)(5)(a);

e. the requirement, as part of the process of developing the EP, to provide a written description of any necessary modification or accommodations. When a W-2 Agency does not incorporate all of

the recommended accommodations or modifications into the EP, the agency must document the reasons(s) the recommendation(s) was/were not incorporated. This is outlined under Section VI (D)(5)(g)(ii);

f. the requirement that, prior to assigning applicants or participants to an education, training, or worksite activity,W-2 Agencies will advise the provider of that activity of any needed services, reasonable modifications, or accommodations. The W-2 Agency will further monitor the participant's performance in the activity to ensure that previously specified services, modifications, or accommodations are provided. This is outlined under Section (VI)(D)(5)(g); and

g. the requirement to document the basis for granting or denying "good cause" determinations and timeframes.

9. Monitoring

Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall monitor its compliance with the provisions of Section 504 and the ADA, in relation to the W-2 Program and the provisions of this Agreement. DCF shall ensure that:

a. the EOS/EOO, as established in Section VI(B), monitors DCF's compliance with Section 504 and the ADA;

b. the EOS/EOO monitors W-2 Agency staff and contractors for compliance with the policies and procedures developed pursuant to this Agreement;

c. the EOS/EOO tracks, on a quarterly basis, statistical information from the informal assessment, the formal assessment, and other sources that identify applicants and participants with disabilities, reasonable modifications or accommodations needed, and reasonable modifications or accommodations provided;

d. the EOS/EOO compiles and analyzes information and utilizes that information to conduct regular reviews of the W-2 policies and procedures affecting applicants and participants with disabilities, or with W-2 group members who have disabilities, in order to determine if particular actions, including, but not limited to, actions such as, revising policies and procedures, additional training, or increased monitoring, need to be taken;

e. the EOS/EOO compiles and analyzes information that identifies the outcomes for persons with disabilities in the W-2 Program;

f. the EOS/EOO tracks, on a quarterly basis, adverse actions against applicants and participants with disabilities to prevent and address allegations of discrimination. If such tracking indicates that a W-2 Agency has treated such applicants or participants differently on the basis of disability, DCF shall investigate and require the W-2 Agency to provide explanations and take appropriate steps to remedy any discrimination that is found to have occurred;

g. the EOS/EOO monitors, on a quarterly basis, cases that have had a reduction of 20 percent or more in benefits or termination of eligibility to participate in W-2, through the Division of Family and Economic Security, Bureau of Working Families regional offices to assure appropriate outcomes for all participants; and

h. there are adequate staff/and or contractors to effectively monitor case management.

E. Preventing and Addressing Allegations of Discrimination Based on Race, Color, or National Origin in W-2 Programs

1. Title VI Training

a. DCF shall require that all W-2 Agency staff and contractors responsible for administering the W-2 Program and related services receive training regarding DCF's obligations under this Agreement and changes in W-2 policy and procedure that result from this Agreement. Within twelve months (12) months of the Effective Date of this Agreement, DCF shall train all current W-2 Agency staff and contractors. At a minimum, the training provided to W-2 Agency staff shall include the following:

i. information that is intended to prevent and address allegations of discrimination based on race, color, or national origin; and

ii. information on procedures established by DCF to resolve complaints alleging discrimination on the basis of race, color, or national origin, and how to assist an applicant or participant with filing a complaint.

b. DCF shall ensure that under the W-2 training curriculum described in subsection (a) above, discretionary aspects of W-2 policy are

implemented in a manner consistent with applicable law, and shall ensure the training outcomes are consistent with applicable law (including Title VI), and administrative rule and policy. The training shall be focused to ensure that FEPs, supervisory staff, and contractors understand policy and appropriately use guidelines when exercising discretion.

2. Due Process

   a. DCF shall adhere to Operations Memo 05-52 regarding the determination of "good cause" for missed hours of assigned W-2 activities. DCF shall ensure that "good cause" determinations are not granted or denied based on a participant's race, color, or national origin, including but not limited to a participant's status as a limited English proficient (LEP) person. DCF shall require W-2 Agency staff and contractors to document the basis for granting or denying "good cause" determinations and time frames. DCF shall ensure that W-2 Agency practices comply with State policy guidelines.

   b. DCF shall define what activities can be sanctioned in its guidelines, and DCF shall train W-2 Agency staff and contractors to assist applicants and participants with compliance.

