

**Key Provisions of TANF Final Rule Affecting
Welfare Recipients With Alcohol and Drug Problems**

May 1999

The final rule implementing the Temporary Assistance for Needy Families (TANF) program¹ was published in the April 12, 1999, issue of the *Federal Register* (64 FR 17720). It goes into effect on October 1, 1999.

The final rule broadens the ability of state and local governments to use welfare funding for services, such as alcohol and drug treatment, for low-income individuals.

Using Federal TANF Funds for Alcohol and Drug Treatment

The final rule permits states to use federal TANF funds for alcohol and drug treatment because doing so is:

“programmatically sound and reasonably calculated to achieve TANF goals since it may help clients make successful transitions to work and provide for a stable home environment for TANF children.”²

The only limit is that federal TANF funds cannot pay for medical services.³ The final rule does not define “medical services,” leaving it to states to “look at the range of services offered and differentiate between those that are medical and those that are not.”

Treatment services funded with federal TANF money do not count as “TANF assistance,” so receiving them does not trigger work requirements or time limits for the individuals served. The final rule limits the term “assistance” to “[c]ash, payments, vouchers, and other forms of benefits designed to meet a family’s ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).”⁴ Specifically excluded

¹ Created in P.L. 104-193, “The Personal Responsibility and Work Opportunity Reconciliation Act” (PRWORA). All further references to statute, unless otherwise noted, are to the Social Security Act.

² Preamble language, 64 FR 17840.

³ §408(a)(6).

⁴ §260.31(a) of the final rule.

are “services such as counseling, case management, and peer support,”⁵ which are key elements of alcohol and drug treatment.

As a result, low-income individuals needing alcohol and drug treatment can receive TANF-funded alcohol and drug treatment services:

- Without receiving TANF “assistance” and, therefore, without accruing months that count toward their time limit and without being required to engage in work activities.
- Even if they are not eligible for TANF cash assistance because of a drug felony conviction because that ban is explicitly tied to assistance.⁶
- After they have left welfare for work.
- After they have exhausted their 60-month time limit on cash assistance.

Recommendation: Alcohol and drug treatment programs should work with their state alcohol and drug agency and state and local welfare agencies to secure federal TANF funding to support non-medical treatment services for their low-income clients.

Using State Welfare Funds for Alcohol and Drug Treatment

The final rule permits states to use their own welfare funds for alcohol and drug treatment. To count toward TANF “maintenance of effort” (MOE), however, the funds must be spent on behalf of “eligible families,” which are those:⁷

- with a child living with a custodial parent or another adult caretaker relative and that meet the financial eligibility criteria under the state TANF plan.
- currently eligible for TANF assistance and those that would be eligible but for the time limits.
- that would be eligible but for their immigrant status.

If a state mixes federal TANF and state MOE funds, the funds *are* subject to the medical services limitation. The final rule leaves it to states to “develop policies that distinguish between expenditures for the provision of medical services and nonmedical services.”⁸

⁵ §260.31(b) of the final rule.

⁶ §115(a)(1) of PRWORA.

⁷ §263.2(b) of the final rule.

⁸ Preamble language, 64 FR 17830.

For states that spend MOE funds in a separate state program, those funds *are not* subject to most TANF rules, including the ban on using TANF funds for medical services.⁹

In either case, state Medicaid spending cannot count as MOE.¹⁰

Recommendation: Serving TANF-eligible individuals in alcohol and drug treatment funded through a separate state program is an effective way to help clients focus on treatment first, at least temporarily, without being subject to TANF work requirements and time limits. Treatment programs serving low-income individuals should work with the state alcohol and drug agency and state and local welfare agencies to secure MOE funding for the range of treatment services their low-income clients need, regardless of whether the state has a separate program or commingles federal and state welfare funds.

Definition of Work

Individuals receiving TANF assistance are required to work when the state determines that they are ready or when they have received assistance for a total of 24 months, whichever is earlier.¹¹ States must meet statutorily set work participation rates among recipients of TANF assistance, which increase from 25 percent in Fiscal Year (FY) 1997 to 50 percent in FY 2002.^{12,13} States may only count toward their federal work participation rate individuals who are “engaged in work” as defined in law as:¹⁴

- unsubsidized employment
- subsidized private sector employment
- subsidized public sector employment
- work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- on-the-job training
- job search and job readiness assistance
- community service programs
- vocational educational training (not to exceed 12 months with respect to any individual)

⁹ Preamble language, 64 FR 17831.

