Developing Policies to Support Microenterprise in the TANF Structure: A Guide to the Law

by Mark Greenberg
Center for Law and Social Policy

FIELD

Microenterprise Fund for Innovation, Effectiveness, Learning and Dissemination

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(Lisa Plimpton of CLASP provided substantial help in the preparation of this document)

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The Center for Law and Social Policy (CLASP) is a national public interest law and policy organization that began in 1968. Since 1982, CLASP has focused on the problems of low-income families with children. CLASP focuses on job training and workforce development, child support, welfare reform, and reproductive health and teen parent issues at both the state and Federal level. CLASP has written widely about state and Federal policy proposals; provided training and technical assistance to advocates, administrators and officials; and advocated and testified before Congress and in a number of states to improve the income support, workforce development and child support systems.

The Aspen Institute, founded in 1950, is an international educational organization headquartered in Washington, DC. The welfare-to-work cluster evaluation is housed in the Economic Opportunities Program of the Aspen Institute. The staff of the Economic Opportunities Program (EOP) are primarily known for the practitioner-focused, participatory evaluation methodology developed to conduct research and assessment of community-based programs.

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Introduction

Under TANF, states have broad discretion in determining whether and how to provide support for microenterprise initiatives. In some respects, it is easier for states to support microenterprise initiatives in the TANF structure than was the case in AFDC; in other respects, it is more difficult. In AFDC, the biggest barriers to supporting microenterprise initiatives were often program income and asset rules that made it difficult for families to continue to qualify for AFDC assistance after a business began operating. Since states determine their own income and asset policies under TANF, those barriers need no longer exist. However, a new set of potential barriers arise in TANF: time limits and participation requirements that make it more difficult to support extended training opportunities for families receiving assistance. Moreover, the "work first" philosophy in many states and the political emphasis on caseload reduction in the TANF context may make states hesitant to provide TANF support for more extended periods even when there is no technical barrier to doing so.

The political challenges may be significant, but it is important to appreciate that it is ultimately up to each state to determine whether to provide support for microenterprise initiatives in TANF. If a state wishes to do so, it is possible to overcome all of the barriers potentially presented by federal requirements. Moreover, a state can exercise its discretion in the block grant structure to provide support for microenterprise initiatives both inside and outside of the state's cash assistance (welfare) system.

In developing policies, a state needs to consider the need for supports during two stages of microenterprise development: First, a family may need access to microenterprise training and may need support (income support, child care, health care) during the initial period of participation in microenterprise training and business development. Second, once a microentrepreneur begins to operate a business, the family may need support (i.e., income support, child care, health care, continued access to counseling and training) for some period of time.

A state's ability to address these needs turns on the policies that it develops The following pages summarize the relevant TANF law in eight areas that may need to be considered in designing policies in support of microenterprise efforts:

- expenditures of TANF, state maintenance of effort, and Welfare-to-Work grant funds for microenterprise training and support;

- the TANF definition of assistance;
- TANF work and participation requirements;
- TANF time limits
- treatment of income;
- treatment of assets;
- child care assistance;
- Medicaid coverage.

This is not a comprehensive discussion of each issue or of all aspects of TANF but rather than overview of the relevant law that forms the backdrop as states develop their policies.

An earlier version of this document was prepared for the grantees of the Mott Foundation's "Micro-enterprise Development Initiatives for Welfare to Work" demonstration, as part of the Aspen Institute's Learning Evaluation of the demonstration. The three-year demonstration, involving eleven state and local grantees in nine states, is seeking to learn about the experience of and lessons from programs providing microenterprise training and support under TANF. The state policy decisions described in this document are drawn from those nine states.

FUNDING MICROENTERPRISE TRAINING WITH TANF DOLLARS

A state may fund microenterprise training for needy families by using federal TANF block grant funds, state maintenance of effort (MOE) funds, and Welfare to Work grant funds. The rules governing each of these funding streams are somewhat different, but each provide a potential source of funding.

