



A Fact Sheet for Policy Makers

**Welfare Reform:
How States Can Use TANF Funding
To Pay for Alcohol & Drug Treatment**
(September 1998)

The 1996 federal welfare law and a 1997 proposed rule to implement the law provide states with several flexible mechanisms for funding alcohol and drug treatment through their welfare programs. This memo describes several allowable, appropriate, and legal options for states to fund alcohol and drug treatment through their Temporary Assistance for Needy Families (TANF) programs.

Background -- The Prevalence of Alcohol and Drug Problems Among Welfare Recipients and the Availability of Treatment

Studies based on national data have estimated that between 15 and 20 percent of welfare recipients have alcohol and drug problems.¹ States that have examined the prevalence of alcohol and drug problems in their own welfare caseloads have even higher estimates.²

Many of these individuals will need treatment to find and keep jobs, which could translate into as many as 400,000 to 800,000 individuals seeking treatment. Yet more than 50,000 Americans are currently on waiting lists for treatment.³

At the same time, direct sources of federal funding for treatment are shrinking. For example, individuals who receive a felony drug conviction for possession, use, or distribution after August 22, 1996, are not eligible for welfare assistance and food stamps unless the state enacts legislation to "opt out" of or modify the ban. These benefits have paid for room and board for women with children in residential alcohol and drug treatment. In addition, two categorical programs in the Substance Abuse and Mental Health Services Administration⁴ serving the welfare population are not being renewed.

¹ Studies have been published by: Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services; National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health; and National Center on Addiction and Substance Abuse at Columbia University.

² Legal Action Center, *Making Welfare Reform Work: Tools for Confronting Alcohol and Drug Problems Among Welfare Recipients*, September 1997.

³ Waiting list figures are compiled by the National Association of State Alcohol and Drug Abuse Directors.

⁴ The two programs are: Residential Treatment for Women with Children and Treatment for Pregnant and Post-Partum Women and their Infants.

In addition, as currently construed and interpreted, Medicaid is of limited use in many states for funding alcohol and drug treatment. Drug and alcohol treatment services are optional under Medicaid; consequently, some states cover little or none. Furthermore, reimbursement is expressly disallowed for all Medicaid-covered services provided to recipients between 22 and 64 years old in most residential treatment facilities, which have been classified as Institutions for Mental Diseases (IMDs). IMDs are residential facilities with more than 16 treatment beds that provide care for individuals with "mental diseases," including substance abuse.

If welfare recipients with alcohol and drug problems do not receive appropriate treatment for their addiction, they will not be able to find and keep jobs and take care of their families. In this context, it is critical that states explore innovative ways of funding treatment, including using funding from the Temporary Assistance for Needy Families (TANF) block grant to pay for it.

How States Can Use Federal TANF Funds

Under the 1996 welfare law,⁵ individuals are no longer entitled to welfare assistance. Instead, individual states are eligible for TANF block grants. The federal law gives states broad flexibility to determine the scope of their welfare programs, including who is and is not eligible within certain broad parameters.

One of the few requirements is that states use TANF funding "in any manner reasonably calculated to accomplish the purposes"⁶ of the law, which are to:

- provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- prevent and reduce the incidence of out-of-wedlock pregnancies; and
- encourage the formation and maintenance of two-parent families.

⁵ "The Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104-193.

⁶ §404(a) of P.L. 104-193.

Alcohol and drug treatment services have been clearly demonstrated to accomplish many of these purposes.⁷ The Notice of Proposed Rulemaking⁸ (NPRM) issued by the Department of Health and Human Services (HHS) to implement the TANF program recognizes this fact by explicitly allowing states to use federal TANF funds⁹ and state maintenance of effort (MOE) funds¹⁰ for alcohol and drug treatment.

