



Child Support Cooperation Requirements and Public Benefits Programs: An
Overview of Issues and Recommendations for Change

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INTRODUCTION

Child support cooperation requirements exist in a variety of public benefits programs. For the most part, these requirements apply to custodial parents or others who have the legal ability to assign support rights to the state and cooperate with the state in pursuing those rights. Only the Food Stamp Program (FSP) contains authorization for a child support cooperation requirement for both custodial and non-custodial parents.

Except for the FSP non-custodial parent provision, the requirements contain good cause exceptions from cooperation, primarily for those with concerns about domestic violence. Failure to make a good faith effort to meet a program's cooperation requirement without good cause leads to a sanction. Generally the sanction applies to the non-cooperating individual, but children can also be affected in the Temporary Assistance to Needy Families (TANF) program as well as the FSP if an adult in their household does not meet the child support cooperation requirement.

Because many low-income, single parent families participate in multiple programs, families can face multiple cooperation requirements. Because the standards for judging cooperation can vary from program to program, and the criteria for claiming a good cause exception also vary from program to program, it is possible for the head of a household to face varying, inconsistent program rules and obligations. This can lead to confusion and cause those in need to go without assistance to obtain food, shelter, health care and child care.

Indeed, every year, thousands of individuals and households are sanctioned for failure to cooperate with a child support requirement. Moreover, there is a growing body of evidence that suggests that many families never apply for needed assistance because they do not understand the cooperation requirements, how to meet them, or how to successfully claim a good cause exception.

This monograph explains the child support cooperation requirements in five programs: TANF, Food Stamps, Medicaid, the State Children's Health Insurance Program (SCHIP), and child care. It describes the federal law governing each program and where states have discretion to vary from these requirements. It then delves into the relationship between the requirements of each program and how the interaction may affect needy families. Finally, it contains recommendations for change. Several appendices are also provided that give the reader supplemental information about state policy. These appendices should help the reader determine the extent of any possible problem in his/her own state.

CHILD SUPPORT COOPERATION REQUIREMENTS IN THE MAJOR PUBLIC ASSISTANCE PROGRAMS¹

Temporary Assistance for Needy Families (“Cash Assistance”²)

Every state offers a program under which low-income families with children may be eligible to receive cash assistance. The program is called Temporary Assistance for Needy Families (TANF) and is funded by a combination of state allocations and federal block grant monies. In order to receive their full allotment of federal funds, states must impose certain requirements on applicants and recipients. One of these requirements is that the person in the family with the legal right to do so must assign to the state any rights he/she has to spousal support as well as any rights any child in the family has to receive child support. 42 USC § 608(a)(3) In addition, federal law requires that states impose a child support cooperation requirement on the responsible individual unless that person can establish “good cause” for refusing to cooperate. 42 USC § 65(29) Cooperation must be in “good faith” and includes 1) appearing at interviews, hearings and legal proceedings; and 2) submitting to genetic testing (for purposes of establishing paternity) when ordered by a judge or administrative agency. 42 USC §§ 654(29)(B) &(C)

States may supplement these federal requirements and many have done so.³ For example, states can limit the cooperation requirement to just custodial parents or legal guardians or expand it to cover other individuals who are applying for or receiving assistance on the child’s behalf (e.g. a grandparents or aunts). 45 CFR § 264.30(a)(1)⁴ States can also add additional criteria to the definition of “cooperation.” In other words, both who is covered by the cooperation requirement and what is required to be deemed “cooperative” are determined by both federal and state law. Both need to be consulted in order to determine whether a given individual must cooperate and what cooperation entails.

If an individual is covered by the cooperation requirement, he/she will be referred to the state’s child support enforcement agency. 45 CFR § 264.30(a)(1) This agency is also funded by a combination of federal and state funds. Thus, there are federal rules here as well. One is that the child support agency must accept all individuals referred by the TANF program and provide

¹ There are also child support assignment provisions in the foster care program. 42 USC § 671(a)(16). However, they are substantially different from the provisions in the other programs described here and so they are not included in this discussion.

² For purposes of this discussion, the term “cash assistance” applies to both cash and vouchers as described at 45 CFR § 260.31(a). Federal funds may also be used to provide other forms of assistance (e.g. child care for working parents). Unless the family receives cash or a voucher, these benefits are not “cash assistance” and applicants/recipients are not automatically subject to a child support assignment or cooperation requirements. 45 CFR § 260.31(b)

³ The Department of Health and Human Services Office of Inspector General (DHHSOIG) conducted several studies of the TANF child support cooperation requirements in the year 2000. It found that most states had adopted child support cooperation and good cause standards that were applicable in the predecessor program to TANF, Aid to Families with Dependent Children (AFDC). However, there was substantial variation in the amount of information an individual must provide in order to be deemed cooperative. DHHSOIG. CLIENT COOPERATION WITH CHILD SUPPORT ENFORCEMENT Policies and Practices. (2000) available at www.oig.hhs.oei/reports

⁴ The regulation requires cooperation from “appropriate individuals”. The text accompanying the regulations clarifies that this is meant to provide states with some flexibility in deciding what categories of individuals beyond parents and guardians should be covered. 69 Fed. Reg. 17850 (April 12, 1999).

services to them at no cost. 42 USC §§ 654(4)(A)(i)(I) and 654(6)(B) Another is that the child support agency provide services to 1) locate the absent parent and identify his/her income and resources; 2) establish paternity if that is an issue; 3) establish a support order if one is not already in place; 4) enforce an order for child or spousal support if one exists; and 5) periodically modify the child support order if circumstances change. 42 USC §§ 651 and 654

States are also responsible for establishing standards under which individuals will not be required to cooperate because they have “good cause”. In most states, these include situations in which there is domestic violence, the child was conceived through rape or incest, or where a parent is contemplating placing the child for adoption. Again, individual state TANF regulations must be consulted to determine what “good cause” means.