First, a state may spend federal TANF funds to provide microenterprise training for members of needy families with children. The use of federal TANF funds is permissible because states may (unless otherwise prohibited) use federal TANF funds in any manner reasonably calculated to accomplish the purposes[1] of TANF, and a program that provides employment preparation for parents in needy families furthers one or more of the statutory purposes. As discussed below, there may be some situations in which a microenterprise training effort does not count toward federal TANF participation rates, but this does not affect whether the expenditure of TANF funds is permissible. Rather, it is permissible because it furthers a statutory purpose and is not otherwise prohibited.[2]

Note that a state could use TANF funds to provide microenterprise training to needy parents whether or not those parents are receiving TANF cash assistance. Because TANF is a block grant, the funds can be used to operate multiple programs, and particularly in states where there has been a large decline in the cash assistance caseload, the state may be able to use TANF funds for a range of other services and activities. The state would probably need to limit TANF-funded microenterprise training to "needy" parents, but the state has broad discretion in determining when a parent is needy. The determination that a parent is needy must be based on income guidelines (and if the state chooses, a resource test), but it is up to the state to determine the maximum income level for eligibility.[3]

A second possible source of funding for microenterprise training is the state's maintenance of effort (MOE) funds. Under the federal law, each state is required to maintain a specified level of state spending for needy families each year as a condition of receiving a TANF grant. The state

may meet its MOE obligation by spending state funds in the TANF Program, but the state can also choose to spend state MOE funds in separate state programs outside of TANF. Maintenance of effort funds must be spent for certain allowable purposes for "eligible families."[4] One allowable purpose is job training.[5] A family with one or more children may meet the definition of "eligible family" if the family satisfies the income and (if applicable) resource standards set by the state.[6]

Since a state can spend maintenance of effort funds for microenterprise training, the state might choose to either do so within its TANF program or in a separate state program. The potential advantage of a separate state program is that the participants in that program do not receive "TANF assistance"so they are not subject to TANF time limits and work participation requirements (though the state is free to establish its own appropriate requirements.) Another potential advantage is that such a program could provide training and other supports in a non- welfare context, which many participants might prefer. Initially, proposed federal regulations had sought to discourage states from using separate state programs by suggesting that states operating such programs could be at greater risk of receiving TANF penalties. However, final regulations issued April 12, 1999 eliminate any greater risk of penalties for states using separate state programs.[7] Accordingly, if a state wished to use part of its MOE funds to design a program of microenterprise training for needy families wholly outside of TANF, the state can do so. The state might, for example, structure a non-welfare program in which participants received a needs-based stipend during participation in training

Finally, all states could qualify for a share of $3 billion in federal Welfare to Work (WtW) grant funds in FY 98 and FY 99,[8] and significant amounts of those funds have not yet been spent. Generally, a state's share of funding must be expended on certain "allowable activities" for a population of "hard-to-employ individuals" and "individuals with long-term welfare dependence characteristics."[9] One allowable activity is "job readiness" and the Department of Labor has expressly stated that "Job readiness may, however, include training for WtW participants starting their own businesses."[10] Support services may be provided with WtW funds (if not otherwise available to the participant) after an individual is placed in a job readiness activity, employment activity or job: allowable support services can include transportation assistance, substance abuse treatment (but not medical treatment), child care assistance, emergency or short term housing assistance, and other supportive services.[11] WtW funds may also be used for Individual Development Accounts.[12]

THE TANF DEFINITION OF "ASSISTANCE"

As described above, a state may use TANF funds to provide microenterprise training for needy families whether or not those families are receiving "TANF assistance." However, there are an important set of consequences when a family receives TANF assistance. Under newly issued federal regulations, some services and benefits provided with TANF dollars are considered "assistance" and other services and benefits are considered "nonassistance."

Many TANF provisions apply to the receipt of "TANF assistance." For example:

- **Time Limits:** The state may not use federal TANF funds to provide assistance to a family in which the adult head of household or spouse of the head of household has received federal TANF assistance for sixty months (subject to limited exceptions);
- **Participation rates:** If a family including an adult or minor parent head of household receives TANF assistance (whether federally funded or state funded), the family is considered part of the state's caseload for purposes of TANF participation rate requirements;

- **24-month work requirement:** The TANF 24-month work requirement is a requirement that a parent or caretaker receiving TANF assistance (whether federally funded or state funded) be engaged in work (as defined by the state) by the time that he or she has received TANF assistance for 24 months;
- **Child Support:** A family receiving TANF assistance (whether federally funded or state funded) is required to assign its child support to the state;
- **Prohibitions:** A set of prohibitions bar the state from providing TANF assistance (or in some cases, federally-funded TANF assistance) to certain groups of families and individuals; and
- **Data Reporting:** A set of data reporting requirements apply to those receiving TANF assistance (whether federally funded or state-funded).