3. Practice / Implementation

   a. Within twelve (12) months of the Effective Date of this Agreement, DCF shall identify and implement best practices for all W-2 Agencies to reduce inappropriate sanctioning. DCF shall determine if there are case management strategies or practices that lead to inappropriate sanctions and implement corrective actions.

   b. Within twelve (12) months of the Effective Date of this Agreement, DCF shall develop an action plan of ways to improve case management, including targeted training, policy clarification, and system and reporting tools that can help FEPs.

   c. DCF shall hold periodic roundtables for FEPs, supervisory staff, and contractors to review case scenarios and discuss as a group where the applicant or participant should be placed in the W-2 Program, with the goal of increasing uniformity in the decision-making in all W-2 Agencies.

4. Monitoring

Within one hundred and eighty (180) days of the Effective Date of this Agreement, DCF shall monitor its compliance with the provisions of Title VI, in relation to the W-2 Program and the provisions of this Agreement. DCF shall ensure that:

a. the EOS/EOO, as established in Section VI(B), monitors DCF's compliance with Title VI;

b. the EOS/EOO monitors W-2 Agency staff and contractors for compliance with the policies and procedures developed pursuant to this Agreement;

c. the EOS/EOO tracks, on a quarterly basis, adverse actions by race, color, or national origin to prevent and address allegations of discrimination. If such tracking indicates that a W-2 Agency has treated applicants or participants differently on the basis of race, color, or national origin, DCF shall investigate and require the W-2 Agency to provide explanations and take appropriate steps to remedy any discrimination that is found to have occurred;

d. the EOS/EOO monitors, on a quarterly basis, cases that have had a reduction of 20 percent or more in benefits or termination of eligibility to participate in W-2, through the Division of Family and Economic Security, Bureau of Working Families regional offices to assure appropriate outcomes for all participants; and

e. there are adequate staff/and or contractors to effectively monitor case management.

5. Analysis

a. To prevent and address allegations of discrimination based on race, color, or national origin, DCF shall evaluate the W-2 Agencies' intake, informal, and formal assessment procedures.

b. For calendar year 2009, DCF shall update its previous studies of sanctions by race and national origin. Based on results of the studies, DCF will develop best practices to prevent and address allegations of discrimination on the basis of race, color, or national origin. In addition, DCF will develop a plan to analyze other adverse actions by race and national origin by December 2010 and provide the plan to OCR by December 31, 2010.

c. For the three (3) fiscal years following the Effective Date of this Agreement, DCF shall create and release to the public the standardized annual report of sanctions by race, color, or national origin.

F. DCF W-2 Program Manuals

Within one hundred and eighty (180) days from the Effective Date of this Agreement, DCF shall review and update all W-2 Program policy and procedure manuals to ensure that they reflect consistent and appropriate information regarding all aspects of the W-2 Program's compliance with the requirements of Section 504, the ADA, Title VI, and this Agreement.

VII. Data Collection and Reporting Requirements

A. DCF shall collect and report to OCR the following data on an annual basis, for three (3) years beginning with the first full quarter in the fiscal year in which the Agreement becomes effective:

1. The total number of applicants and participants entering the W-2 Program and the following:

   a. the total number of applicants and participants receiving an informal assessment;

   b. the total number of applicants and participants receiving a formal assessment;

   c. the total number of applicants and participants receiving a reasonable accommodation or program modification; and

   d. of the total number of applicants and participants receiving a reasonable accommodation or program modification, the total number who:

      i. obtained employment, along with starting wage information; and

      ii. obtained a high school diploma or GED (completion of which is recorded in CARES).

2. The total number of applicants and participants with disabilities who were served in the W-2 Program.

3. The following information about grievances filed by applicants and

participants based on disability and/or relating to requests for reasonable modifications or accommodations in relationship to the W-2 Program:

a. the number of grievances filed;

b. the types of reasonable modifications or accommodations requested and provided;

c. the reason(s) any requested or recommended modifications or accommodations were denied; and

d. the results of the grievance process.

4. The following information about complaints filed by applicants and participants based on race, color, or national origin in relationship to the W-2 Program:

a. the number of complaints filed; and

b. the results of the complaint process.

