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Maintaining State TANF Flexibility Despite Tough New Federal Rules

Jack Tweedie and Christine Nelson
Children and Families Program

Headlines: **New federal TANF rules restrict state flexibility (and take effect in October 2006).**

States have options to meet the rates'in ways that maintain existing, successful programs and broader uses of TANF funds.

NCSL can help state legislators figure how to respond to the federal TANF changes and evaluate executive proposals to insure that they reflect legislative priorities.

Federal TANF changes contained in the budget reconciliation **significantly** restrict states' flexibility in running their TANF programs and using TANF funds for broad purposes, such as child care for working families, pre-K programs, child welfare and youth programs. But states do have options so that they can meet the higher federal requirements and maintain or even strengthen their existing programs without significant new state spending. As states consider how to respond to the federal TANF changes, state legislators should know that there are a variety of approaches to meeting these requirements and that they should make sure that the state's proposals take advantage of these options and maintain state programs that are working well. NCSL staff is available to help state legislators think through their responses to the federal changes and to evaluate executive proposals to help insure that they reflect legislative priorities.

The Good News

The federal TANF changes in the Deficit Reduction Act include both some good news for states and substantial restrictions on state flexibility:

- TANF block grant is reauthorized for five years at the current funding level
- An additional $200 million a year is available for childcare
- States can spend state funds on pregnancy prevention and supporting two parent families without limiting it to low-income families

- $150 million per year is available to fund projects on healthy marriage and responsible fatherhood

The Bad News

- Changes in the federal work participation rules significantly restrict state flexibility and may subject states to substantial penalties
  - Change in the calculation of the caseload reduction credit essentially eliminates the credits that most states have relied upon to meet the work participation rate requirement.
  - Families in separate state programs must be included in work participation rate.
  - Secretary of Health and Human Services given broad new authority to regulate how states count and report work participation rates.
    - Regulations will be released for the first time on June 30,2006 and will take effect immediately
    - Regulations will likely impose substantial administrative costs on state TANF agencies
    - Regulations may require states to include some child-only cases in work participation requirements
  - Changes take effect in October 2006 with no phase-in period.

- Most states will have to achieve substantial increases in their work participation rates within a few months
  - Only five states currently meet the 50 percent standard for all families and only three meet the 90 percent standard for two-parent families.
  - Fifteen states will have to double or triple their existing work participation rates.
  - Twelve more states will have to make more than a 50% increase.

- Achieving these increases are expected to cost about $1.7 billion a year and the only new federal money is the additional $200 million for child care. States will have to spend additional state funds or shift TANF funds from their current uses, such as child care for working families, pre-K programs, child welfare or youth programs.

- States that do not meet the higher rate face substantial financial penalties
  - losing 5% of their federal TANF block grant
  - increase in required state TANF spending by 13% to 26%.
  - penalty increases if state fails to meet rate in subsequent years

- Most states face the choice of eliminating their two-parent programs or accepting federal penalties given the difficulty of meeting the 90% two-parent rate.

Making Lemonade

States can adopt alternative strategies to meet the new federal participation rates, strengthen their welfare-to-work programs and avoid much of the potential costs of complying with the new federal law. There are three general strategies that states should consider in responding to the federal changes:

- **Work engagement strategies:** Increase work activity rates through more rapid engagement, stricter enforcement and quicker sanctions and the use of work experience slots for clients unable to find jobs
- **Post-employment (add-in) strategies:** Add working families to the work participation rate by allowing families to earn more before having to leave welfare and providing assistance to families who leave welfare for work
- **Targeting (take-out) strategies:** Take non-working families out of the work participation rate by using state money to provide benefits without claiming it as state spending in the TANF program

Work engagement strategy

Federal officials seek to focus states on increased work engagement—limiting exemptions from work requirements, focusing on the federally defined work activities, more active monitoring and case management, and stronger and more rapid sanctions. However, for many states, meeting the new requirements solely through these work strategies involves significant changes to their programs that would result in more sanctions and many families losing assistance.

Most states should examine a work participation-focused strategy as part of their response. They should consider program changes to strengthen their engagement of clients and their efforts to get them to participate in activities that lead to work and the possibility of leaving welfare and moving toward self-sufficiency. Possible changes include

- Broader work activity requirements (reducing exemptions from work requirements)
- Maximize use and claiming of activities that can count toward the federal requirements (job readiness & community service) – Note: The new federal regulations will affect the federally defined activities.
- Eliminate or reduce assignment of activities that do not count as federal work activities (GED, post-secondary education, extended job readiness) – Note: The new federal regulations will affect the federally defined activities.
- Devote additional resources to case management and develop strategies to directly address client nonparticipation
- Stricter enforcement of work requirements (more active monitoring of clients, faster sanctions and more full-family sanctions)
- Improve access to child care and other work supports
- Creation of work activity slots for clients unable to find work or other countable activities (community service, subsidized work)

- Elimination of eligibility for clients unable to find work (fewer extensions to time limits)

States that either use or want to use postsecondary education as a work activity should pay special attention to the upcoming regulations that the federal Administration for Children and Families (ACF) will announce in June. While some postsecondary education can count as vocational education as a federal work activity, ACF is expected to include provisions that clarify when it can count. The effect of these regulations could be to limit or expand how postsecondary education can be used to meet the federal work participation requirement.

While states should focus on effective engagement of cash assistance recipients, there are some limits to this strategy. Significant improvement of work participation rates through these strategies requires aggressive monitoring and enforcement. While these approaches are likely to increase work participation over two or three years, they also will result in increased sanctions and many families losing assistance. Some of the families losing assistance will be working, but in many cases families will leave welfare without work.

