NACHSA National Association of County Human Services Administrators

An Affiliate Organization of NACo ★ National Association of Counties

# National Association of County Human Services Administrators (NACHSA)

## Federal Legislative and Regulatory Streamlining Recommendations to Improve Service Delivery

## August 2011

Earlier this summer, the National Association of County Human Services Administrators (NACHSA) requested from its members examples of federal regulatory or statutory barriers that affect their ability to serve low-income individuals. This document summarizes the issues county directors identified. They are categorized by federal agency and the programs administered by that agency. Issues include the Temporary Assistance for Needy Families (TANF) program, child welfare services, child care, senior nutrition services, Medicaid, and the Supplemental Nutrition Assistance Program (SNAP).

California's county human services agencies and their association, the County Welfare Directors Association of California (CWDA) were instrumental in assisting NACHSA in identifying many of the issues described below.

An affiliate of the National Association of Counties, NACHSA represents county administrators of health and human services programs. The majority of NACHSA's members are from states in which counties are responsible for administering and, in many instances, contributing to the financing of federal entitlement and discretionary programs.

Many comments urged that the applications processes be simplified and one form created for federal means-tested programs. Once an agency determines an individual's income and assets, that information would then be legally shared with the benefit delivery provider.

Such a streamlining effort would truly make government more efficient and manageable for low-income individuals and all other taxpayers. Obviously, it would take a major commitment and partnership between federal, state and local governments to change laws and regulations to accomplish the goal.

Specific programmatic recommendations follow.

## *ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES*

### Temporary Assistance for Needy Families (TANF)

#### *Work Participation Rate (WPR) Exemptions*

Exclude from the WPR those who have legitimate medical disabilities, as verified by a doctor. In a two parent family, the person who is caring for the parent who has a medical need is excluded from the WPR, but not the parent who is ill.

Do not consider those who are verifiably disabled as a work eligible individual. When customers are verifiably disabled and do not receive SSDI, it affects the county's ability to engage the customer because their physician states they are unable to work.

The WPR calculation should exclude participants that are medically exempt and those that are unable to participate due to current domestic violence barriers for reasons beyond a state and county's control.

Work eligible individuals should be redefined to exclude all non-aided parents. (i.e., timed out, sanctioned, and felon adults).

TANF agencies should be able to exclude from WPR pregnant women who are starting to receive aid three months before the child is born.

Exclude "Timed Out Adults" and Drug/Fleeing Felons" from the WPR numerator and denominator, since counties cannot provide any incentives or penalty to get them to participate in the Welfare-To-Work program. Furthermore, most states do not have the funding to serve them on a voluntary basis.

#### *WPR Countable Activities*

Add to "Core Activities," counting GED/High School diploma study as a federal activity with a 12 month time limit.

#### *Lower the WPR Measurement to a More Realistic Threshold*

The federal government should consider lowering the WPR for all states defined as "needy". A "needy state" would be defined as having an unemployment rate of 10 percent or greater. The new rule would waive all penalties related to not meeting WPR during a month a state has been defined as a needy state.

#### *Count Partial Participation*

Change the rate calculation in order to give credit to cases with partial participation. The current approach fails to recognize that a gradual progression toward self-sufficiency is more the norm than the exception, and fails to credit states for moving clients along the continuum toward full work participation and self-sufficiency.

Under the current criteria, an adult participant of a single parent household with two children over the age of six who is working 25 hours per week (100 hours/month) does not meet WPR requirements and no partial participation credit is allowed.

There should be no distinction between core and non-core activities or countable versus not countable activities. If a TANF recipient is participating in an activity, all the hours should count towards the federal WPR.

### *Extend Vocational Education Time Limits*

Extend allowable Vocational Training Education (VTE) from 12 months to at least 24 months, as most community college students attend for two years and most courses of study exceed 12 months. Currently, if a participant wishes to complete their education and remain in their VTE activity after 12 months, their hours of participation will not count towards participation in the WPR. Most TANF participants need at least one semester before they are eligible to enroll into the core classes of a subject area.

Expand the length of time that Vocational Education can be considered a core activity to two years. This will correspond to the length of time for community college vocational programs. One year of vocational training is not enough. It forces counties to encourage clients to maintain a certain level of poverty versus creating taxpayers who are less vulnerable to the ups and downs of the economy.

TANF participants often need remedial education which must be taken prior to advanced classes, which often precludes them from participating in this activity due to the time limit. Given school budget cuts, many classes are also either being cut or only available once a year, which may complicate a participant's educational pursuit, given the one-year limit. One year of education often does not lead to enough skill-building to make a person self-supporting.