State law also governs the standard of proof that must be met in order to establish “good cause”. For example, if a parent alleges domestic violence, some states require that parent to produce documentation of the violence (e.g., police reports, hospital records, protective orders and/or documentation from a shelter) while others accept a simple attestation from the parent or a friend or relative. If the good cause claim is based on rape or incest, adoption papers, court documents, birth certificates police reports, and/or hospital records may be required.⁵

Good cause may be claimed at the time of the TANF application. The TANF agency will assess the claim: if good cause is found, then the case will not be sent to the child support agency. If good cause is not claimed, or the claim is denied, then the case will go to the child support agency. If the obligated individual does not cooperate, the child support agency will make a finding and inform the TANF agency. 45 CFR § 264.30

Not surprisingly, few individuals claim good cause for not cooperating. Explanations for this include the difficulty of proving a claim, embarrassment about the violence, fear of retaliation by the non-custodial parent, and fear of intervention by a child welfare agency. In addition, despite the violence, many simply need (and want) the child support income.⁶

If a parent is found to be uncooperative and there is no “good cause” exception that applies, then a sanction must be imposed by the TANF agency.⁷ 45 CFR § 264.30(a)(2) Federal law requires that the family lose at least 25 percent of its grant. The state may reduce the grant even further. It may also refuse to provide assistance (or further assistance) to the entire household. 42 USC § 608(a)(2) and 45 CFR § 260.30(c) As can be seen in Appendix 2, some states reduce the grant, some terminate it, and still others begin with a reduction and eventually terminate if either a certain period of time passes and there is still no cooperation, or the obligated individual cooperates and then commits a new failure to cooperate without good cause.

⁵ DHHSOIG. CLIENT COOPERATION WITH CHILD SUPPORT ENFORCEMENT Use of Good Cause Exceptions. (2000) available at www.oig.hhs.oei/reports.

⁶ Id.

⁷ States which fail to implement sanctions for non-cooperation as recommended by their state’s child support enforcement program can be sanctioned by the federal government and lose as much as 5 percent of their TANF funding. 42 USC § 609(a)(5) and 45 CFR §§264.30 and 264.31

In short, there are some federal parameters that govern who must cooperate, what cooperation means, and what the penalty for non-cooperation is. States may go beyond these parameters and require cooperation from those not covered by the federal requirement, and can impose cooperation criteria in addition to those described in federal law. States can also go beyond a grant reduction and make an entire family ineligible for TANF assistance if they choose to do so.

Medicaid

The Medicaid program provides health care coverage to low income families. 42 USC § 1396 *et seq.* Like TANF, this program has child support assignment and cooperation requirements. An individual seeking Medicaid coverage must assign to the state any rights the individual has to medical support. The individual must also assign the medical support rights of any children in the family if he/she has the legal capacity to do so. 42 USC § 1396k(a)(1)(A) The assigning individual may sign a specific document to this effect, or the assignment may be automatic under state law. In the latter case, the state must inform the individual that by applying for Medicaid, he/she is deemed to have assigned his/her support rights. 42 CFR §433.146(c)

The individual must also cooperate with the state in establishing paternity for any child in the family whose paternity has not yet been established, and obtaining medical support for him/herself and the children. 42 USC § 1396k(a)(1)(B) Federal regulations define cooperation. 42 CFR §433.147(b) It includes 1) providing relevant information or evidence; 2) appearing as a witness at hearings; 3) attesting to lack of information under penalty of perjury if requested information is not available; 4) paying the Medicaid agency any monies collected by the individual that are covered by the assignment; 5) taking any other reasonable steps to establish paternity and secure medical support. 42 CFR §433.147(b)

Pregnant and post-partum women are exempt from the cooperation requirement.⁸ 42 USC § 1396k(a)(1)(B) See, also 42 CFR §433.145(a)(2). In addition, as with TANF, there is a good cause exception to the requirement. The statute requires that this determination take into account the best interests of the individuals involved. 42 USC § 1396k(a)(1)(B) In the context of paternity establishment, the regulations focus on the “best interests of the child.” 42 CFR § 433.147(c)(1)⁹ If paternity is not at issue and some other element of cooperation is required (e.g., the provision of information, help in obtaining payments) the regulations are slightly different for individuals who have claimed a good cause exception from the cooperation requirement in the TANF program and those who have not done so.

- If the state’s TANF agency has already made a determination that good cause does or does not exist, the Medicaid agency is required to adopt this finding. 42 CFR § 433.147(c)(1)¹⁰

⁸ However, once the post-partum period ends, the mother must assign medical support rights and cooperate with the state in establishing paternity and pursuing those rights. If she fails to do so, she will lose her Medicaid coverage.

⁹ The federal regulation also states that the determination is to be “in accordance with the factors specified for the Child Support Enforcement Program at 45 CFR Part 232.” Unfortunately, that part has been repealed, so it is not clear what other standards may apply.

¹⁰ This rule applies in the paternity context as well. 42 CFR § 433.147(c)(1)
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- If there is no TANF agency decision on this issue – either because the family has never received TANF or has received TANF but never raised the good cause issue before—then the decision must be based on the best interests of the individual or person to whom Medicaid is being furnished. In deciding this, the agency must anticipate whether cooperation could result in reprisal against the individual or the person to whom Medicaid is to be furnished. The anticipated harm could be either physical or emotional. 42 CFR § 433.147(c)(2)

An individual who is pregnant or does not qualify for the good cause exception will be required to cooperate. However, there is currently no requirement that state Medicaid agencies refer applicants or recipients to their state child support enforcement agency. Therefore, they can refer all cases, some cases, or no cases to the state child support enforcement agency for services.¹¹ States are encouraged to refer “appropriate” cases. While “appropriate” is not defined, if private health care coverage is already in place, a referral should not be made.¹²

In short, it appears that a state could require an individual to provide information necessary to fulfill the cooperation requirement, but not refer the case to the child support program for action and still be consistent with federal law. For example, in a domestic violence situation, a Medicaid worker might be concerned about what would happen if the child support agency pursued the non-custodial parent to establish paternity and/or secure medical support. Rather than going through a formal good cause process, the worker might simply not immediately refer the case to the child support agency, but wait to see how things develop. A referral might never be made, or a good cause exception might be granted at a latter time.

