

August 28, 2006 letter - TANF

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The Honorable Michael O. Leavitt
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Leavitt:

The nation's governors submit the following comments regarding the interim final regulations on the reauthorization of the Temporary Assistance for Needy Families (TANF) Program. Ten years ago, governors worked hand in hand with Congress and the administration to reform the nation's welfare system. We have seen great success within the TANF program and remain committed to our shared outcome of disadvantaged families becoming self-sufficient through work.

In March, the National Governors Association sent you comprehensive recommendations prior to publication of the Department's interim final regulations. We are encouraged by your recognition of circumstances for which child only cases should be excluded from the work rate calculation. However, we encourage HHS also to exclude from the work rate parents who are Title 16 recipients, drug felons or who have timed-out of TANF, as well as individuals who are awaiting determination of their Supplemental Security Income claim.

Governors also appreciate HHS efforts to help states comply with the Fair Labor Standards Act (FLSA) by deeming TANF clients to have met their hourly work requirements if the combination of TANF and food stamp benefits divided by the minimum wage falls short of 20 hours. However, governors continue to call on HHS to deem the full 30 hours where applicable to ensure states can comply with FLSA.

Although many of the documentation requirements found in the new regulations are necessary to establish a level playing field among the states and regions, some are unduly burdensome. Governors strongly urge HHS to take a common sense approach in creating practical and achievable documentation and verification requirements. In addition, HHS must recognize the composition of the remaining TANF recipients and that states, in large part, will be providing services to families with severe barriers to work and individuals with disabilities.

Governors are concerned with the strict limitations placed on serving families with severe barriers to work; providing educational and skills-based training; and meeting new supervision, documentation and verification requirements. With several new challenges facing states as a result of the Deficit Reduction Act - including a nearly impossible 90% participation rate for two-parent families - the final regulations must provide maximum flexibility for states to meet these new

requirements. Unfortunately, the cumulative impact of the interim final rule undermines state flexibility and innovation - the cornerstone of TANF for the past 10 years - as well as imposes new administrative burdens on states. Unless HHS provides more state flexibility and creates practical, achievable requirements, the interim final rule will subject more states to penalties and substantially increase state costs.

We appreciate your efforts to seek input from the states and hope our recommendations will be considered as you begin to draft final regulations on the reauthorization of TANF. Attached are additional comments to the TANF interim final regulations. If HHS believes it is not possible to address one or more of our specific recommendations in the final regulations, we encourage the Administration to recommend remedial legislation to provide states the flexibility necessary to achieve the goals of TANF. We hope to continue to work with you as partners to ensure families receive the assistance they need to become self-sufficient.

Sincerely,

Governor Janet Napolitano
Chair

Governor Tim Pawlenty
Vice Chair

Key Rehabilitative and Supportive Services

Governors continue to believe that states should have maximum flexibility in receiving credit for key rehabilitative and supportive services such as substance abuse, behavioral/mental health and domestic violence treatments in one or more work activity. These services are an imperative part of moving recipients, with barriers, to work and retaining employment. States need credit for these services in work activities that are fully countable for all hours of participation without time limit. With that said, HHS should classify these critical services under one or more different categories than currently prescribed in the interim final rule, such as community service, job skills training directly related to employment, or education directly related to employment. Limiting these much needed elements by including them in a time-limited work category that focuses on other elements such as job search disregards the significance of this component in moving families to self-sufficiency. Again, this restriction ignores the challenges states face in dealing with the significant percentage of the TANF population who have serious barriers to work due to substance abuse, behavioral or mental health issues.

Job Search/Job Readiness

As currently written in the interim final rule, many activities that would be allowable under job search/job readiness would amount to only 5-10 hours in a week. It is our understanding that under the Department's interpretation of statute, states would have to count these 5-10 hours during a week as an entire week of job search/job readiness. HHS should give states the option to count these activities in hours instead of weeks, similar to the same flexibility used to allow states to count 10 days of excused absences as hours that is under consideration by HHS. This would allow states to configure a client's job search, job readiness and rehabilitative services plan in a logical combination along with other countable activities. For the past 10 years, job search/job readiness has been an integral part of all work activities and states should have the option and flexibility to continue using this work category in a similar fashion.

Supervised Homework/Study Time

Under the interim final regulations, homework/study time must be supervised in a structured setting in order to count as an allowable work activity. Homework/study time is an integral part of successfully completing most educational programs. HHS should allow states to develop common sense practices for determining the amount of homework/study time needed for a recipient to satisfactorily progress in a course. For example, a state may allow the instructor or educational institution to provide documentation of the average required homework time needed for satisfactory completion of the course and count that time using the teacher's statement and the recipient's satisfactory progress as the verification. The new requirements will be unduly administratively burdensome for states by documenting and monitoring hours that virtually every learning institution has already adopted as an accepted practice. In addition, this rule would increase expenditures for staff, space costs, and child care.

Individuals with Disabilities

Similar to the deeming provision for the FLSA, HHS should deem full participation for disabled recipients (including individuals with short-term disabilities) who participate in work activities to the maximum level allowed by medical verification. Many recipients are prohibited from engaging in work activities for more than a set number of hours per month due to medically verified disabilities. When these recipients participate at their medically prescribed maximum level, states should be able to receive credit for their participation at the required work participation of 20 or 30 hours per week. We recognize states can work with these individuals outside of the 50% participation requirement; however, this recommendation would focus on what these recipients can do and represents incremental progress towards self-sufficiency.

Excused Absences

Comparable to actual employment settings, HHS should allow states to count the 10 days of excused absences promulgated in the regulations as 80 hours at state option. This will give states more flexibility in serving TANF clients on a more individualized basis.

Vocational Educational Training

We believe that vocational educational training needs to be designed and well-suited for the population it serves. There should be greater flexibility under this work activity to include some basic skills training or ESL. It is also important that programs such as career pathways, which can combine work and education, be countable. Also, explicitly prohibiting baccalaureate or advanced degrees from the definition does not take into account the reality of today's employment environment and prevents states from creatively working with universities to support low-income families.

On-the-Job Training

HHS asked for comments on whether on-the-job training (OJT) should be broadened. As written in the interim final regulations, OJT is for training provided to "paid employees" while engaged in productive work. HHS should allow for other training that is not through paid employment, including incumbent worker training (on or off site) and training provided in an unpaid work environment, such as work experience or a school-based enterprise created to help students learn about production processes. OJT should be expanded to encompass more training and skills-building activities, including orientation and classroom instruction in areas such as work place basics, computers, and ESL. OJT could be an avenue to provide job-related basic skills and occupational skills that could help people better prepare for work.

Job Skills Directly Related to Employment

At the recent TANF Listening Sessions sponsored by HHS, the Department has stated that clinical experience and other "hands-on" experiences within an educational setting would be allowable under job skills directly related to employment. NGA strongly supports this policy. Also, HHS should permit basic skills and ESL courses to be allowable under this work category.

Documentation of Secondary School Attendance

HHS applies a bi-weekly documentation for secondary school attendance, which is primarily used for teen parents in public high schools. Since school systems typically generate attendance quarterly, we suggest HHS permit states to project attendance up to six months - as states are permitted to do with wage-earning activities.

Satisfactory Attendance at Secondary School

HHS asked for comments on possible criteria or definitions for what constitutes making "good and satisfactory progress," related to defining the satisfactory attendance at a secondary school or in a course of study leading to a GED. HHS should allow a state to submit standards and internal processes to define "good and satisfactory progress" within its individual work verification plan that will be submitted to HHS on October 1, 2006.



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