When participants must try to fit classes around core activities, they often cannot complete their program in the time they have left on cash aid. Without the benefit of supports offered through Welfare to Work, a participant has much greater difficulty being successful in their program.

### *Include TANF Subsidized Employment Participants in WPR After Exiting Cash Aid*

Under current federal rules, TANF participants who exit the program due to earned income do not count in the WPR. This has the perverse effect of penalizing states for implementing successful strategies to move clients off aid because as successful clients exit, they are removed from the WPR calculation. The WPR caseload reduction credit does not compensate fully for this because caseload decreases may be fully or partially offset by the influx of new clients, particularly in a weak economy.

Many states implemented successful subsidized employment programs through the American Recovery and Reinvestment Act (ARRA) TANF Emergency Contingency Fund. Some of those programs continue to operate despite the loss of ARRA funding. In some instances, particularly in high-wage regions, subsidized employment program participants earn an income which allows them to leave TANF. That, however, does little or nothing to improve the WPR despite the obvious success of the strategy.

The proposed change could result in direct taxpayer savings if TANF clients succeed in leaving public assistance more quickly through subsidized employment, or if the experience allows them

to secure and retain unsubsidized employment more quickly and reliably than they might have otherwise. Additionally, the change could boost WPR's nationwide, potentially helping fiscally-strapped states avoid millions of dollars in financial penalties due to the failure to meet WPR.

***Extend Time Allowed for Job Search***

Extend Job Search for more than 12 weeks for needy states. Unemployed participants that are exhaustively job searching are only allowed four to 12 weeks during a 12 month period to be countable as an activity. The Job Search component also includes time-limited counseling for mental health, substance abuse, and domestic abuse.

Job Search limits and the method of counting participation hours should be simplified and increased. A certain number of hours should be available for Job Search. One suggestion would be to provide a maximum number of hours (up to 360 hours per individual (30 hours x 12 weeks)) in a rolling 12-month period.

The language defining how to 'count' Job Search participation is contradictory and confusing. It must be replaced at the federal and state levels with language that is easily understood by staff and participants.

The following language needs to be deleted or revised: "Job Search and job readiness activities are limited to no more than four consecutive weeks and up to six weeks total in the preceding 12-month period. The six-week limit is based on the average number of hours per week required for a family to count in the overall participation rate. Thus, the six-week limit equates to 120 hours and 180 hours, respectively. For the limit of no more than four consecutive weeks, a week is seven consecutive days and is not converted to hours. Reporting any hours in a week uses a week of participation."

"A full week of participation may be calculated based on the average daily hours for three or four days. For this calculation, a week is five days. The average hours of participation during three or four days may be applied to the remaining one or two days in the week to determine the total hours of a week. This calculation is the only exception to reporting actual hours and its use is limited to once in a 12-month period. If the calculation is used, the case file must indicate that weekly hours were based on the average number of hours for the three or four days."

This limitation is counter-intuitive to the goal of Welfare-to-Work which is a program that "is designed to assist welfare recipients to obtain or prepare for employment." Employment is the overall goal of the program and must be obtained in order for the participant to transition off of aid and attain self-sufficiency.

***Job Club Component:*** In many counties, after participants are granted aid, they are brought into a Welfare-to-Work program, and unless they are exempted, they are required to participate in Job Club. Job Club consists of education regarding how to job search, conduct employment research, resume building, etc. Job Club is also a component of Job Search. The clients participate in Job Search/Job Readiness for three (of the four allowable) consecutive weeks. If a job is not obtained through Job Club, then the participant only has three more weeks of Job Search for the rest of their time on aid. This amount of time is not sufficient for clients to obtain employment.

According to an article featured in CNN Money, the average unemployed person searches 30 weeks before obtaining employment. We allow our participants a total of six weeks of Job

Search activity; 20 percent of the amount of time it takes the average person to find employment. The vast majority of TANF participants exit Job Club without obtaining employment. These participants will be placed in activities that teach them employment or life skills, counseling, work experience, etc., however once their skills have increased they only have three weeks of countable Job Search left. This is not a sufficient amount of time for the participant to find and obtain employment.

These requirements place additional barriers on TANF participants. They are required to conduct between 20 and 35 hours (depending on family composition) of employment-related activities which is supposed to help them obtain employment, however they are not allowed to participate in Job Search because they have exhausted the time allowed for that activity, or have a limited amount of time left. Agencies are then filling those hours in which they could be job searching with other activities that they must also complete. So, not only are agencies not providing them with enough time to Job Search, but they are also filling the time they could be job searching with other activities (which generally do not lead to unsubsidized employment).