If a referral to the child support agency is made, the referred individual will not have to pay any fees or costs for the child support services. 42 USC § 654(6) and 45 CFR §§ 302.33(a)(1)(ii) and (a)(3) The agency will locate the absent parent, establish paternity (if necessary), establish a medical support order, enforce that order, and periodically modify it as appropriate. 45 CFR § 303.31(b) If the child support agency is able to establish and enforce an order for private health care coverage, this coverage will be the child’s primary carrier. The child will still be eligible for Medicaid services that are not covered by the private policy.

If the adult who is subject to the cooperation requirement fails to cooperate with either the Medicaid agency or the child support enforcement agency, Medicaid coverage will be denied to that individual. If the individual is already receiving Medicaid, then he/she will be terminated from the program. The children, however, are still eligible for coverage. This is because the statute requires cooperation from those who are “legally able”. Since children are not considered “legally able” to cooperate, their eligibility cannot be affected by the cooperation requirement.¹³

¹¹ See, Center for Medicare and Medicaid Services, Fact Sheet #5 MEDICAID AND SCHIP AND MEDICAL CHILD SUPPORT ENFORCEMENT (September 16, 2004) page 2, available at www.cms.hhs.gov/schip/factsheets/chfscse.asp (hereafter “Fact Sheet #5)

¹² Fact Sheet #5, *supra*, page 2..

¹³ *Id.*, page 1.

A recent study of the Medicaid cooperation requirement in five states concluded that there were a number of problems in the system, particularly in regard to obtaining a good cause exception to the cooperation requirement. In addition, many state materials did not adequately explain the requirements and many parents were confused about their actual obligation.¹⁴

State Children's Health Insurance Program (SCHIP)

Like Medicaid, the SCHIP program provides access to health care coverage. It serves children whose family income is above the Medicaid level but still too low to provide them with access to private health care coverage.¹⁵ As a condition of eligibility for SCHIP, the child cannot have private health care coverage. This makes a medical support cooperation requirement somewhat problematic: successful pursuit of medical support might lead to private coverage and thereby make the child ineligible for SCHIP. If the private coverage is less comprehensive and/or involves high deductibles or co-payments, the child could actually be harmed by the pursuit of medical support. Happily, the federal statute does not contain a child support assignment or cooperation provision.

However, a state could incorporate these requirements into its SCHIP program in one of two other ways:

- It could structure its SCHIP program as a Medicaid expansion. If it does this, then the Medicaid assignment and cooperation provisions described above would apply. Twelve states have chosen to implement their SCHIP program solely as a Medicaid expansion. Another eighteen have some participants in a Medicaid expansion and others in a separate state program. Thus, in thirty states at least some SCHIP households are subject to assignment and cooperation requirements.¹⁶ See Appendix 1.
- A state could design SCHIP as a completely separate program. In that case, the Medicaid provisions would not apply. Eighteen states fall into this category. However, a state could impose such requirements under state law or policy.¹⁷

If the state implements its SCHIP program through a Medicaid expansion and the individual who enrolls the children refuses to meet the assignment or cooperation requirements, the children must nonetheless be covered.¹⁸ If the state opts for a separate program and imposes a state-based assignment or cooperation requirement, the children must also be covered as they meet the federal eligibility criteria. Since adults are generally not covered by SCHIP, they cannot be

¹⁴ Pat Redmond. A MEDICAID PERSPECTIVE ON MEDICAL SUPPORT COOPERATION: a STUDY OF PROCEDURES IN FIVE STATES. 2005. available from the Kaiser Commission on Medicaid and the Uninsured.

¹⁵ A few states have waivers of the SCHIP rules so that parents may also be covered, but this is not the general rule.

¹⁶ As noted above, the state Medicaid agency does not have to refer these individuals to the child support agency under current Medicaid law. If private coverage is not available, is not adequate and/or contains high fees, co-payments and deductibles, the Medicaid agency could simply not make a referral.

¹⁷ Fact Sheet #5, supra, page 2.

¹⁸ Id. page 1.

deemed ineligible or terminated from the program. Thus, even if the state imposes assignment and cooperation requirements in a separate SCHIP program, there is no meaningful sanction available to enforce them. For that reason, no state currently appears to impose such obligations.

Food Stamps

Every state also offers a program pursuant to which both single individuals and families can receive assistance in purchasing food. This program is called the Food Stamp Program (FSP). 7 USC § 2011 *et seq.* In order to receive benefits, the household must have low income and limited resources. 7 USC § 2014 The actual size of the benefit varies by income and family size: the poorest and largest families receive the greatest amount of benefits.

States have the *option* to impose a child support cooperation requirement on *either custodial or non-custodial parents* who participate in the FSP. The state program may impose such requirements on only custodial parents¹⁹, only non-custodial parents, or both. 7 USC §§ 2015(l) and 2015(m)²⁰

If a state imposes a child support cooperation requirement on either parent, it may limit the requirement to certain classes of individuals. For example, a state might choose to impose a child support cooperation requirement only on custodial parents who do not receive TANF assistance. Alternatively, it might apply the requirement to all custodial parents receiving food stamps. If it makes the latter choice, then custodial parents who receive TANF will have both a TANF child support cooperation requirement and an FSP program cooperation requirement.

Custodial Parent Cooperation Obligations. If the state adopts a child support cooperation requirement for *custodial parents*, it must define what it means by “cooperation.” The federal regulations do not provide specific guidance on this issue. They do specify that if a state takes up this option, it must notify all individuals who are subject to this requirement in writing at the time they apply and at reapplication for benefits. 7 CFR § 273.11(o)(1)(i)

A state exercising this option must also provide a good cause exception from the requirement. 7 USC §2015(l)(2) The federal regulations define “good cause” to include those reasons the state has adopted in its TANF program. 7 CFR § 273.11(o)(2)(i)(A) In addition, good cause can be found when cooperating with the child support agency would make it more difficult for an individual to escape domestic violence or unfairly penalize an individual who has been a victim of domestic violence. “Domestic violence” is defined to include situations where the individual who is required to cooperate or the child would be subject to physical acts that result in, or threaten to result in, physical injury, sexual abuse, sexual activity involving a dependent child, rape, or attempted rape. It also includes mental abuse, neglect, or deprivation of medical care. 7 CFR § 273.11(o)(2)(i)(B) Finally, a state can establish other “good cause” criteria at its discretion. 7 CFR § 273.11(o)(2)(i)(C)

¹⁹ The regulations define “custodial parent” to be a natural or adoptive parent who lives with his or her child *and* any other individual who is living with and exercising parental control over a child under age 18. 7CFR § 273.11(o) Thus, the term encompasses relatives and non-relatives with whom a child may be living.