Under new federal regulations, assistance has been defined to include "Cash, payments, vouchers and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." "Assistance" also includes stipends and allowances for participation in education and training, and includes supportive services such as transportation and child care provided to non-employed families, unless the supportive service falls within a list of exclusions.[13]

There are some importance exclusions from the definition of assistance. Assistance does *not* include nonrecurrent short-term benefits that:

- are designed to deal with a specific crisis situation or episode of need;
- are not intended to meet recurrent or ongoing needs; *and*
- will not extend beyond four months.

Also excluded from the definition of assistance are:

- Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
- Support services such as child care and transportation provided to families who are employed;
- Refundable earned income tax credits;
- Contributions to and distributions from Individual Development Accounts;
- Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
- Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.[14]

The new definition of assistance has potentially important implications for the design of microenterprise training and for providing supports to families after they begin self-employment. Specifically:

- The provision of training would not be considered assistance, so if participation in a TANF-funded training program is the only benefit received by a family, the family is not considered to be receiving TANF assistance.

- If a family is receiving a TANF-funded cash payment for basic needs during the period of participation in microenterprise training, then it will fall into the definition of assistance, whether the cash payment is structured as "welfare" or as a "stipend."
- Even if the family is receiving no cash payment, but is only receiving TANF-funded child care or other support services, those support services will still fall within the definition of assistance during the time that the family is not employed.

Thus, if the state wants to avoid imposing the array of TANF requirements on families participating in a microenterprise training program, the state has several choices:

- The state might provided TANF-funded training, and provide supportive services funded from another source. If any basic needs payment is provided, it would need to be from a non-TANF source.
- The state might develop a separate state program funded with MOE dollars to provide the training, supportive services, and basic needs payments to families.

If the families participating in the training are receiving TANF assistance, then the state will need to consider the set of issues concerning work and participation requirements and time limits discussed in the next sections.

Note, however, that after the parent begins to be engaged in self-employment, it may be possible to structure supports provided to the parent so that they are nonassistance. Once an individual is considered employed, supportive services provided are not considered assistance. The federal regulations do not define "employed," so a state may develop its own reasonable definition to address the circumstances of self-employment. And, the state might consider providing the family with a work expense allowance (which would seem to be excluded from the definition of assistance) instead of a payment to meet basic needs (which would be considered assistance.) However, if a self-employed individual continues to receive a TANF payment to meet basic needs (or any other benefit that falls within the definition of assistance), then that family will still be considered to be receiving "assistance" for TANF purposes.

TANF WORK AND PARTICIPATION RATES

If a family that includes an adult receives TANF assistance, then the family becomes subject to a set of work and participation requirements. There are four work and participation requirements associated with TANF that affect both states and individuals. Some of the federal requirements could make it more difficult to provide microenterprise training for families receiving TANF assistance. However, it is possible for a state to provide access to microenterprise training for at least some families without jeopardizing the state's ability to meet federal work and participation requirements. In states where there have been large caseload declines, the federal participation rates should not prevent the state from allowing access to microenterprise training in appropriate cases. And, if TANF participation rates are viewed as a serious impediment to allowing access to microenterprise training, the state might consider using MOE funds to structure a separate state program outside of TANF.

One TANF requirement is the **two year work requirement.** This provision requires that a state's TANF plan must require a parent or caretaker receiving assistance under the program to "engage in work" (as defined by the state) after not more than 24 months of assistance. States have broad flexibility in determining how to implement the two-year work requirement. It is up to each state to define what it means to be "engaged in work." Thus, a state could count participation in

microenterprise training, other education or training, or job readiness activities as satisfying the two-year work requirement.[15]

For example, Iowa considers any parent participating in a Family Investment Agreement as "engaged in work." Family Investment Agreements require participation in specific activities including education, training, and activities designed to overcome barriers to employment.