Agencies and participants also confront the fact that a fifth consecutive week of Job Search cannot count toward participation hours. There appears to be no legitimate reason as to why the 5$^{th}$ week cannot be counted. If the participant is doing what is asked of them, it should be counted as an allowable activity.

There should not be a limitation on the amount of Job Search that can be counted toward a participant's WPR. This requirement limits on the participant's ability to find employment (i.e., if they aren't looking for jobs, then they most likely won't find them). At a minimum, the federal government should eliminate the provision not counting a fifth consecutive week of Job Search toward the participant's WPR.

These changes may lead to a savings in taxpayer dollars. The participants would be allowed to Job Search until they obtained employment, thus eventually transitioning them off of aid and into self-sufficiency. By finding employment, either the families grant would be reduced (based on how much earned income is coming into the family) or they could be completely removed from aid, either one resulting in government savings.

This change would improve the outcomes of client services two-fold. It would increase the amount of unsubsidized employment obtained, and would also increase the State's WPR because the hours that clients spend job searching can count toward their WPR.

***WPR Verification***

Federal regulations establish a high standard for documentation of client participation. The onerous nature of the current standards prevents verification from being achieved. Paychecks often do not include hours worked, which creates additional challenges and workload for TANF staff to follow up with employers to verify hours. Piece work, commission, or other non-traditional work arrangements also require follow-up with the client's employer, which inconveniences the employer and increases administrative costs for the state. In California's May 2011 report to ACF on engagement in additional work activities, close to 10 percent of the total work-eligible individuals had unverifiable hours for the month of March 2011, in countable activities.

Federal regulations should be amended to permit states to use alternate approaches to documentation (such as dividing income by minimum wage) when the paystub does not show work hours or other documentation challenges exist.

### *WIA and TANF Duplicate Requirements*

Workforce Investment Act (WIA) and TANF Welfare-to-Work contain duplicate requirements for assessment, appraisal and other workforce preparation steps such as Job Search Workshop, and incongruent performance standards (e.g., "hours of participation" versus "retention 9-12 months later").

Theoretically, the WIA and TANF programs should be a good fit for administration by the same staff. In fact, it is difficult to impossible to overcome the barriers between the programs. Many counties perform two orientations, two assessments, and two appraisals using two different staff groups for each concurrently enrolled individual. This is not by local design. It is due to different program regulations. Some of these coordination issues are statutory and some are regulatory.

We would recommend that the federal government streamline the requirements for WIA/TANF programs by making orientation, assessment, appraisal and other required tasks from one program count for the other one and vice versa. Forms for both programs should be standardized so that there is one form for intake for both programs.

Additionally, the program outcomes, and performance standards should be aligned and data for both programs be tailored so that the information is compatible to measure client progress in either TANF or WIA.

### *Assign Overpayments to Adult Responsible for Overpayment*

Responsibility for a TANF overpayment is assigned to members of the assistance unit (children in most cases) when the caretaker relative payee is not a member of the case. It is proposed that children not be held liable for overpayments when the adult payee is responsible for the overpayment occurring. Regardless of whether the adult is active or not, s/he should be held liable for the overpayment and not the child(ren).

Under the California Welfare and Institutions Code Section 11004 (h), if the individual responsible for the overpayment to the assistance unit is no longer eligible for public social services or if he or she becomes a member of another assistance unit, recoupment of overpayments shall be made against the individual or his or her present assistance unit, or both.

## Child Welfare Services

### *Modify Child Welfare Services Outcome Requirements and Measures*

Current child welfare outcome measures should be modified to make them more relevant and applicable to the program. For example, child welfare policy should modify its focus from exit cohorts to entry cohorts. Under the current system that uses exit cohorts, there are a significant number of children who do not get measured for a lengthy period of time because they are still in the program. The expectation of a 75 percent reunification rate within 12 months places an unnecessary burden on counties/states to meet that target, and those that do have a much higher re-entry rate. Time frames should be changed to coincide with court times frames (i.e., 18 months.)

Performance measures drive program design. Extending the time frame for reunification would result in fewer re-entries and fewer children being put at risk of re-abuse. Taxpayers would benefit from a change to entry cohorts because there would be a clearer picture of how programs are actually performing.