²⁰ The statute is not clear about whether individuals other than parents could be subject to the requirement. The regulations do not clarify this issue and states are told it is up to them to decide.

If the individual subject to the cooperation requirement is receiving TANF or Medicaid and has already been determined to have good cause for not cooperating, then the individual's FSP cooperation requirement is met. 7 CFR § 273.11(o)(1)(iii) Otherwise the individual must prove his/her good cause claim pursuant to the same standards as those used for proving a TANF good cause claim. Moreover, the evidence submitted must be evaluated and found to actually verify the claim. 7 CFR § 273.11(o)(2)(ii)

Once it is determined that a custodial parent is subject to the Food Stamp Program cooperation requirement and does not have good cause for refusal to cooperate, the food stamp agency must refer the individual to the state child support enforcement agency. 7 CFR § 273.11(o)(1)(ii) That agency may not charge fees or costs for its services. 7 CFR § 273.11(o)(4)

If an individual is found to be uncooperative, that individual is disqualified from participating in the FSP. 7 CFR § 273.11(o)(3) The disqualification lasts until the individual cooperates. The state must have procedures in place for re-qualifying such individuals. 7 CFR § 273.11(o)(4) During the disqualification period, the rest of the household does continue to receive assistance. The disqualified member's resources and a pro rata share of his/her income are counted in determining the household's eligibility and allotment. 7 CFR § 273.11(o)(3)

Non-custodial Parent Cooperation Requirements. As noted above, a state may also subject non-custodial parents to a child support cooperation requirement. A non-custodial parent is one who is or is alleged to be the parent of a child²¹ under the age of 18. 7 CFR § 273.11(p)(1) An individual who is subject to such a requirement must cooperate in establishing paternity (if that is an issue) and providing child support. 7 CFR § 273.11(p)(1)(iv)

If a state adopts a child support cooperation requirement for non-custodial parents, it must inform them in writing at the time they apply for assistance and at re-application for continued benefits. 7 CFR § 273.11(p)(1)(i) Neither the statute nor the regulations provide a good cause exception to this requirement. However, if the individual subject to the FSP programs cooperation requirement is also receiving assistance from TANF or Medicaid (or is already receiving assistance from the child support enforcement program), and has been determined to be cooperating or to have good cause for not cooperating, then the food stamp agency will adopt this determination as well. 7 CFR § 273.11(p)(1)(ii)

As with the other programs described above, individuals who are required to cooperate will be referred to the state's child support program. 7 CFR § 273.11(p)(1)(iv) They will not be required to pay fees and costs for the services. 42 USC § 654(6)(B) and 7 USC §§2015(l)(3) and 2015(m)(3) See, also 7 CFR §273.11(p)(4).

If the child support agency determines that an individual is not cooperating in good faith, it will inform the food stamp agency and the individual. 7 CFR § 273.11(p)(1)(v) The food stamp agency will then determine whether the refusal is due to unwillingness or inability. If it finds that the non-cooperation is due to unwillingness, then it will sanction the individual. This may mean

²¹ This allows the state to impose the requirement on someone whose parentage has not yet been established. This is generally the situation in which a child's paternity has not yet been determined.

a loss of benefits (if the individual is a household of one) or a reduction in benefits (if the individual is embedded in a larger household). The sanctioned individual's resources will still be counted as will a pro rata share of his/her income. 7 CFR § 273.11(p)(3) The sanction lasts as long as non-cooperation continues. The state must have a procedure for re-qualifying sanctioned individuals once they cooperate. 7 CFR § 273.11(p)(6)

To date, few states have imposed such requirements on custodial or non-custodial parents. See Appendix 1.

Child Care

States offer some low-income families access to subsidized child care funded through the Child Care Development Fund (CCDF). Federal law does not require parents who receive subsidies to assign their child support rights to the state or cooperate in establishing paternity or pursuing child support. However, a number of states have enacted state law or policy that requires custodial parents to use the services of the state's child support enforcement program and to cooperate with that program in establishing paternity and pursuing support. Failure to do so leads to the loss of the subsidy.

Because there is wide difference in state approaches, it is not possible to provide a general description of the state policies on fees, exemptions, or good cause policies. These are detailed on a state-by-state basis in Appendix 4.

PROGRAM INTERACTIONS

If a low-income family receives some form of federally-funded assistance, it is likely to be subject to a child support cooperation requirement. As a result the individual who is required to cooperate will be dealing with both the agency responsible for the assistance and the child support enforcement agency. For most individuals subject to a cooperation requirement, that is not a problem. These individuals welcome the chance to pursue child support and obtain the additional income and/or health care coverage they might obtain. Indeed, families receiving some form of benefits receive over \$5 billion in income each year through child support.²² These individuals are also advantaged by being relieved of any obligation to pay fees or costs for child support services.

If the household participates in more than one public benefits program, there is some potential for overlap and inconsistency, however. As detailed in the individual program discussion above, for the most part the federal regulations minimize potential problems, especially if the combination of programs in which the household participates includes TANF. Note that:

- If the household participates in TANF and Medicaid, the cooperation requirements are quite similar. Moreover, if the TANF agency has already determined that the individual is entitled to a good cause exemption to the cooperation requirement, the Medicaid agency must adopt this finding. 42 CFR §433.147(c)(1)
- If the household participates in TANF and the FSP in a state which has opted to impose a child support cooperation requirement on custodial parents receiving food stamps, the cooperation requirements are also likely to be similar. In addition, if the TANF program has already determined that the individual has good cause for not cooperating, the food stamp agency must accept that determination. 7 CFR § 273.11(o)(1)(iii)
- If the state imposes a child support cooperation requirement in its child care programs, the interrelationship is not so clear and problems could occur. For example, as indicated in Appendix 4, states that have decided to impose a child support cooperation requirement on families receiving subsidized child care have generally not developed written guidance on how the cooperation requirements in the different programs interrelate. Only Connecticut has specific guidance stating that if a family is already cooperating with Medicaid or TANF, their child care obligation is met.

