



CALIFORNIA
STATE
ASSOCIATION OF
COUNTIES

August 28, 2006

Office of Family Assistance
Administration for Children and Families
5th Floor East
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447



CWDA

COUNTY WELFARE
DIRECTORS
ASSOCIATION

Re: Comments on the Interim Final Rule on the Reauthorization of the Temporary Assistance to Needy Families Program

Dear Sir/Madame:

On behalf of California's 58 counties, which administer the state's Temporary Assistance to Needy Families (TANF) block grant program, the California State Association of Counties (CSAC) and the County Welfare Directors Association of California (CWDA) are providing the attached comments on the TANF interim final rule that implements the statutory changes made by the Deficit Reduction Act of 2005.

Our elected county supervisors and human services directors urge you to retain the necessary flexibility to meet the unique needs of each county and its population. Our members have front-line TANF experience. They understand the need to administer TANF and other human services programs efficiently and effectively, given the budget pressures their counties face when funding human services programs. They also are committed to ensuring that needy residents in their communities receive appropriate services to move them into the workforce and toward economic self-sufficiency.

Our comments seek to maintain a true federal, state and local intergovernmental partnership that provides local administrators with the tools to continue focusing on common-sense and real-life approaches to moving families from welfare to work, instead of designing programs simply to meet burdensome administrative requirements.

We have organized our comments by category in the attachment. Please do not hesitate to contact either of us if you have questions regarding our comments and suggestions.

Sincerely,

A handwritten signature in blue ink that reads "Kelly Brooks".

Kelly Brooks, Legislative Representative
California State Association of Counties

A handwritten signature in blue ink that reads "Frank J. Mecca".

Frank J. Mecca, Executive Director
County Welfare Directors Association of California

**California County Comments
on the
TANF Interim Final Rule
August 28, 2006**

State Work Plan Requirements

Section 261.2(a)

Recommendation

States should be allowed to submit proposed alternative definitions of each work activity in their required plans.

Rationale

If a state can make a reasonable, common-sense argument that an activity should be included in a particular category, we see no reason why that state should not be allowed to include that proposal in its plan, which must be submitted for approval by the Administration for Children and Families (ACF). Federal ACF staff indicated at the regional listening sessions that their proposed definitions were based on their best assumptions at what should be included in each definition. States may have other approaches to defining these activities that should be taken into consideration when their plans are reviewed.

Self Employment Hours

Section 261.2(b)

Recommendation

Base self-employment participation on actual hours, not on earnings divided by the minimum wage as set forth in the interim final rule.

Rationale

Our recommendation takes into account the fact that self-employed individuals often work long and sporadic hours with little monetary return in the early years. Using the formula specified in the interim final rule would result in relatively few hours of work being counted for individuals who are actually fulfilling their work participation requirements, but have not yet seen that work pay off in earnings.

Definition of On-the-Job Training

Section 261.2(f)

Recommendation

Include Unpaid OJT Training: The definition of On-the-Job Training (OJT) should include both paid and unpaid training activities that the employer and case manager identify as necessary for the recipient to be successfully employed. This training should be allowed on or off-site.

Rationale

This change will help to ensure that the State's TANF participants (known as CalWORKs in California) are successfully employed. Whether the OJT is paid or not, and the location of the training, should not matter when making efforts to achieve that goal.

Definition of Job Search/Job Readiness

Section 261.2(g)

Recommendation 1.

One hour of participation should count as one hour, not as one week. The Preamble to the interim final rule states that for purposes of the four- and six-week annual limits on job search and job readiness activities, participation in an activity for as little as one hour is to count as a full week. States should be able to draw down hours of participation in these activities from a "bank" of 240 hours each year, with no more than 160 hours used consecutively for a recipient. This will meet both the letter and spirit of the law.

Rationale

We fully support the proposed inclusion of mental health, substance abuse and domestic violence services in the definition of job search and job readiness activities. However, these services often involve a small number of hours per week. While we welcome HHS's inclusion of these services as allowable activities, an interpretation that one hour would count as an entire week of participation in the activity is neither common-sense nor conducive to assisting them in overcoming a major employment barrier. Allowing participants to draw upon these hours through the course of a year also more closely resembles the "real world" of work, where employees needing counseling can use sick leave or other time off during a portion of the work day for such appointments.

Further, if participation in just one hour of activities in any given week counts as a full week, it will all but eliminate counties' ability to use job search/job readiness activities as "bridging" activities in between formal activities for clients who are otherwise engaged in the program but happen to be in a waiting period between one job and the next, or the completion of a training program and the start of an on-the-job training slot. Our caseloads are dynamic, with significant movement into and out of activities. In many areas of the state, it is impossible to perfectly schedule the end of one activity with the start of another. At any given point in time, data show a number of clients who are engaged in the program, but would appear idle if pulled for a work participation rate sample because they are in between formal activities. Hindering our ability to provide appropriate bridging activities for these recipients would be unfair to them and would artificially suppress state participation rates.

Recommendation 2.

Include Domestic Violence: Domestic violence activities should be included in the definition of job search/job readiness activities.

Rationale

Instead of automatically exempting victims of family violence from any participation in Welfare-to-Work activities, California may instead provide alternative Welfare-to-Work plans for them. We believe that domestic violence activities should qualify as a job readiness service because they assist clients in preparing for a job. See above for how we recommend counseling hours be counted.

Work-Eligible Individuals

Section 261.2(n)(1)

Recommendation 1.

Exclude Drug Felons and Fugitive Felons: Drug felons should be excluded from the definition of work-eligible individuals.