## Child Care

### *Collectability of Overpayments/Improper Payments Across All Federally-Funded Child Care Programs*

TANF funds must be used to pay for investigative units to help maintain the integrity of the program, and overpayments are reinvested in the state's TANF program, including TANF-funded child care. However, federal Child Care Development Fund funding is not required to be spent on investigations. And overpayments, including fraudulent payments, must in most cases be returned to the federal government. This reduces the incentives for program integrity activities in CCDF-funded child care programs, while TANF-funded child care programs have vigorous program integrity activities. Child care providers may be funded by either/both TANF and CCDF – the program integrity needs remain the same, regardless of funding source.

ACF should clearly state expectations that overpayments/improper payments in ***all*** child care programs -- either partially or fully funded by federal dollars -- are collectable and transferable across different child care programs. Accordingly, the federal government should establish specific rules making the detection, tracking, collection and reporting of overpayments/improper payments mandatory in ***all*** child care programs and create incentives for States to process this additional workload.

### *Employer of Record for In-Home Child Care Providers*

Under federal law (29 USC 206(f)), domestic workers are subject to minimum wage laws.

In its final 1998 rule implementing the Child Care and Development Fund, the Administration for Children and Families defined in-home child care providers as domestic workers under that Act and therefore subject to federal minimum wage.

ACF stated strongly that

- They cannot overlook violations of the minimum wage law nor exempt us from it;
- Human services agencies cannot prohibit parents from using in-home providers;
- States have "wide latitude to impose conditions and restrictions on in-home care"
- Federal labor law requires that in-home child care providers at least make minimum wage. However, enforcing the minimum wage effectively prohibits families with fewer than four kids under age six from using in-home care and keeps their preferred providers out of this part of the labor market.

A complicating issue is that the IRS has at times asserted that the employer of record is the agency making the payment to the in-home provider, not the parent, which would make the paying agency subject to other employer obligations. In two cases in California, the IRS lost the judgment, and the parent was declared the employer.

Labor law should be clarified to specify that the parent, not the state or local agency or child care contractor, is the employer of record for in-home child care providers in federally-funded subsidized child care programs, including having the sole obligation to pay minimum wage. If federal/state payments amount to less than minimum wage, the parent should be obliged to make up the difference. The legal relationship for purposes of the minimum wage requirement should be between the parent and provider.

Alternatively, subsidized in-home providers could be exempted from the minimum wage. The reasoning behind this is that subsidized child care programs are different from other jobs in that the issue is not whether the domestic employee will make a dollar more or a dollar less per hour. Rather, it is whether the employee makes something or nothing.

## *ADMINISTRATION ON AGING, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES*

### *Senior Nutrition: Older Americans Act Meals Programs*

The Older Americans Act requirements for congregate and home delivered meals create service barriers. The federal government should distribute nutrition funds in one category instead of two so that local administering entities can determine locally the best use of the funding.

This is a statutory barrier within Title III Senior Nutrition. The segmenting of congregate and home delivered meals funding prevents local Area Agencies on Aging from providing nutrition services that are appropriate to the community. Some areas of the community have a greater need for home delivered meals than for congregate since there are a number of low cost dining options available for those that are not homebound.

## *CENTERS FOR MEDICARE & MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES*

### **Medicaid Behavioral Health Services**

### *Eligible Providers*

The federal government requires behavioral health services to be performed or referred only by psychiatrists or another MD. Since there is a tremendous shortage of these individuals, a licensed psychologist or other licensed behavioral health provider should be allowed to perform or sign off on behavioral health services funded by Medicaid or Medicare. Elderly people or those on Medicaid in rural areas have little to no access to a psychiatrist. The change would allow services to be provided where there currently are none.

### *Excessive Reporting Requirements for Home and Community Based Care Services*

California's counties operate a Multipurpose Senior Services Program (MSSP) under a 1915(c) waiver which provides intensive case management services enabling low income seniors to stay at home and avoid nursing home placement. More flexibility is needed in implementing these waivers. Extensive documentation is currently required to re-examine of how health and safety concerns are addressed at intake, monthly, and then a biannual reassessment. California

counties understand from the State that this extensive documentation is a federal waiver requirement.

Evaluating health and safety is a part of the baseline MSSP assessment. Repeated assurances of health and safety requires a tremendous amount of documentation and is detracts from the program's mission to create an alternative to an institutional setting, because it takes time away from case managers to work directly with clients. A more realistic expectation would be that the MSSP staff evaluate and document risk at intake and then at an annual reassessment.

This regulatory change would improve outcomes for clients because they would have more case manager time and be able to continue to receive the support of the waiver program.