Most of these options require additional spending for child care, community service positions and more administrative monitoring and case management. There may be some savings on cash assistance due to families leaving the rolls because of work or sanctions. (The Congressional Budget Office estimated the direct cost of these changes at $8.5 billion over five years.) Funds may have to be shifted from broader TANF purposes such as child care for work families, child welfare, early education and youth programs.

And the work engagement strategies do not guarantee success in increasing the work participation rates enough to meet the higher federal requirements (especially given the October 2006 implementation date). Nor has research shown that they are more effective in producing better outcomes for families leaving welfare.

For many states, the work engagement strategy will not be sufficient to meet the higher federal requirements or state policymakers may be reluctant to accept the shift in the character of the program or the costs involved in this approach. Alternative strategies hold more promise for meeting the federal rates, avoiding large increases in state spending and improving outcomes for families leaving welfare.

Post-employment assistance (Add-in) Strategies

Making a quick, significant increase in work participation rates may require states to adopt policy changes that keep or move working families into the work participation rate. These approaches can also support families as they move from welfare to work, strengthening job retention and earnings gains and reducing returns to welfare. For instance, states could provide continuing assistance to families where parents are working:

- increased earnings disregards to provide added incentive for parents on welfare to work and allow them to be counted toward the work participation rate or
- work incentives and job retention bonuses for families after they leave welfare structured to count those families toward the work participation rates.
- a diversion program for work-ready families to keep them off the cash assistance rolls and provide them with post-employment assistance and services to support their transition into work and count them toward the state's work participation rate

The post-employment assistance payments could also be combined with services designed to help former TANF recipients stay in jobs and increase their earnings. Research shows that improving post-TANF work outcomes is difficult, but that the best strategies combine financial assistance and services to support job retention and help parents negotiate the transition from welfare to work. In addition to case management for parents in jobs, some states are developing services that help parents move from entry-level jobs to better jobs with more earnings and career potential.

These policy changes could be pursued with small spending increases and tailored to meet the needed increase in work participation. Or states could make more substantial investments that would increase supports and services to working families and improve outcomes for working families. Using state money for this assistance would mean that the payments would not count against the families' federal time limits. And these larger investments would still cost less than what would be required to directly increase work participation.

Take-out Strategies

States may also want to consider using state funds not counted within the federal TANF program to fund programs for clients who will be unable to meet the participation requirements. For instance, most states cannot practically achieve the 90 percent two-parent rate. The families in their programs face too many challenges, such as physical disabilities, substance abuse, depression or responsibilities for caring for a disabled family member. Instead of ending their two-parent program or accepting the penalties for not meeting the federal rates, states could continue the program as it is currently being run, but use state money and not count it toward their TANF maintenance of effort (MOE) requirement. By not counting spending in this program as state TANF MOE, the program would not be subject to the unreasonably high 90% two-parent work participation requirement.

States could also use this strategy for clients who are not expected to be able to meet the work participation rates (such as clients with credible applications for SSI or disabled parents who do not qualify for SSI). The state could also use this strategy for clients engaged in activities that do not count as federal work activities (such as postsecondary education or extended job readiness services for parents with little or no work experience). Taking this approach would take families out of the work participation rate that are unlikely to count toward the federal rate despite the efforts of your agencies and allow your agencies to focus their efforts on other clients who are more likely to increase their work participation.

If states use the state non-MOE sending approach, they would have to identify other state spending to count toward the MOE requirement. Most states would not have much difficulty in identifying existing spending that could be used to fill the hole created by moving some program spending outside of TANF. The federal rules about what can count as TANF spending are very flexible. The Deficit Reduction Act included provisions that significantly increase states' abilities to count spending toward the TANF MOE requirement. The DRA removed the income eligibility requirements for state spending to reduce out-of-wedlock pregnancy (which covers virtually all spending on youth programs) and the formation and maintenance of two-parent families (which covers programs for healthy marriage and responsible fatherhood). And, under current federal rules, states can count local government and school spending on these programs toward their state MOE requirements.

States can also use an applicant diversion program to deal with the challenges of getting applicants into work activities quickly. (It often takes two or three months to get new clients into their work activities and under the federal rules, these families count in the state's work participation rate as failing to meet the requirement.) Applicants who meet initial eligibility requirements would be given a lump sum benefit and placed in the diversion program for two or three months where they would be assessed and assigned into activities designed to help them find jobs. States can use federal or state TANF funds in these programs without affecting their work participation rates. By placing them in the diversion program rather than into cash assistance, the family would not be counted in the federal work participation rate while they are being placed into activities. Many of these families would find work quickly and would never go onto cash assistance (although the state may want to provide these families with post-employment assistance and services to help them with their transition into work and to count them toward the work participation rate).

States Still Have Flexibility in TANF

Despite federal changes aimed at restricting state flexibility and focusing them on work engagement, states retain substantial TANF flexibility. The alternative strategies discussed here help states meet higher federal work participation requirements without requiring states to change their existing, successful programs or make large shifts in state TANF spending. They involve less change to existing successful programs, less loss of benefits to families where parents struggle to work, less funds that would have to be shifted from their current uses to increase work participation, and less risk that states will fail to meet work requirements and face penalties.

To find out more about the federal TANF changes and states' options in responding, contact Jack Tweedie (303) 856-1546 (jack.tweedie@ncsl.org) and Sheri Steisel (202) 624-5400 (sheri.steisel@ncsl.org).