A second TANF provision states that unless the state opts out, the state shall require a nonexempt parent or caretaker to participate in **community service** employment after two months of receiving assistance, with minimum hours per week and tasks to be determined by the state.[16] All but a handful of states opted out of this requirement. A state choosing to implement the requirement still has broad flexibility in defining what constitutes sufficient community service activity, and could allow participation in training along with participation in community service.

The two TANF requirements that are more likely to pose significant issues for microenterprise training efforts are the TANF **all-families participation rate and two-parent participation rate.** Technically, the participation rates are *not* requirements on individuals, but are requirements which states must satisfy in order to avoid the risk of federal fiscal penalties. Federal law provides considerable detail as to how to calculate the numerator and denominator for each of these participation rates; the law specifies both the number of hours required to be a countable participant and the permissible activities that can count toward participation; many education and training activities that were countable in the AFDC Program are not countable toward TANF participation rates, or are countable to only a limited extent.

In understanding the effect of TANF participation rates on microenterprise-related activities, the key points to appreciate are that:

- ***Participation in microenterprise training can count toward participation rates but only for a limited period of time.*** A microenterprise training program might be considered "job readiness" (which is countable for six weeks a year) or might be considered vocational educational training (which is countable for up to 12 months per individual, subject to a cap on the numbers that can count as participants through engagement in vocational educational training.) HHS has not defined vocational educational training, so a state must decide whether counting microenterprise training as vocational educational training is a reasonable interpretation of the statutory language.
- ***Participation in employment (including self-employment) is countable toward TANF participation rates if the required number of hours are satisfied.*** Michigan, Minnesota, and Oregon count hours of self-employment toward the hourly requirement as long as net business sales equal or exceed the minimum wage.
- ***A state can allow an individual to participate in an activity, and can choose to fund the activity, even if it does not count toward TANF participation rates.*** The analysis of whether an activity is a permissible use of TANF funds does not turn on whether the activity counts toward participation rates. Moreover, there is no requirement that all individuals be engaged in activities countable toward participation rates; a state need only have a strategy for satisfying the participation rate requirement. For example, in Iowa, entrepreneurial training is an allowable activity for up to 18 months, even though it may not count toward participation rates for that entire time.
- ***A state's actual required participation rate may be considerably below the "official" participation rate if the state qualifies for a caseload reduction credit.*** Under the TANF statute, a state can qualify for a reduction in its required participation rate if the state's caseload has fallen since FY 95 for

reasons other than changes in eligibility rules.[17] For example, in FY 99, the required all-families rate is 35%, but if the caseload has fallen by 20% for reasons other than changes in eligibility rules, the required rate may be adjusted downward by 20 percentage points, i.e., to 15%.

Thus, individuals in microenterprise training or employment may be countable toward a state's participation rates; even if not countable, the state may still choose to allow them to continue their activities so long as the state has a satisfactory strategy for meeting the participation rates; and, as a result of the caseload reduction credit, many states may find that they are able to satisfy the rates while still allowing individuals to engage in activities not countable toward the rates.

If a state concludes that the restriction on the ability to count training participants toward federal participation rates presents a serious barrier, the state may wish to consider using a MOE-funded separate state program as a means of allowing access to microenterprise training. For example, Maine made use of state MOE funds to design a Parents as Scholars Program to allow access to postsecondary education outside of TANF; a state could consider a similar approach for microenterprise training.

TIME LIMITS

One consideration affecting the design of microenterprise training and continued support for self-employed families is the role of time limits in TANF. A state can choose whether to have time limits run against families receiving assistance while participating in microenterprise training. Similarly, a state can choose whether to have time limits run against self-employed (or employed) families receiving assistance. The state has the discretion to make these policy choices because federal time limits only restrict the use of federal TANF funds.