This scheme for dealing with interrelated programs does have one overarching flaw, however. Since TANF is the lynchpin program, if a state defines cooperation in a way that makes it

²² According to a recent study, families receiving TANF obtained about \$1 billion a year in income from child support collected by the state's child support enforcement agencies those receiving food stamps, Medicaid, SSI or housing supplements obtained \$4 billion through such collections. See US Department of Health and Human Services. INDICATORS OF WELFARE DEPENDENCE Annual Report to Congress. (2005). Table ECON 6, p. III-15 available at <http://aspe.hhs.gov/hsp/Indicators05/index.htm>

difficult to meet the obligation, there will be serious consequences for the household beyond the TANF program. Similarly, if the state has a very narrow definition of good cause, or has very high standards of proof to establish a good cause claim in its TANF program, benefits from other programs may be affected in a serious way. This is especially true for households participating in both TANF and the FSP. This problem is explored below.

Households Receiving TANF and Food Stamps

There are approximately one million single-parent households with children that participate in both TANF and the FSP.²³ If the responsible adult in one of these households is found not to be cooperating with the TANF agency in establishing paternity or pursuing support and does not have good cause for this non-cooperation, the TANF grant will be reduced or eliminated. See Appendix 2.

No Increase in FSP Benefits Despite a Loss of TANF Income. Normally, if a household loses income, its food stamp benefits will increase. However, if the loss of income is the result of a TANF sanction for non-cooperation with child support enforcement efforts, then the food stamp allotment cannot be increased. 7 USC § 2017(d)(1)(A) In other words, the loss of TANF income will not be offset by an increase in food assistance. See, 7 CFR §273.11(j)

This limitation on increasing benefits lasts only as long as the TANF sanction. 7 CFR § 273.11(j)(2) Moreover, if the TANF sanction lasts longer than a year, the food stamp agency must review the case to determine whether the ban on increasing benefits is still appropriate. Thereafter, it must conduct a yearly review and may discontinue the ban on increasing benefits at any time. 7 CFR § 273.11(j)(2) Moreover, if the TANF sanction is lifted, or the household leaves the TANF program, then its food stamp benefits must be based on actual income. 7 CFR § 273.11(j)(5)

Optional Reduction in FSP Benefits. States have the *option* to further punish the household of the non-cooperating individual by *reducing* its food stamp benefits by up to twenty five percent. 7 USC §2017(d)(1)(B) (The state is free to choose a lower percentage, but not a higher one.)

To assess the potential impact on households if a state elects this option, an example is useful. Assume a household consists of a mother and two children. The family's TANF benefit is \$400 per month and they receive \$ 240 per month in food stamps, for a total income of \$640 per month. For non-cooperation with a child support cooperation obligation, the state imposes a 25 percent TANF grant reduction. If the mother is found to be non-cooperative, then the TANF grant will drop to \$300. Under the mandatory no-increase-in-benefits provision discussed above, food stamp benefits will not be adjusted to take this loss of income into account so they stay at \$240. If the state adopts the optional benefit-reduction provision, it must use the actual TANF grant of \$300 to calculate food stamp benefits. If the family would receive \$280 in food stamps with this income, up to a \$70 reduction (25% x \$280) can be imposed. Then, the household's TANF benefit will be \$300 per

²³ There are approximately 3.2 million households receiving food stamps which are headed by a single adult; a little over 1 million of these households also have income from TANF. Karen Cunyngnam and Beth Brown, CHARACTERISTICS OF FOOD STAMP HOUSEHOLDS:FISCAL YEAR 2003 (2004) , Table 3.3 available at www.fns.usda.gov/oane

month and its food stamps will be worth \$170 (\$240 –70). The net loss of household income for non-cooperation is then \$170 per month (\$640 - \$470).

Comparable Disqualification. Another option available to the state is to disqualify the individual who is not cooperating with the TANF program from participating in the FSP.²⁴ 7 USC § 2015(i) and 7 CFR § 273.11(k). This is referred to as a “comparable disqualification” and can be imposed in addition to or in lieu of the optional benefit reduction discussed above. 7 CFR § 273.11(k)(10)

A comparable disqualification can only be imposed on the non-cooperative individual. This is true even if the TANF agency sanctions the entire family 7 CFR § 273.11(k)(5) The income and resources of the disqualified individual must be prorated in determining the eligibility and benefits for the rest of the household members. 7 CFR § 273.11(k)(8)

As with the ban on increasing benefits for a sanctioned household, the individual disqualification in the FSP can last only as long as the TANF finding of non-cooperation is in place. Once the individual cooperates with the child support system and the TANF sanction is lifted, the sanctioned individual is once again eligible to participate in the FSP. Moreover, the FSP sanction must be reviewed at the end of the first year and every year thereafter. The food stamp agency must determine whether the sanction is still appropriate and may lift the disqualification at any time. 7 CFR § 273.11(k)(6)

As can be seen in Appendix 1, 14 states have taken the option to impose a comparable disqualification. One study (conducted in 2000) suggests that this means that about 25 percent of the food stamp caseload that participates in TANF is potentially affected by these policies.²⁵

²⁴ It is worth noting that the individual must actually be receiving TANF to face disqualification. If the individual has applied, and been found non-cooperative before actual receipt of assistance, this provision does not apply.

²⁵ Vivian Gabor, Brooke Layne Hardison, Christopher Botsko, and Susan Bartlett. FOOD STAMP ACCESS STUDY. December 2003.

EFFECT OF THE CHILD SUPPORT COOPERATION REQUIREMENTS

About 60 percent of single parent families participate in one of the state-based child support enforcement programs. The percentage is even higher among low-income families: 84 percent of single parent families below the poverty line participate in the government's child support program.²⁶ Moreover, those not in the government program may have an informal support relationship with the non-custodial parent or be receiving private child support services.