5. On a quarterly basis, any summaries of reports, descriptions of violations found, and corrective actions taken by DCF.

B. In addition, DCF shall provide the following information to OCR:

1. within thirty (30) days of the Effective Date of this Agreement, the name of the EOS/EOO appointed to monitor DCF compliance with this Agreement;

2. within sixty (60) days of the Effective Date of this Agreement, a copy of the notification memorandum sent to all W-2 Agencies identifying the terms of this Agreement;

3. within one hundred and eighty (180) days of the Effective Date of this Agreement, copies of grievance and complaint procedures established to resolve Section 504 and ADA grievances and Title VI complaints for OCR's review and, if appropriate, comment. If OCR has concerns regarding the Section 504/ADA or Title VI procedures, OCR shall so notify DCF;

4. within sixty (60) days of the Effective Date of this Agreement, a copy of the informal assessment inventory currently utilized by DCF. If OCR has concerns regarding DCF's current informal assessment tool, OCR shall so notify DCF;

5. within sixty (60) days of the Effective Date of this Agreement, a copy of the formal assessment tools currently utilized by DCF. If OCR has concerns regarding the current formal assessment tools, OCR shall so notify DCF;

6. within one hundred and eighty (180) days of the Effective Date of this Agreement, copies of all W-2 policies and procedures that have been reviewed, revised, updated and/or developed pursuant to this Agreement, including, but not limited to, DCF's policies and procedures related to informal and formal assessments. If OCR has concerns regarding any of the specified documents, OCR shall so notify DCF;

7. within one hundred and eighty (180) days of the Effective Date of this Agreement, a copy of the notice which will be posted in the waiting area of all W-2 Agencies, advertising the availability of the BST. If OCR has concerns regarding any of the specified documents, OCR shall so notify DCF;

8. within nine (9) months of the Effective Date of this Agreement, a copy of all the materials that DCF will utilize in conducting training in accordance with this Agreement for review and, if appropriate, comment. If OCR has concerns regarding the training documents, OCR shall so notify DCF;

9. within one hundred and eighty (180) days of the Effective Date of this Agreement, copies of any consent forms DCF will utilize for formal assessments. If OCR has concerns regarding any of the specified documents, OCR shall so notify DCF;

10. within one year from the Effective Date of this Agreement, verification that all W-2 Agency staff and contractors have completed training;

11. within one hundred and eighty (180) days of the Effective Date of this Agreement, copies of all changes and corrections to the Department W-2 manuals, arising from this Agreement. If OCR has concerns regarding any of the specified documents, OCR shall so notify DCF;

12. prior to the Effective Date of this Agreement, its current FY 2006-FY 2009 Wisconsin TANF State Plan, a copy of its draft FY 2010-FY 2011 Wisconsin TANF State Plan, revised and updated according to the provisions of this Agreement. If OCR has concerns regarding the draft FY 2010-FY 2011 Wisconsin TANF State Plan, OCR shall so notify DCF; and

13. within one (1) year, two (2) years, and two (2) years and nine (9) months

from the Effective Date of this Agreement, a report on the monitoring required by this Agreement, including, but not limited to, verification that all new W-2 Agency staff and contractors who were not part of the initial training reported in paragraph 12 above, have been trained.

C. Unless otherwise provided, DCF's obligation to report data and information to OCR shall terminate three (3) years from the Effective Date of this Agreement.

VIII. Signatures

The individual signing this Agreement on behalf of DCF represents that he is authorized to execute this Agreement and that the terms of the Agreement shall be legally binding on DCF and its W-2 Agencies and contractors. The individual signing this Agreement on behalf of OCR represents that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement.

Reggie Bicha
Secretary
Wisconsin Department of Children and Families

3-31-10
Date

Valerie Morgan-Alston
Regional Manager
U.S. Department of Health and Human Services
Office for Civil Rights, Region V

4-8-10
Date

STATE OF WISCONSIN
DEPARTMENT OF CHILDREN AND FAMILIES
Division of Family and Economic Security

ATTACHMENT I

MENTAL HEALTH REPORT

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m). Wisconsin Statutes]

The provision of your Social Security Number (SSN) is mandatory under Wisconsin Statutes 49.145 (2)(k). Your SSN may be verified through computer matching programs and may be used to monitor compliance with program regulations and program management. Your SSN may be disclosed to other Federal and State Agencies for official examination. If you do not provide your social security number, your application for benefits will be denied.