¹⁰ §409(a)(7)(B)(iv); preamble language, 64 FR 17831.

¹¹ §407(e)(2); §261.10(a)(1) of the final rule.

¹² §407(a)(1) for one-parent families.

¹³ The participation rate can be lowered through a caseload reduction credit, if a state’s TANF caseload has fallen below FY 95 levels and if the drop is not attributable to eligibility changes (§261.40 of the final rule).

¹⁴ §407(d).

- job skills training directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- the provision of child care services to an individual who is participating in a community service program.

Under the final rule, states can define these terms but must report their definitions to the federal government for monitoring. States also have the flexibility to determine what counts toward the state work requirement, subject to the need to meet the federal participation rates. According to the final rule, HHS believes that this state flexibility will lead “to greater innovation, experimentation, and success in helping families become self-sufficient quickly.”¹⁵

Alcohol and drug treatment fit most naturally in the “job search and job readiness assistance” category. By law, however, these activities can count as work only for four consecutive weeks and only up to six weeks total (12 weeks if the state’s unemployment rate is at least 50 percent higher than the national unemployment rate).¹⁶ This may provide limited relief from TANF work requirements for welfare recipients who are participating in alcohol and drug treatment.

Recommendation: Treatment programs that offer one or more of the listed work activities should work with their state alcohol and drug agency and state and local welfare agencies to ensure that as many of those activities as appropriate count toward their TANF clients’ work requirements.

Time Limit on Assistance

The law imposes a 60-month lifetime limit on federal TANF assistance. Months that count toward the time limit are those when the adult head of the household (or an adult married to the head of the household) receives assistance.¹⁷

States can exempt up to 20 percent of their average monthly caseload from the time limit because of “hardship” or because the family includes someone who has “been battered or subject to extreme cruelty.”¹⁸ Decisions about who qualifies for an exemption must be made on an individual basis, when the family has reached its time limit.¹⁹

¹⁵ Preamble language, 64 FR 17776-77.

¹⁶ §407(c)(2)(A)(i).

¹⁷ §264.1(b)(1) of the final rule.

¹⁸ §264.1(c)(2) of the final rule.

¹⁹ §264.1 of the final rule.

Recommendation: Treatment providers should encourage their state and local welfare agencies to use their flexibility to define “hardship” in a way that provides exemptions for clients who need more time to finish treatment and for those whose time limit elapsed while they were on a waiting list to receive treatment services.

Relationship of TANF and Welfare-to-Work Program

The final rule clarifies that the TANF definition of “assistance” also applies to the Welfare-to-Work (WTW) program,²⁰ administered federally by the Department of Labor and locally by Private Industry Councils (PICs)/Workforce Investment Boards or (WIBs).²¹ Months of WTW cash assistance count toward TANF time limits,²² but non-cash WTW assistance does not. Individuals may receive WTW cash assistance even after five years of TANF assistance. Non-custodial parents may also receive assistance through the WTW program.

Recommendation: The WTW program may be a way to extend benefits and fund services for low-income parents in alcohol and drug treatment, since individuals “requiring substance abuse treatment for employment”²³ are a WTW target group. Treatment providers should advocate with their state employment agency and local PICs/WIBs for WTW money to serve low-income clients who meet WTW eligibility criteria.

Relationship Between TANF and Child Welfare Services

The preamble to the final rule states that certain family preservation activities – such as counseling, home visits, and parenting training – can be funded through TANF²⁴ because they can be reasonably calculated to meet one of the key goals of the welfare law of providing “assistance to needy families so that children can be cared for in their own homes or the homes of relatives.”²⁵

Recommendation: Treatment programs providing these services should work with their state alcohol and drug agency and state and local welfare and child welfare agencies to secure TANF funding to support them.

²⁰ §260.32 of the final rule.