One could certainly look at these numbers and conclude that the vast majority of low-income single parent families are already in the child support enforcement system. In this context, a cooperation requirement may be redundant. It also requires considerable coordination between the various public assistance programs and generates the need for substantial coordination of automated data bases.

There is also some evidence that child support cooperation requirements are not well understood by the individuals who are subject to them and that communication between program caseworkers and child support enforcement staff is often problematic. For example, in a series of studies done by the Department of Health and Human Services Office of the Inspector General (OIG) in regard to the interaction of the TANF and child support enforcement programs, the OIG found that child support staff expressed frustration about reaching a client's TANF caseworker while TANF workers expressed the same feeling about the difficulty of reaching their child support counterparts. This affects the ability of those workers to cooperate and share information.²⁷ It also presents problems to sanctioned individuals. For example, a TANF caseworker might be trying to assist a sanctioned client to reschedule a missed appointment so a sanction can be lifted. If the TANF caseworker can't reach the child support staff person, then the sanction remains in place. If the FSP has adopted a comparable sanction policy, then both the TANF and the food stamp benefits will continue to be reduced, likely causing harm to the children in the household.

Another way in which children can be harmed is if the cooperation requirements cause the responsible individual to simply not apply for assistance. Children may then become homeless or hungry; they may not receive adequate medical care; they may become latch-key children at a very young age. It is difficult to determine how frequently this happens, but anecdotal evidence suggests that it is a problem. This may be a particular problem for grandparents and other relatives who take custody of children who have been abandoned by parents with serious mental health issues or drug/alcohol problems. These relatives may be reluctant to pursue child support for fear of antagonizing the absent parent and/or triggering a custody fight.

²⁶ For more data on participation in the child support enforcement program see <http://aspe.hhs.gov/hsp/CSE-Char04/index.htm>

²⁷ DHHSOIG. CLIENT COOPERATION WITH CHILD SUPPORT ENFORCEMENT The Role of Public Assistance Agencies. (2000) available at www.oig.hhs.oei/reports

RECOMMENDATIONS

Given the issues discussed above, it appears that the following would be prudent steps to take to assure that the child support cooperation requirement actually benefits children and their families:

1. Limit further expansion of child support cooperation requirements. The primary goal of a child support cooperation requirement is to insure that eligible families know about the availability of services and take advantage of those services. If families do this, many will have an increase in income (through the support payment) and/or be able to access private health care coverage. Ultimately, this may decrease their dependence on public benefits programs.

The data show that the vast majority (84%) of low-income single parent families are already enrolled in their state's child support enforcement program. Others are using the services of a private attorney, pro bono program, or law school affiliated legal clinic. Still others have an informal agreement with the other parent. Thus, the goal of the child support cooperation requirement is being met.

It therefore seems both redundant and needlessly bureaucratic to expand child support cooperation requirements into new programs like child care and SCHIP. Unless the goal is to punish children, it also seems unnecessary to impose child support cooperation requirements on families participating in the FSP. By-and-large, the individuals subject to the child care, SCHIP and FSP requirements are already in the system and/or are subject to a child support cooperation requirement in another program in which they are participating. Those who are not enrolled could be given information about the child support program and the services it provides. They could also be offered services at no cost. Those two steps would likely bring in any remaining households that would want to pursue child support. Households that did not wish to pursue child support would likely be those who would otherwise be able to claim a good cause exception. Why make individuals and caseworkers go through this process if the outcome is likely to be that a referral to child support will not be made?

Finally, the need for sophisticated computer interfaces to make multiple child support cooperation requirements function in the way contemplated by the federal regulations is enormous. Each individual state agency needs to be able to track individuals participating in other state public benefits programs, ascertain when a sanction has been imposed or lifted, and swiftly correct its own records. In the absence of such interface, individual caseworker time must be taken from other tasks. If the interface does not work timely or properly, there is also a substantial likelihood that families will go without food, clothing, shelter and medical care.

2. Review the rules of the state's TANF program to be sure that cooperation is clearly defined and fully explained to covered individuals. As discussed above, the TANF child support cooperation requirement serves as a lynchpin. If an individual is found to be cooperative by the TANF system, that individual is also deemed cooperative for purposes of Medicaid and food stamps. Conversely, if an individual is not deemed to be cooperative for

purposes of the TANF program, then there can be ripple effects in both Medicaid and food stamps. This is especially true in states which have chosen to implement a comparable sanction in the FSP when an individual is not deemed to have complied with the TANF cooperation requirement.

It is, therefore, imperative that the TANF child support cooperation requirement be spelled out in detail and that TANF applicants and recipients are aware of what they are required to do.

3. Review the TANF good cause exceptions and the standards for proving an exception. Again, since TANF is the lynchpin, it is very important that the state's good cause exceptions are clearly spelled out for applicants and recipients. Thereafter, the exceptions should be reviewed at recertification so that affected individuals know that they can claim good cause at any time it seems appropriate.

In addition, this would be a good time to review the standards and the burden of proof in making a good cause claim. In states which require documentation, every effort should be made by the caseworker to assist the individual making the claim to obtain those documents. This is especially true when there are fees and costs associated with the documentation. Those fees and costs should be absorbed by the state if it is going to insist on documentary evidence.

In cases where the claim is based on domestic violence, the state should also have procedures in place to minimize contact between the parties and protect confidential information (e.g., an address) if the state decides to proceed despite the good cause claim. These "yellow light" procedures can be used to flag cases where there is concern about domestic violence and either the individual wishes to proceed anyway or he/she is unable to meet the state's good cause standards but there are nonetheless concerns.²⁸

4. Review the program interfaces so that it is possible to quickly and easily determine when a covered individual has already met a child support cooperation requirement or established a good cause exception. Individuals subject to cooperation requirements in more than one program can often meet their obligation by qualifying as cooperative or exempt in a single program. Indeed, the federal regulations are structured to minimize hassles for program participants by establishing this principle. However, the principle does not work well if the various programs are not linked to one another in such a way as to facilitate communication on these issues.

This can be especially troublesome if an individual has been sanctioned by TANF and then cures the sanction by cooperation. The FSP needs to know this very quickly so that any sanction in food stamp benefits can be quickly lifted as required by the FSP regulations.