## *FOOD AND NUTRITION SERVICE, U.S. DEPARTMENT OF AGRICULTURE*

### Supplemental Nutrition Assistance Program (SNAP)

Current SNAP policies regarding treatment of assets is very convoluted and confusing and should be simplified or streamlined.

#### *Medicaid Categorical Eligibility for SNAP*

Many low-income individuals are eligible for both Medicaid and SNAP benefits but are not enrolled in both programs. This will be true for many more people once the pending health reform expansion of Medicaid eligibility to all persons under 133% FPL occurs. However, clients currently have to fill out two separate applications for the programs.

All Medicaid recipients up to 133% FPL should be categorically eligible for SNAP. Streamline/simplify the SNAP application and recertification processes for Medicaid recipients at higher income levels. Seniors might have to be excluded from this change in states with a SNAP "cash out" policy.

Clients would benefit from expanded and streamlined access to SNAP. There would be a reduced administrative burden for local agencies that administer SNAP benefits, which could eventually generate taxpayer savings. Increased enrollment in SNAP would provide a boost to local economies because SNAP benefits are spent quickly.

#### *Lengthen Certification Period*

Currently, the federal government (Food and Nutrition Service) allows a one year certification period for most households, although a two-year certification period is allowed for seniors/disabled households. A longer certification period should be allowed for all households.

#### *Modify Income Deeming Requirements*

Recommend elimination of income deeming for sponsored noncitizens. Also, if person is here legally, they should not have to meet any other requirement such as 40 quarters or live here for five years.

***Create Separate Household Age Limits***

Change the age limit of 22 in order to be a separate head of household. An adult child may be employed but unable to afford to live on her/his own. If the adult child has their own case and they move back in with parents who would never qualify for the program, the adult child is put at a disadvantage.

Similarly, the requirement for married couples should change. When one of the spouses is under 22 and they live with their parent, they cannot be considered separate households. If they are married they should be their own family unit.

***Quality Control***

Quality Control (QC) audits should be aligned with actual policy and information verified within the policy limitations. For example, administering agencies accept client's statement of shelter cost unless it is questionable. When federal (?) QC conducts the review they will seek the verification for the shelter cost; if there is a difference in what the client stated and what they verify, the variance can result in an error. Additionally, client caused errors should not be counted against the agency. Lastly, the tolerance level of $25 should be changed to a higher amount; the amount is not updated with the allotment increases; if one changes the other should as well.

***Minimize Client Asset Verifications***

Adopt a federal requirement to verify only identity and income. Currently states may adopt their own policy for verifying certain items that are optional (dependent care, shelter, liquid resources/loans, household size). A federal requirement specifically delineating only those verifications that are mandatory or questionable would streamline the application process across states. This may also decrease a state's error rate.

***Eliminate Federal work requirements for students of higher education***

The federal government should eliminate the policy requiring a student of higher education to work a minimum of 20 hours per week in order to be eligible for benefits. If not eliminated, the federal requirement should change to include averaging the work hours over a month (20 per week/80 per month). This would make students who work fluctuating schedules more likely to qualify. Another alternative would be to only exclude persons attending college and living in the dorms or has meals paid for.

***Employment & Training Program (formerly FSET)***

The SNAP Employment & Training Program (formerly FSET) is a state optional program whose purpose is to assist members of non-assistance SNAP households to gain skills, training, work or experience that will increase their ability to obtain regular employment. Federal rules require that a state employment and training (E&T) program must include one or more of six specified components: job club, job search, workfare, self-initiated workfare, vocational training and basic education, including ESL. However, a SNAP E&T component that provides for the purchase of services and goods associated with beginning and retaining employment is not allowable since this is beyond the scope of SNAP E&T, which is limited to providing good and services *leading up to* employment. This means that E&T funds cannot be used to support subsidized

employment, a proven program model that could help bridge SNAP recipients to unsubsidized jobs.

Through the ARRA-authorized TANF Emergency Contingency Fund, many states implemented successful subsidized employment programs for TANF recipients and other non-needy families with incomes below 200% FPL. There remains a high demand for such programs.
All allowable TANF activities should be also allowable activities under FSET. FSET activities should also be permitted to go beyond what is allowable under TANF at state option and as permitted by the FSET regulations. (This is important since some work supports, e.g. supportive housing, are allowable under FSET but not under TANF.)

To streamline the programs further, federal administrative responsibility for FSET could be shifted from USDA to HHS so that further simplifications in reporting, etc. could be identified.

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