Each state's TANF Program is funded with a mixture of federal and state funds. The federal time limits restrict the use of federal, not state funds. More specifically, the state is prohibited from using federal TANF funds to provide assistance to a family that includes an adult who has received federal TANF assistance for sixty months; states are allowed to provide exceptions for up to 20% of their cases.[18] Thus, if a state commingles federal and state funds, then every family is receiving federally-funded TANF assistance each month, and each month counts against the federal time limit. However, if the state segregates state from federal funds, then any month in which the state provides TANF assistance to a family with segregated state funds does not count against the federal TANF time limit. HHS has expressly recognized that assistance funded with segregated state funds is not subject to federal TANF time limits.[19]

For example, Illinois provides that families are exempt from time limits in months where an adult is working for at least 25 hours a week. The state accomplishes this result by providing that when an adult is working at least 25 hours a week, the case is funded with state funds. This does not mean that the state is spending additional state funds. Rather, instead of commingling federal and state funds in every case, some cases are funded with only state funds.

A state wishing to exempt other groups from time limits could use the segregated state funds approach to do so. For example, if a state wished to provide cash assistance for a period of time for families completing microenterprise training without having that time count against TANF time limits, the state could elect to do so through use of segregated state funds.

If the state does not elect to segregate state funds, then each month in which assistance is received will count against federal time limits, and the providers of training and parents who have begun

to operate microenterprises will want to consider how those time limits should affect the length of training or the length of time for which the family receives assistance.

Finally, under TANF, a state is free to establish a time limit of less than 60 months, and some states have chosen to do so. If a state adopts a time limit shorter than 60 months, the state can also choose to develop appropriate exemptions or extensions from the time limit. Note, however, that if the family is receiving federally-funded TANF assistance, each month will continue to count against the federal time limit even if the family is exempt from or receiving an extension from the state time limit.[20]

TREATMENT OF INCOME

After a needy parent begins operating a business, there will be a revenue flow from that business. Whether that family continues to qualify for TANF assistance may depend on the state's rules concerning treatment of income.

In TANF, a family's eligibility for and amount of assistance will depend on the family's income. However, it is up to each state to decide:

- how to **define** income;
- what **deductions** may or must be allowed when calculating income; or
- what **disregards** from earned income are applied in calculating amount of assistance..

A state's TANF plan must provide for objective criteria for the determination of eligibility and for fair and equitable treatment[21] but this does not require uniformity in how income is treated. Thus, if a state wishes to have time-limited deductions or disregards, the state can do so.

A state's definitions of what counts as income and what deductions are allowed can have a significant effect in determining whether a self-employed individual continues to be eligible for assistance. States may take a range of approaches in treatment of income from self-employment:

- ***A state can ensure that all expenses are deducted from gross income in determining eligibility and assistance.*** For example, Colorado defines the net profit from self- employment as gross income less the costs of doing business. Oregon also provides that business expenses can be deducted from business earnings.
- ***A state can allow recipients a percentage deduction from gross income to alleviate the paperwork burden of verification.*** For example, California will allow an individual to either deduct 40% from gross income or deduct actual verified expenses as in the Food Stamp Program.
- ***A state can provide for an exemption for a period of time intended to allow support for business start-up.*** For example, Illinois provides for a two-year exemption of business income up to $5000, and also provides that the cost of replacing stock, equipment and inventory are deductible expenses.
- ***A state can simplify the budgeting process to reduce administrative burdens and provide for greater predictability and stability.*** For example, Oregon provides for income to be annualized in determining benefit levels.

After determining what income is counted, a state will (presumably) apply its general earnings disregard policy in determining the treatment of self-employment income. Whether a family continues to be eligible for TANF cash assistance may depend on the generosity of the state's general earnings disregard policy. Most states have elected to develop more generous disregards than

existed under AFDC, but there is wide variation between states. For example, according to the Urban Institute[22] when a family receiving assistance enters employment:

- California disregards $225 of earned income plus 50% of the remainder;
- Colorado applies the former AFDC policy, disregarding $120 and 1/3 of the remainder for the first four months of earnings, $120 for the next eight months; and $90 after twelve months;.
- Illinois disregards 67%;
- Iowa disregards 20% and 50% of the remainder;
- Massachusetts disregards $120 and 50% of the remainder for families subject to the state time limit, and $120 and 1/3 of the remainder for families not subject to the time limit;
- Michigan disregards $200 and 20% of the remainder;
- Minnesota disregards 36%;
- New York disregards $90 and 42% of the remainder;
- Oregon disregards 50%.