²⁸ For an extensive discussion of these issues see Susan Notar and Vicki Turetsky. "Models for Safe Child Support Enforcement" 8 *Journal of Gender, Social Policy and the Law*, Number 3 (2000), pp. 657- 716.

APPENDIX 1

Child Support Cooperation Requirements in Public Assistance Programs by State

	TANF	MEDICAID	SCHIP ²⁹	FOOD STAMPS	CHILD CARE
Alabama	Yes	Yes			
Alaska	Yes	Yes	Yes	CD ³⁰	
Arizona	Yes	Yes			
Arkansas	Yes	Yes			Yes
California	Yes	Yes	Yes		
Colorado	Yes	Yes			
Connecticut	Yes	Yes			Yes
Delaware	Yes	Yes			
District of Columbia	Yes	Yes	Yes		
Florida	Yes	Yes	Yes	Yes & CD	
Georgia	Yes	Yes			
Hawaii	Yes	Yes	Yes	CD	
Idaho	Yes	Yes	Yes	Yes & CD	
Illinois	Yes	Yes	Yes		
Indiana	Yes	Yes	Yes		
Iowa	Yes	Yes	Yes		
Kansas	Yes	Yes		CD	
Kentucky	Yes	Yes	Yes	CD	
Louisiana	Yes	Yes	Yes		
Maine	Yes	Yes	Yes	CD	
Maryland	Yes	Yes	Yes		Yes
Massachusetts	Yes	Yes	Yes	CD	
Michigan	Yes	Yes	Yes	Yes & CD	Yes
Minnesota	Yes	Yes	Yes		Yes
Mississippi	Yes	Yes		Yes & CD	Yes
Missouri	Yes	Yes	Yes		
Montana	Yes	Yes			Yes

²⁹ These are states which have implemented SCHIP in whole or in part through a Medicaid expansion. In those states the Medicaid rules and procedures apply.

³⁰ “Yes” means the state has a distinct child support cooperation requirement for Food Stamp Program recipients. “CD” is short for Comparable Disqualification. In this case, the state does not have a specific cooperation requirement for Food Stamp households, but applicants or recipients who fail to perform an action (including child support cooperation) in TANF are automatically sanctioned by the Food Stamp Program as well.

	TANF	MEDICAID	SCHIP ²⁹	FOOD STAMPS	CHILD CARE
Nebraska	Yes	Yes	Yes		
Nevada	Yes	Yes			Yes
New Hampshire	Yes	Yes	Yes		
New Jersey	Yes	Yes	Yes		
New Mexico	Yes	Yes	Yes		
New York	Yes	Yes	Yes		Yes
North Carolina	Yes	Yes			
North Dakota	Yes	Yes	Yes	CD	
Ohio	Yes	Yes	Yes	CD	
Oklahoma	Yes	Yes	Yes		Yes
Oregon	Yes	Yes			
Pennsylvania	Yes	Yes			Yes
Rhode Island	Yes	Yes	Yes		
South Carolina	Yes	Yes	Yes		
South Dakota	Yes	Yes	Yes		Yes
Tennessee	Yes	Yes			
Texas	Yes	Yes			Yes
Utah	Yes	Yes			
Vermont	Yes	Yes			
Virginia	Yes	Yes	Yes		
Washington	Yes	Yes			
West Virginia	Yes	Yes			
Wisconsin	Yes	Yes	Yes	Yes	Yes
Wyoming	Yes	Yes		CD	

APPENDIX 2

Maximum Penalty for Non-Cooperation with the Child Support Agency for Families Receiving TANF

	MAXIMUM PENALTY
Alabama	Termination*
Alaska	Grant reduction
Arizona	Grant Reduction
Arkansas	Termination*
California	Grant reduction
Colorado	Termination*
Connecticut	Termination*
Delaware	Termination
District of Columbia	Grant reduction
Florida	Termination
Georgia	Termination
Hawaii	Termination
Idaho	Termination
Illinois	Termination*
Indiana	Termination*
Iowa	Grant reduction
Kansas	Termination**
Kentucky	Grant reduction
Louisiana	Termination
Maine	Grant reduction
Maryland	Termination
Massachusetts	Grant reduction
Michigan	Termination*
Minnesota	Grant reduction
Mississippi	Termination
Missouri	Grant reduction
Montana	Grant reduction
Nebraska	Grant reduction
Nevada	Termination*
New Hampshire	Grant reduction
New Jersey	Termination*
New Mexico	Termination*
New York	Grant reduction
North Carolina	Grant Reduction
North Dakota	Termination*
Ohio	Termination
Oklahoma	Termination*

	MAXIMUM PENALTY
Oregon	Termination*
Pennsylvania	Grant reduction
Rhode Island	Grant Reduction
South Carolina	Termination
South Dakota	Termination
Tennessee	Termination
Texas	Grant Reduction
Utah	Termination*
Vermont	Termination*
Virginia	Termination*
Washington	Grant reduction
West Virginia	Termination*
Wisconsin	Termination
Wyoming	Termination

* State first reduces the grant for a period of time. Continued non-compliance or a second instance of non-compliance increases the penalty and can ultimately lead to ineligibility/termination.

** In Kansas, a first instance of non-compliance results in no grant until compliance. A second instance results in a loss of benefits for two months, even if there is compliance.

APPENDIX 3

Comparison of the Child Support Cooperation Requirements in Various Public Assistance Programs

	DEFINITION OF COOPERATION PROVIDED	GOOD CAUSE EXCEPTION PROVIDED	OBLIGATED PARTICIPANT SUBJECT TO FEES AND COSTS	MAXIMUM SANCTION FOR NON-COOPERATION
TANF	Yes, by a combination of federal and state law and regulations.	Yes, by a combination of federal and state law and policy.	No under federal law and regulation.	Entire family ineligible for assistance.
MEDICAID	Yes, by federal regulations	Yes, by federal law and regulations.	No under federal law and regulation.	Non-cooperative individual is ineligible for services.
Stand-alone SCHIP	If the state opts to impose one, the definition will be in state law or policy.	State law or policy.	Subject to program fees and costs unless the state pays those costs or waives them.	None.
FOOD STAMPS	Yes, by a combination of federal and state law or policy.	Yes by federal law and regulations.	No under federal regulation.	Non-cooperative individual is ineligible for benefits.
CHILD CARE	If the state opts to impose one, the definition will be in state law or policy. See Appendix 4.	State law or policy. See Appendix 4.	Subject to program fees and costs unless the state pays those costs or waives them. See Appendix 4.	Child is ineligible for subsidized care. See Appendix 4.