Participant Name	Date of Birth	Social Security Number
	/ /	

Name of Professional Provider	Professional Title		
Office Address	City	State	Zip Code

Dear Mental Health Professional,

The individual named above is an applicant/participant in the **Wisconsin Works (W-2)** program. The purpose of this form is to gather information about this individual's current ability to participate in W-2 activities.

W-2 is a program designed to help individuals become self-sufficient through work and work readiness activities. In order to assign appropriate activities, it is important for us to have an idea of what tasks and assignments this individual is capable of. It is also important for us to know about accommodations and modifications that may assist this individual in participating in work readiness activities.

Activities that can be a part of a W-2 placement include:

- job readiness/life skills workshops;
- education and job skills training;
- on-the-job work experience;
- recommended medical treatments; and
- counseling and physical rehabilitation activities.

Please answer the following questions concerning this individual's impairments:

1. How frequently is the patient scheduled to meet with you?

   _____

   Regarding current course of treatment, how long have you been meeting with this patient?

   _____

   When is your next scheduled appointment with this patient? _____

2. Are you aware of any other health care professionals who are currently treating this person? If yes, please identify provider name and purpose of treatment: _____

   _____

3. DSM-IV-TR Multiaxial Evaluation:
   - include code and diagnosis for each axis
   - in addition to mental health, please include any diagnosis related to alcohol or other substance abuse

   Axis I: _____ Axis IV: _____

   Axis II: _____ Axis V: Current GAF: _____

   Axis III: _____ Highest GAF Past Year: _____

4. Identify your patient's signs and symptoms associated with this diagnosis:

	Poor Memory		Time or place disorientation
	Appetite disturbance with weight loss		Decreased energy
	Sleep disturbance		Social withdrawal or isolation
	Personality changes		Blunt, flat or inappropriate affect
	Mood disturbance or lability		Illogical thinking or loosening of association
	Pathological dependence or passivity		Anhedonia or pervasive loss of interests
	Delusions or hallucinations		Manic syndrome
	Recurrent panic attacks		Obsessions or compulsions
	Somatization unexplained by organic disturbance		Intrusive recollections of a traumatic experience
	Psychomotor agitation or retardation		Persistent irrational fears
	Paranoia or inappropriate suspiciousness		Generalized persistent anxiety
	Feelings of guilt/worthlessness		Catatonia or grossly disorganized behavior
	Difficulty thinking or concentrating		Hostility and irritability
	Suicidal ideation or attempts		Other:

5. If your patient experiences symptoms which interfere with attention and concentration needed to perform even simple work tasks, during a typical workday, please estimate the frequency of interference. *For this question, "rarely" means 1% to 5% of an eight-hour working day; "occasionally" means 6% to 33% of an eight-hour working day; "frequently" means 34% to 66% of an eight-hour working day; and "constantly" means more than 66% of an eight-hour working day.*

☐ rarely ☐ occasionally ☐ frequently ☐ constantly

Is your patient making positive progress? ☐ Yes ☐ No
Please describe the progress or lack of progress.

_____

_____

6. To the best of your knowledge, is the patient on prescribed medications? ☐ Yes ☐ No
If yes, please list:

_____

_____

Describe any side affects of prescribed medications which may have implications for working, e.g., dizziness, drowsiness, fatigue, lethargy, stomach upset, etc.:

_____

_____

7. When did your patient's symptoms begin (estimate date)?

_____

8. Is it likely that your patient's symptoms will last 6 months or longer? ☐ Yes ☐ No

9. Is it likely that your patient's symptoms will last 12 months or longer? ☐ Yes ☐ No

_____

10. Does the psychiatric condition exacerbate your patient's experience of pain or any other physical symptoms? ☐ Yes ☐ No

If so, please explain:

_____

_____

11. When completing the chart below:

*A "Marked" degree of limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively.

**"Concentration, persistence and pace" refers to ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings. This is often evaluated in terms of frequency of errors, assistance required and/or time necessary to complete simple tasks.