Note that even if a state's disregard policy is restrictive, a state could consider developing a specialized policy providing a more generous or longer-lasting earnings disregard for individuals who had completed the state's microenterprise training programs.

ASSETS

When a needy parent begins to operate a business, he or she will, hopefully, begin to accumulate assets. There is no federal asset limit in TANF, and a state could choose not to have an asset limit at all. Or, a state could have different asset limits for different TANF services and forms of assistance. The state has discretion both in setting the asset limit and in determining whether and to what extent an asset counts toward the asset limit.

Asset limits around the country vary widely but are typically less restrictive than had been the case in AFDC. The Urban Institute's analysis[23] found that 37 states have increased the asset limit above the $1000 limit in AFDC, and 46 states have liberalized the treatment of motor vehicles as compared to the $1500 exemption from assets in AFDC. Twenty-one states are wholly excluding the value of a motor vehicle under some or all circumstances.

- In Illinois and Michigan, the asset limit is $3000, and the full value of one vehicle is excluded when counting a family's resources.
- Iowa and Minnesota both have asset limits of $5000. In Iowa, the equity value of one car up to $7500 is excluded when counting resources. In Minnesota, the equity value of a car up to $3890 is excluded.

In addition to setting a less restrictive asset limit, a state can elect to use TANF funds to carry out a program of individual development accounts (IDAs). Under the federal law, there are three "qualified purposes" for IDAs: postsecondary education expenses, first home purchase, and business capitalization.[24] Funds in an IDA account meeting the TANF statutory requirements must be disregarded in determining eligibility and benefits for federal means-tested programs (other than under the Internal Revenue Code) during the period in which the individual maintains or makes contributions to the account. IDAs may be established on behalf of individuals eligible for TANF assistance.

Note that a state could develop its own program of IDAs under different rules than the TANF statute, and could choose to disregard funds in such accounts in calculating TANF assets eligibility; however, an IDA program must meet the TANF statutory requirements in order to receive the benefit of the exclusion from consideration for purposes of other federal means-tested programs.

CHILD CARE

In TANF, each state can choose whether and to what extent the state wishes to provide child care assistance to TANF participants engaged in microenterprise training or in operating a microenterprise.

Each state now receives a block grant of federal funds from the Child Care and Development Block Grant (CCDBG); the amount of a state's block grant depends, in part, on whether the state provides matching funds to draw down all available federal funding. The state must use its CCDBG (and state matching) funds for child care assistance to low income families and for child care-related activities. Eligibility for child care assistance must not exceed 85% of state median income, though can be set at a lower level.[25]

States are free to "guarantee" or "assure" child care assistance for families receiving TANF assistance but are not required to do so. A state could choose to provide child care assistance for some TANF-related activities and not others. A state need not limit the provision of child care assistance to families engaged in activities countable toward TANF participation rates, though a state seeking to allocate limited child care slots may conclude that is wishes to do so.

In TANF, a state may not impose a sanction (grant reduction or termination) against a single parent of a child under age six if the parent has failed to comply with work requirements due to the unavailability of needed child care.[26] This does not mean that states have an affirmative responsibility to provide child care assistance; it is only a protection for a limited group of families when a state does fail to provide needed assistance.

A state can choose to operate a transitional child care program for families leaving TANF due to employment (or other reasons) but has no obligation to do so. A state could also choose to assure child care to particular groups of families leaving TANF due to employment (e.g., microentrepreneurs) though might face equity objections from other groups if it elected such an approach.

MEDICAID

A microenterprise effort will likely want to ensure that Medicaid coverage is available for families while they are receiving TANF assistance and after leaving TANF due to self-employment income.

TANF recipients are not automatically eligible for Medicaid, though many recipient will be eligible for Medicaid. As a practical matter, virtually all TANF-eligible children and some parents will be eligible for Medicaid on independent grounds, e.g., pregnant women and children under six with incomes below 133% of poverty; children born after September 30, 1993 with family incomes below 100% of poverty, children covered through optional state expansions. If, however, a family member does not qualify for Medicaid on other grounds, the state must determine whether the family member is eligible for Medicaid under Section 1931 eligibility. Generally, the intent of Section 1931 was to ensure that families who would have been eligible under prior AFDC rules continue to qualify for Medicaid.