²¹ Created by the Balanced Budget Act of 1997 (P.L. 105-33) (BBA) and aimed at helping long-term welfare recipients with specific barriers to employment, including alcohol and drug problems, make the transition to work.

²² Preamble language, 64 FR 17845.

²³ Section 403(a)(5)(C)(ii)(I)(bb) of the BBA.

²⁴ Preamble language, 64 FR 17762.

²⁵ §401(a)(1).

Family Violence Option (FVO)

Recognizing that domestic violence can be a barrier to employment for some welfare recipients, the law²⁶ and the final rule²⁷ allow states to adopt a “family violence option” (FVO). To do so, states must certify that they have established and are enforcing standards and procedures to:²⁸

- screen welfare recipients for domestic violence (while maintaining their confidentiality).
- refer those identified to counseling and supportive services.
- waive any TANF requirements that are appropriate for as long as necessary in cases where compliance with those requirements would make it difficult for the individuals involved to escape domestic violence or where compliance would unfairly penalize those who are current victims, have been victims, or at risk of domestic violence.

States with federally recognized FVOs may have their penalties reduced for not complying with work participation rates or adhering to time limits if they can demonstrate that their “reasonable cause” for failing is attributable to adopting the FVO.

Recommendation: Women on welfare who are in alcohol and drug treatment may qualify for FVO exemptions, given the relationship between domestic violence and addiction among women. Treatment providers serving women should explore with their state alcohol and drug agency and state and local welfare agencies how to ensure that qualified TANF clients receive these exemptions.

Other Related Provisions

- Assessment, Mandated Treatment, and Penalties for Non-Compliance.

The final rule requires states to conduct an initial assessment of the skills, work experience, and employability of recipients who are 18 years old, have not completed high school, and are not attending secondary school with 30 days (90 days at state option).²⁹ States are not required to assess whether a welfare recipient has an alcohol or drug problem, but they may do so and require recipients, as part of an “individual responsibility plan,” to “undergo appropriate substance abuse treatment.”³⁰

²⁶ §402(a)(7).

²⁷ §260.50 of the final rule.

²⁸ §260.52 of the final rule.

²⁹ §260.11 of the final rule.

³⁰ §261.12(e) of the final rule.

Recipients may be penalized for failing, without good cause, to follow their plan. Penalties can include a reduction in their TANF grant by whatever amount the state deems appropriate. The final rule does not define “good cause” but we believe that good cause should include the inability to comply with treatment because appropriate treatment is not available.

- Ban on Benefits for Individuals Violating a Condition of Their Parole or Probation.

HHS decided not to define any terms related to the law’s ban on TANF, food stamps, Supplemental Security Income (SSI), and public housing for individuals violating a condition of their parole or probation.³¹ These definitions are left to states.

- Drug Testing.

The law authorizes but does not require states to require urine drug tests of welfare recipients and sanction those who test positive.³² The preamble to the final rules asserts that the federal government will not regulate state interpretation of how to apply sanctions and against whom.³³ As a result, states may sanction the entire family’s TANF grant if a parent tests positive for drugs. According to the rule, HHS “might advise against sanctioning other family members, [but] we decided not to regulate State decisions in this area.”³⁴

- Continuation of Waivers.

A state is not required to meet certain TANF requirements (work participation, time limits, and sanctions) that are inconsistent with provisions of a welfare reform waiver that was in effect when the 1996 law was enacted.³⁵ Some states, such as Oregon, have used waiver authority to require welfare recipients to be screened for alcohol and drug problems, referred to treatment, and monitored for compliance. These programs may continue under the final rule until the waiver expires.³⁶

For More Information

³¹ Preamble language, 64 FR 17754.

³² §902 of PRWORA.

³³ Preamble language, 64 FR 17749.

³⁴ *Ibid.*

³⁵ §415(a)(1)(A).

³⁶ §260.70 of the final rule.

For more information, call Gwen Rubinstein at the Legal Action Center at 202-544-5478 (e-mail gwenrr@lac-dc.org).

A short summary of the regulations is available from the website of the Administration for Children and Families, www.acf.dhhs.gov.

A more detailed summary of the regulations is available from the Center for Law and Social Policy, 202-328-5140 (www.clasp.org).