*** "Repeated" refers to repeated failure to adopt to stressful circumstances such as decisions, attendance, schedules, completing tasks, interactions with others, etc., causing withdrawal from the stress or to experience decompensation or exacerbation of signs and symptoms.

FUNCTIONAL LIMITATION		DEGREE OF LIMITATION				
1.	Restriction of activities of daily living	None ☐	Slight ☐	Moderate ☐	Marked* ☐	Extreme ☐
2.	Difficulties in maintaining social functioning	None ☐	Slight ☐	Moderate ☐	Marked* ☐	Extreme ☐
3.	Deficiencies of concentration, persistence or pace resulting in failure to complete tasks in a timely manner (in work settings or elsewhere) **	Never ☐	Seldom ☐	Often ☐	Frequent ☐	Constant ☐
4.	Episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors)	Never ☐		Once or Twice ☐	Repeated***	Continual ☐

12. Please describe any additional functional limitations not covered above that would affect your patient's ability to work in a job on a sustained basis: _____

_____

13. On the average, how often do you anticipate that your patient's impairments would become acute so that the patient would be absent from work and other W-2 activities?

☐ Once a month or less
☐ About twice a month
☐ Over twice a month
☐ More than 3 times a month

14. Has there been any recent acute episodes? If yes, please explain and give dates:

_____

_____

15. To determine your patient's ability to do work-related activities on a day-to-day basis in a regular work setting, please give us your opinion – based on your examination – of how your patient's mental/emotional capabilities are affected by the impairment(s). Consider the medical history, the chronicity of findings (or lack thereof) and the expected duration of any work-related limitations, but not your patient's age, sex or work experience.

For each activity shown below, describe your patient's ability to perform the activity according to the following items:

Unlimited to Very Good:	Ability to function in this area is more than satisfactory.
Good:	Ability to function in this area is limited but satisfactory.
Fair:	Ability to function in this area is seriously limited, but not precluded.
Poor or None:	No useful ability to function in this area.

	MENTAL ABILITIES AND APTITUDE NEEDED TO WORK	UNLIMITED TO VERY GOOD	GOOD	FAIR	POOR OR NONE
1.	Interact appropriately with general public				
2.	Understand, remember and carry out very short and simple instructions				
3.	Maintain attention for two-hour segment				
4.	Maintain regular attendance and be punctual with customary, usually strict tolerances				
5.	Sustain an ordinary routine without special supervision				
6.	Work in coordination with or proximity to others without being unduly distracted				
7.	Complete a normal workday and work week without interruptions from psychologically based symptoms				
8.	Perform at a consistent pace without an unreasonable number and length of rest				
9.	Accept instructions and respond appropriately to criticism from supervisors				
10.	Get along with co-workers or peers without unduly distracting them or exhibiting behavioral extremes				
11.	Respond appropriately to changes in a routine work setting				
12.	Deal with normal work stress				
13.	Be aware of normal hazards and take appropriate precautions				
14.	Deal with stress of semi-skilled and skilled work				
15.	Perform detailed or complicated tasks				
16.	Perform fast paced tasks (e.g., production line)				

16. Is the patient attending scheduled appointments? ☐ Yes ☐ No

If no, please explain and list missed appointment dates:

_____

_____

Do you attribute the missed appointments to the mental health impairment? ☐ Yes ☐ No

17. What kind of treatment plan is the patient involved in? What is the expected outcome?

_____

_____

_____

If schedule for treatment plan is known, please include below or attach:

_____

_____

18. Please recommend any other activities and services not included in your treatment plan that may help this individual further address his/her mental health impairment:

- ☐ Assessment (please specify type) _____
- ☐ Advocacy for Social Security Income/Disability
- ☐ Treatment and counseling (please specify) _____
- ☐ Other _____

19. What type of environment or conditions could help this person function most effectively in a variety of daily activities? _____

_____

20. Considering this patient's mental health condition and limitations please indicate below what activities related to work and training you would recommend?