To qualify on the basis of Section 1931, an individual must meet the income and resource standards for determining AFDC eligibility under the State AFDC Plan in effect on July 16, 1996, using the income and resource methodologies under that plan, or at state option, less restrictive methodologies. The individual must also meet a test for being a "dependent child" or being related to and living with a dependent child. Single parent families and two-parent families that met prior AFDC-UP or AFDC-Incapacity rules will meet the "dependent child" requirement.

A state can broaden the groups qualifying for Medicaid under Section 1931 by opting to use less restrictive income and resource methodologies than those used under the plan as of July 16, 1996.[27] A state's income standards are, for example, its gross income and net income levels for AFDC eligibility receipt; its income methodologies are the methods used in determining what counts as income, and the extent to which particular types of income are disregarded or excluded. A state's resource standard is the applicable state resource limit, e.g., the $1000 resource limit. A state's resource methodologies are the methods used in determining what counts as a resource.

For example, suppose a state had an AFDC resource limit of $1000 on July 16, 1996, and counted all of the equity in an automobile after the first $1500 against the resource limit. Suppose the state now wishes, for purposes of pre-welfare reform eligibility criteria, to allow an exclusion of one car per family in determining Medicaid eligibility. The state can elect to do so by opting for a less restrictive resource methodology, i.e., excluding one car in determining whether the family is within the $1000 resource limit.

Or, suppose the state disregarded the first $30 and 1/3 of earnings in determining eligibility for the first four months of employment. Now, the state wishes to implement a permanent $30 and 1/3 disregard, or a $30 and 40% disregard for purposes of pre-welfare reform eligibility criteria. The state may elect to do so by treating its expanded earnings disregard as a less restrictive methodology.

The Health Care Financing Administration has expressly recognized that expanded earnings disregards or more generous vehicle exclusions are permissible "less restrictive methodologies" and may be implemented through the state plan amendment process.[28] Thus, a state electing a less restrictive approach to income and/or resources in TANF might opt for a comparably less restrictive approach in its pre-welfare reform eligibility criteria. Even if a state does not use a less restrictive approach in TANF, the state still might opt for that less restrictive approach for purposes of Medicaid eligibility.

A state might elect to use this provision to advance a broader Medicaid expansion for working poor families.[29] Or, a state might opt to use the provision to advance a narrower expansion for families with self-employment income, by structuring a less restrictive methodology for calculating the income and/or resources of families with income from self-employment. Note, however, that a state probably could not limit the use of the less restrictive methodology to families with self-employment income receiving TANF assistance, or to families with self-employment income participating in a microenterprise training program; rather, families in the same situation (e.g., self-employed) would need to be treated similarly.

In the TANF structure, the availability of transitional Medicaid does *not* turn on whether the family leaves TANF due to earnings. Rather, if an individual has qualified for Medicaid for at least three of the last six months based on the "pre-welfare reform eligibility criteria", and then ceases to qualify as a result of hours or income from employment of the caretaker relative, or because of expiration of the applicable earnings disregards, then the individual's family will continue to qualify for up to one year of transitional Medicaid.[30]

Conclusion

It is sometimes suggested that TANF requires states to adopt a “work first” philosophy or to focus on immediate labor force attachment and that this prevents states from allowing access to more extended education, training, or other work preparation activities. This perception does not accurately reflect the law. States have broad discretion in using their TANF funds and states have a set of choices in developing their approaches to federal TANF time limits and work participation requirements. Ultimately, a state must decide whether and what to what extent it wishes to support microenterprise efforts within the TANF structure. However, if a state wishes to do so, it is possible to develop strategies for addressing the aspects of TANF rules which present the most significant barriers.

Endnotes

1. The federal TANF statute (42 U.S.C. §601) lists four purposes of TANF, providing that “[t]he purpose of this part is to increase the flexibility of States in operating a program designed to:

   (1) provide assistance to needy families so that the children may be cared for in their homes or in the home of relatives;

   (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage;

   (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

   (4) encourage the formation and maintenance of two-parent families.