APPENDIX 4

State Child Support Cooperation Provisions for Parents Seeking Child Care Funded by the Child Care Development Fund (CCDF)

STATE	BASIC IVD PROVISION	ALTERNATIVE PROVIDED	TIME FRAME PROVIDED	APPLICATION FEE WAIVED	GOOD CAUSE EXCEPTION
Arkansas	Parents who are separated, divorced or never married must apply for IVD services if not currently receiving child support. Relatives with physical custody must pursue support from all absent parents living in a separate household.	Yes. Case head must furnish proof that child support is being pursued through a private attorney or that there is an existing case/order pursuant to which payments are being made.	Immediately. Facts must be documented in case file.	Not addressed.	Yes. In cases of documented domestic violence, where there is joint custody, the absent parent is deceased or is incarcerated and expected to remain sp throughout the certification period.
Connecticut	Custodial parent or person acting <i>in loco parentis</i> must agree to apply for IVD services for child receiving child care subsidy.	Yes. If support is being actively pursued through private legal means <i>or</i> the family is already meeting a TANF/Medicaid child support cooperation requirement.	Not later than the first re-determination after the initial date of eligibility.	Yes.	Yes. TANF standard applies.

STATE	BASIC IVD PROVISION	ALTERNATIVE PROVIDED	TIME FRAME PROVIDED	APPLICATION FEE WAIVED	GOOD CAUSE EXCEPTION
Maryland	Applicants (parents and those with physical custody) must agree to pursue establishment and enforcement of child support.	Applicants may provide documentation that they are already pursuing or receiving support. If they do not, the local case manager will refer them to the child support enforcement (CSE) agency.	If the applicant does not provide proof at the time of application, then he/she must provide documentation of CSE services within 60 days of application.	Not addressed.	Yes. Standards similar to those for TANF.
Michigan	Some families are eligible for services regardless of income. These families are not required to pursue child support in order to obtain subsidized child care. All other families <i>may</i> be required to pursue child support	Not addressed.	Not addressed.	Not addressed.	Not addressed.
Minnesota	Applicants and participants must 1) assign the child care portion of their support order to the state; and 2) cooperate in establishing paternity and enforcing support for all minor children in the household with an absent parent.	Must use state system.	Not addressed.	Not addressed.	Yes. TANF good cause standards.

STATE	BASIC IVD PROVISION	ALTERNATIVE PROVIDED	TIME FRAME PROVIDED	APPLICATION FEE WAIVED	GOOD CAUSE EXCEPTION
Mississippi	Parents must apply for IVD services in order to receive a child care certificate.	No.	A form, signed by the IVD agency, verifying that the parent has applied for or is already receiving IVD services must be included in the child care certificate application package.	No. There is a \$25 fee for each absent parent.	No.
Montana	Non-TANF families with absent parents must apply for services from the state child support agency.	Yes. If the absent parent is paying support pursuant to an order recognized by a Montana district court.	Not specified	Not addressed.	Yes. A household may claim good cause using the state's TANF definition.
Nevada	Child's caretaker must apply for services from the local child support enforcement agency.	No.	An application form is sent to any caretaker who does not already have an open case with the child support agency. The caretaker must return the form within 10 calendar days to the child care agency which will then file it with the child support office.	Not addressed.	Yes. Similar to TANF standards..

STATE	BASIC IVD PROVISION	ALTERNATIVE PROVIDED	TIME FRAME PROVIDED	APPLICATION FEE WAIVED	GOOD CAUSE EXCEPTION
New York	Caretaker must demonstrate that child support is being actively pursued through the local child support enforcement agency.	Yes. If support is being actively pursued through other legal means.	Documentation must be provided by applicants/recipients.	Not addressed.	Yes. Exemption is provided for those who can demonstrate that pursuing child support would adversely affect the health, safety or welfare of the child or other persons in the child's household.
Oklahoma	Client must pursue child support through a referral to the state child support agency.	No.	Agree at time of application. Referral made at time of certification.	Application fee waived	Yes. TANF-like standards.
South Dakota	Recipients of child care assistance must cooperate with the child support agency in identifying and locating the absent parents(s), obtaining support payments, establishing paternity, or obtaining other payments or resources legally due.	No.	A recipient must contact the IVD agency within 6 months of applying for child care services.	Not addressed.	Yes. TANF standards apply.

STATE	BASIC IVD PROVISION	ALTERNATIVE PROVIDED	TIME FRAME PROVIDED	APPLICATION FEE WAIVED	GOOD CAUSE EXCEPTION
Texas	The parent or caretaker of a child receiving subsidized child care must cooperate with the child support agency by providing information about the absent parent, helping to locate the absent parent, helping establish paternity, and appearing at court hearings or other meetings to establish support.	No.	At enrollment.	Not addressed.	Yes. Cooperation is not required if paternity is not established after reasonable efforts to do so, the child is the product of incest, or the parent of the child is a victim of domestic violence.
Wisconsin	All parents in the child care assistance group must cooperate in good faith with the efforts of a child support agency to establish paternity or to secure and enforce a child support order on behalf of any minor child of that parent	No.	First there is an application. Within 5 days there is an interview and the agency then has seven days to determine eligibility. Since cooperation is an eligibility condition, the applicant will have to apply for IVD services or provide evidence that he/she is in the IVD system and cooperating during this time.	Not addressed.	Yes.

STATE	BASIC IVD PROVISION	ALTERNATIVE PROVIDED	TIME FRAME PROVIDED	APPLICATION FEE WAIVED	GOOD CAUSE EXCEPTION
	<p>regardless of whether that parent is a custodial or non-custodial parent in a child support case.</p> <p>In addition , foster parents and those with court-ordered kinship care must cooperate with the child support agency.</p>				