☐ work/work experience activities	☐ job skills training
☐ adult basic education/literacy	☐ supported job search activities
☐ job readiness/life skills workshops	☐ other

If no recommendations, please explain:

_____

_____

21. Estimate the hours a day (5 days a week) this individual can participate in work/work readiness activities within these recommendations? _____

_____

22. Given your patient's current mental impairments, please specify a date when the recommendations that you have provided should be reviewed: _____

Name of Professional Provider	Title	Telephone Number
Signature of Professional Provider		Date Signed

Return completed form to:

Name of Agency Representative		Address		Date Sent
City	State	Zip Code	Telephone Number	Fax Number

STATE OF WISCONSIN
DEPARTMENT OF CHILDREN AND FAMILIES
Division of Family and Economic Security

ATTACHMENT II

MEDICAL EXAMINATION AND CAPACITY

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04 (1)(m). Wisconsin Statutes]

The provision of your Social Security Number (SSN) is mandatory under Wisconsin Statutes 49.145 (2)(k). Your SSN may be verified through computer matching programs and may be used to monitor compliance with program regulations and program management. Your SSN may be disclosed to other Federal and State Agencies for official examination. If you do not provide your social security number, your application for benefits will be denied.

Participant Name	Date of Birth	Social Security Number
	/ /	

Name of Professional Provider	Professional Title		
Office Address	City	State	Zip Code

Dear Health Professional,

The individual named above is an applicant/participant in the **Wisconsin Works (W-2)** program. The purpose of this form is to gather information about this individual's current ability to participate in W-2 activities.

W-2 is a program designed to help individuals become self-sufficient through work and work readiness activities. In order to assign appropriate activities, it is important for us to have an idea of what tasks and assignments this individual is capable of. It is also important for us to know about accommodations and modifications that may assist this individual in participating in work readiness activities.

Activities that can be a part of a W-2 placement include:

- job readiness/life skills workshops;
- education and job skills training;
- on-the-job work experience;
- recommended medical treatments; and
- counseling and physical rehabilitation activities.

Please answer the following questions concerning this individual's medical condition(s):

1. How frequently is the patient scheduled to meet with you?

   _____

   Regarding current course of treatment, how long have you been meeting with this patient?

   _____

   When is your next scheduled appointment with this patient?

   _____

2. Are you aware of any other health care professionals who are currently treating this person? If yes, please identify provider name and purpose of treatment:

   _____

3. Diagnosis/Condition: _____

   _____

   _____

4. Prognosis: (if the patient's condition is related to pregnancy, please enter the expected date of birth)

   _____

   _____

DCF-F-DWSP2012 (R.03/2010)

5. When did your patient's symptoms begin (estimate date)?

_____

Is it likely that your patient's symptoms will last 6 months or longer? ☐ Yes ☐ No

Is it likely that your patient's symptoms will last 12 months or longer? ☐ Yes ☐ No

6. What kind of treatment plan is the patient involved in? What is the expected outcome?

_____

_____

_____

If schedule for treatment plan is known, please include below or attach:

_____

_____

7. What type of environment or conditions could help this person function most effectively in a variety of daily activities? _____

_____

_____

8. This individual may have his/her vocational capacity assessed. What, if any, accommodations should be provided for the assessment? _____

_____

_____

9. Is the patient attending scheduled appointments? ☐ Yes ☐ No

If no, please explain and list missed appointment dates:

_____

_____

Do you attribute the missed appointments to the impairment(s)?

☐ Yes ☐ No

10. Identify any psychological conditions that you are aware of:

☐ Depression
☐ Somatoform disorder
☐ Psychological factors affecting physical condition
☐ Anxiety
☐ Personality disorder
☐ Other:_____

11. Physical Capacities

Maximum ability to lift and carry on an occasional basis (no more than 2 hours out of an 8 hour day).

☐ No limitation ☐ 100 lbs. ☐ 50 lbs. ☐ 20 lbs. ☐ 10 lbs. ☐ Other _____

Maximum ability to lift and carry on a frequent basis (no more than 6 hours out of an 8 hour day)

☐ No limitation ☐ 100 lbs. ☐ 50 lbs. ☐ 20 lbs. ☐ 10 lbs. ☐ Other _____

Maximum ability to stand and walk (with normal breaks) during an 8 hour day.

☐ No limitation ☐ no more than 6 hours ☐ no more than 2 hours ☐ Other _____

How many city blocks can this individual walk without rest or severe pain? _____

Maximum ability to sit (with normal breaks) during an 8 hour day.