Rationale

States and counties are prohibited under federal law from providing federal TANF assistance to drug felons. Their children do receive assistance. It does not make sense that the federal government would mandate that this population participate while not providing any funding for those efforts.

Recommendation 2.

Exclude SSI Applicants and CAPI Recipients: We urge you to exclude from the definition of work-eligible individuals those SSI applicants, and applicants for and recipients of California's state-funded SSI replacement program called the Cash Assistance Program for Immigrants (affecting about 8,000 participants statewide), who have medical verification that they are unable to work.

Rationale

If a medical professional has verified and documented that an SSI applicant, or an applicant or recipient of an equivalent state program has a medical condition that prevents the individual from work, neither the state nor the recipient should be penalized for the inability to meet TANF requirements.

Recommendation 3.

Exclude Timed-Out Cases With No Aided Adult: Adults in cases where a child continues to receive assistance after the parent has reached the federal 60-month time limit should not be considered work-eligible individuals.

Rationale

The rationale for requiring states that assist children whose parents have reached their 60-month time limits to count the adults in those cases toward their work participation rates is unclear. States like California chose to continue assisting these families in order to provide a basic level of subsistence for their children. The level of funding provided in the TANF block grant is wholly insufficient to provide the services and supports that would be necessary to engage all of these timed-out parents – a growing number of parents each year – in work and work-related activities.

Further, this requirement creates substantial inequities between states that opted to continue providing basic assistance to the children of timed-out parents – with no federal mandate to do so – and those that discontinue aid for the entire family when the 60-month limit is reached. It is unfair to penalize states like California that made the choice to support these children.

Calculating Work Participation Hours

Section 261.60

Recommendation

Disabled Recipient Participation: Persons with disabilities should be deemed as meeting the federal work participation rate if they are engaged in federally countable activities for the maximum number of hours that their medical professional says they can participate. When these recipients do so, states and counties should be able to receive full credit for their participation at the individual's required federal work participation level (either 20 or 30 hours per month, depending on the other circumstances in the case).

Rationale

Medical professionals prohibit some CalWORKs participants with disabilities from working or engaging in work-related activities for more than a certain number of hours per month due to their medical condition. A policy that recognizes this fact and gives full credit if activities are performed up to the maximum number of hours per week would allow counties, states and participants alike to focus on what recipients can do and represents incremental progress toward self-sufficiency. This recommendation is similar to HHS's proposed Fair Labor Standards Act (FLSA) treatment of community service or unpaid work experience where the minimum wage equivalent is less than the required 20 hours per week of core activity.

While states and counties can engage these individuals outside of the 50-percent participation requirement, this recommendation should encourage them to increase their efforts to engage persons with disabilities.

Excused Absences

Section 261.60(b)

Recommendations

Provide Flexibility for Unpaid Work: States and counties should be able to count hours recipients are absent on an hour-for-hour basis. Again, such an approach is common-sense and is comparable to actual employment settings. As currently written, if an individual has an excused absence for a few hours during the day, the regulations appear to count them as a full day toward the two-day monthly limitation and the 10-days-in-any-12-month-period limitation.

Excused Absences for Paid Work: For those employees who are paid hourly but the employer does not provide paid sick leave or holidays, the federal policy should match the policy allowing states to count days missed due to holidays and excused absences in unpaid activities. As recommended above, time should be counted on an hour-for-hour basis.

Rationale

These recommendations on counting hours for paid and unpaid work would regard CalWORKs recipients the same as non-TANF employees who take time off in hourly increments to deal with personal issues or to benefit from holidays without being penalized. For example, CalWORKs participants in hourly jobs may work on a Monday-to-Friday schedule, but do not work on Thanksgiving because the business is closed that

day. While they may not be entitled to a paid holiday, they should at least be able to claim eight hours of participation due to the holiday.

Counting and Verifying Reported Hours of Work

Section 261.61

Recommendation 1.

Negative reporting: States should be allowed to use a negative reporting system for participants in programs where the provider has agreed to report in this manner, and procedures are in place for verification.

Rationale

Negative reporting systems are reliable when a mechanism is in place for verifying that the procedures outlined in agreements between counties/states and providers are being utilized.

Recommendation 2.

Monthly or Quarterly Verification: States should not be required to collect participation verification any more often than on a monthly basis. We would recommend that required verifications be collected quarterly, because work participation rates are calculated on a quarterly basis.

Rationale

Requiring providers to submit verification every two weeks, as in the case of educational providers as outlined in the Preamble, would create an undue burden on these providers and make it more difficult for counties to find providers willing to serve TANF clients.

Reasonable Cause Exclusions

Section 262.6

Recommendation

If HHS rejects our earlier comments on excluding certain groups from the work participation requirements, it must then provide a reasonable cause exception to give the State and its counties additional time to enact and implement the statutory changes necessary to include those cases in which all adults have been excluded from cash aid in the assistance unit.

Rationale

California does not have the authority to require activities by the excluded parent under current statute. Deadlines for the introduction of legislation passed prior to the release of the interim final rule and it is too late in this year's legislative session to introduce legislation and get it enacted, let alone implement it by October 1, 2006. The Legislature does not re-convene until January 2007. HHS should use the reasonable cause exception to provide relief from the work participation penalty related to the effect of including this caseload.

This exception also would be necessary for states and counties to meet the requirements for CalWORKs participants who have timed-out of cash assistance. If these cases are included as work-eligible individuals in the final regulations, the State

should be given at least until federal fiscal year 2008 before it is required to place these individuals in the work participation denominator. California will need time not only to respond programmatically but also to redesign its data systems to properly capture participation by these participants.

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