2. States may also (unless otherwise prohibited) spend TANF funds in any manner that was authorized under Part IV-A (AFDC, AFDC Child Care, Transitional Child Care, At-Risk Child Care, Emergency Assistance) or IV-F (JOBS) as of September 30, 1995 or at state option, August 21, 1996. 42 U.S.C. §604(a)(2). As a practical matter, however, a state need not use this provision as a basis for its microenterprise training since the training is permissible as reasonably calculated to accomplish a purpose of TANF.

3. Federal regulations issued on April 12, 1999 (64 Fed. Reg. 17720-19931) address many questions about allowable TANF spending. For a more detailed discussion, *see* Greenberg and Savner, **The Final TANF Regulations: A Preliminary Analysis** (Center for Law and Social Policy, May 1999).

4. 42 U.S.C. §609(a)(7)(B)(i)(IV); 45 C.F.R. §263.2(b). All cites to TANF regulations and preamble may be located in the Federal Register of April 12, 1999.

5. 42 U.S.C. §609(a)(7)(B)(i)(I)(bb); 45 C.F.R. §263.2(a)(3).

6. *See* 45 C.F.R. §263.2(b)(3).

7. 64 Fed. Reg. 17729.

8. See 42 U.S.C. §603(a)(5).

9. Under DOL regulations, at least 70% of an entity’s funds must be spent to benefit “hard to employ” individuals, and no more than 30% may be spent to assist individuals with long-term welfare dependence characteristics. See 20 C.F.R. §§645.211-213.

10. *See* 20 C.F.R. §645.220; 62 Fed. Reg. 61594 (November 18, 1997).

11. 20 C.F.R. §645.220(e).

12. 20 C.F.R. §6435.220(f).

13. 45 C.F.R. §260.31(a).

14. 45 C.F.R. §260.30(b).

15. 42 U.S.C. §602(a)(1)A)(ii). Note that there is no explicit penalty for a state's failure to comply with this requirement, though it is unclear whether a state might be considered to have spent funds in violation of the PRWORA by providing assistance to a parent or caretaker who was subject to this provision and not engaged in work.

16. 42 U.S.C. §602(a)(1)(B)(iv). As with the two-year work requirement, there is no explicit penalty for a state's failure to comply, but it is unclear whether the state might be considered to have spent funds in violation of the PRWORA by providing assistance to a parent or caretaker who was subject to this provision and not participating in community service.

17. See 42 U.S.C. §607(b)(3).

18. 42 U.S.C. §608(a)(7).

19. *See* 62 Fed. Reg. 62131 (Nov. 20, 1997).

20. While this is generally the case, some states may be electing to continue "waiver" policies that were approved before enactment of the 1996 law, and a state that had a different time limit policy under its approved waiver may be able to continue that policy by asserting that it is inconsistent with TANF requirements. *See* 45 C.F.R. §260.73; *see* Greenberg and Savner for more discussion of this issue.

21. 42 U.S.C. §602(a)(1)(B)(iii).

22. Gallagher, Gallagher, Perse, Schreiber, and Watson, **One Year After Federal Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997** (May 1998).

23. Gallagher, Gallagher, Perse, Schreiber, and Watson, **One Year After Federal Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997** (May 1998).

24. 42 U.S.C. §604(h).

25. 42 U.S.C. §618.

26. 42 U.S.C. §607(e)(2).

27. Sec. 1931(b)(2) of PRWORA.

28. *See* State Medicaid Director Letter, February 5, 1997.

29. For a detailed discussion of opportunities to use Section 1931 as a way to expand health care coverage for low-income parents, *see* Mann and Guyer, **Taking the Next Step: States Can Now Expand Health Coverage to Low-Income Working Parents Through Medicaid** (Center on Budget and Policy Priorities, July 19998), available at http://www.cbpp.org/702mcaid.htm.

30. Sec. 1931(c)(2); Sec. 408(a)(11)(A).

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THE ASPEN INSTITUTE

One Dupont Circle, NW
Suite 700
Washington DC 20036