☐ No limitation ☐ no more than 6 hours ☐ no more than 2 hours ☐ Other _____

For questions 12-14 below, "rarely" means 1%-5% of an eight-hour workday; "occasionally" means 6%-33% of an eight-hour workday; and "frequently" means 34%-66% of an eight-hour workday.

12. How often can this individual perform the following activities?

Activity	Never	Rarely	Occasionally	Frequently
Look down (sustained flexion of neck)				
Turn head right or left				
Look up				
Hold head in static position				
Twist				
Stoop (bend)				
Crouch/squat				
Climb ladders				
Climb stairs				

13. Does this patient have significant limitations with reaching, handling, or fingering? ☐ Yes ☐ No

If yes, please indicate how often during an 8-hour day that your patient can use hands/fingers/arms for the following activities:

Activity		Never	Rarely	Occasionally	Frequently
Hand: Grasp, turn twist objects	**Right**				
	Left				
Fingers: Fine finger manipulation	**Right**				
	Left				
Arm: Reaching (include overhead)	**Right**				
	Left				

14. If your patient's symptoms interfere with performance of simple work tasks, please estimate the frequency of interference.
☐ Never ☐ Rarely ☐ Occasionally ☐ Frequently

15. What is your assessment of this individual's ability to communicate and see?

_____

_____

16. Is your patient making positive progress? ☐ Yes ☐ No

Please describe the progress or lack of progress.

_____

_____

17. Are the patient's impairments likely to produce 'bad' days? ☐ Yes ☐ No

If yes, on the average, how often do you anticipate that your patient's impairments would become acute so that the patient would be absent from work and/or other W-2 activities?

☐ Once per month or less ☐ Over twice per month
☐ About twice per month ☐ More than 3 times per month

18. Does this person's medication(s) or treatment cause side affects that impact his/her ability to participate in a work/education environment (e.g., drowsiness, dizziness, nausea, etc.)?
☐ Yes ☐ No

If "Yes" specify: _____

19. Does this person require any adaptive devices or other accommodations to help him/her function effectively in a work/education environment (e.g., assistive device for ambulation, need to alternate positions frequently, limits on pushing and pulling, operating hand or foot controls, accommodations for bending and stooping, part-time or flexible work schedule, etc.)?

☐ Yes ☐ No ☐ Unknown

If "Yes" describe what is needed:

_____

20. Identify any of the following that your patient is likely to experience:

- ☐ Low tolerance for frustration
- ☐ Difficulty communicating his/her needs
- ☐ Difficulty following instructions
- ☐ Inability to work with children
- ☐ Difficulty working around other people
- ☐ Difficulty controlling anger appropriately
- ☐ Socially inappropriate responses to situations
- ☐ Seizures
- ☐ Difficulty engaging in complex tasks that requirement judgment
- ☐ Difficulty maintaining activities of daily living
- ☐ Difficulty with decision making
- ☐ Difficulty following through on agreed actions
- ☐ Panic attacks
- ☐ Difficulty with reality interpretation
- ☐ Difficulty being in unfamiliar environment
- ☐ Difficulty with impulse control
- ☐ Difficulty maintaining concentration
- ☐ Other: _____

21. Please recommend any other activities and services not included in your treatment plan that may help this individual further address his/her mental health impairment:

- ☐ Assessment (please specify type) _____
- ☐ Advocacy for Social Security Income/Disability
- ☐ Treatment and/or counseling (please specify) _____
- ☐ Other _____

22. Additional Recommendations or Restrictions: _____

_____

_____

23. Considering this patient's condition(s) and limitation(s) please indicate below what activities related to work and training you would recommend?

☐ work/work experience activities	☐ job skills training
☐ adult basic education/literacy	☐ supported job search activities
☐ job readiness/life skills workshops	☐ other

If no recommendations, please explain: _____

_____

24. Estimate the number of hours a day (5 days a week) this individual can participate in work/work readiness activities within these recommendations : _____

25. If you have indicated anywhere on this form that this patient is unable to participate in W-2 activities, please explain:

_____

_____

26. Given your patient's current medical condition(s), please specify a date when the recommendations that you have provided should be reviewed:_____

Name of Professional Provider	Title	Telephone Number
Signature of Professional Provider		Date Signed

Return completed form to:

Name of Agency Representative		Address		Date Sent
City	State	Zip Code	Telephone Number	Fax Number