An important restriction, however, is that federal TANF funds may not pay for “medical services,”¹¹ which the NPRM leaves to states to define. The law also bans certain categories of individuals from receiving federal TANF “assistance,”¹² including:

- families without a minor child;
- families with an adult who has already received 60 months of countable federal assistance, unless the family qualifies for a hardship exception;
- fugitive felons, individuals fleeing felony prosecution or violating a condition of parole or probation;
- individuals who receive a felony drug conviction (for possession, use, or distribution) for conduct that occurred after August 22, 1996,¹³ unless a state opts out of or modifies this ban. The NPRM defines assistance as:

“Every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: *Services that have no direct monetary value to an individual family and do not involve implicit or explicit income support, such as counseling, case management, peer support,*

⁷ See specifically: (1) Dean R. Gerstein *et. al.* “Alcohol and Other Drug Treatment for Parents and Welfare Recipients: Outcomes, Costs, and Benefits,” Department of Health and Human Services, January 1997. (2) Center for Substance Abuse Treatment, “The National Treatment Improvement Evaluation Study -- The Persistent Effects of Substance Abuse Treatment One Year Later,” September 1997. (3) State-based studies -- in California, Minnesota, and Oregon -- have also supported the efficacy of treatment specifically in promoting work.

⁸ Beginning on 62 *Federal Register* 62124. These proposed policies do not have the force of law. Until the final rule is published, states may operate their TANF programs under reasonable interpretations of the statute.

⁹ Preamble language, page 62158.

¹⁰ Preamble language, page 62155.

¹¹ §408(a)(6).

¹² §408.

¹³ §115 of P.L. 104-193, as amended by §5516 of P.L. 105-33.

and employment services that do not involve subsidies or other forms of income support. . . .”¹⁴ (Emphasis added)

Most alcohol and drug treatment services, such as counseling and case management, fall outside this proposed definition of assistance. The NPRM does not enumerate who might be eligible for such TANF-funded services, such as alcohol and drug treatment, that are not within the definition of “assistance.”

How States Can Use Welfare Funding to Pay for Alcohol and Drug Treatment

States have several options for using welfare funds to pay for alcohol and drug treatment. Among the best choices are to:

- Use federal TANF funds to pay for treatment.

Federal TANF funds can be used to pay for components of treatment that are not “medical services,” a term neither the law nor the NPRM defines. We believe a reasonable interpretation would make most treatment services eligible for TANF funding. In our view, the ban should apply only to:

- acute care services provided in inpatient hospital settings under the supervision of a physician;
- dosing and dispensing of medications, such as methadone, under the supervision of a medical professional licensed to prescribe drugs (but not the counseling and vocational services associated with these types of treatment);
- primary health care services for individuals in treatment, which are sometimes co-located with a treatment program; and
- drug testing, which is a clinical laboratory service.

¹⁴ §270.30 of the NPRM.

Because the NPRM's definition of assistance does not include counseling and case management and because the statutory ban on individuals with drug felony convictions is explicitly tied to "assistance," we believe that federal TANF funds *can* pay for alcohol and drug treatment for individuals in needy families with drug felony convictions who would not qualify for cash assistance, regardless of whether the state has opted out of the ban. This, however, may be a riskier course for states to take. States can be subject to penalties for misusing TANF funds if they cannot show that they used them "for purposes that a reasonable person would consider to be within the purposes of the TANF program."¹⁵

- Transfer federal TANF funds to the Social Services Block Grant (SSBG).

The 1996 welfare law allowed states to transfer up to 10 percent of the TANF block grant to the SSBG.¹⁶ That amount was reduced to 4.25 percent in 1998.¹⁷

An advantage of using this approach is that TANF restrictions, such as the ban on assistance to individuals in violation of their parole or probation, do not apply to the SSBG. Alcohol and drug treatment is an authorized activity of the SSBG, but SSBG funds may only be spent on children and families with incomes below 200 percent of poverty.

- Pay for alcohol and drug treatment with state MOE funds.

State MOE expenditures are not subject to many of the restrictions imposed on the use of federal TANF funds, such as the prohibition against funding "medical services" or providing assistance to individuals in violation of a condition of their parole or probation. "Assistance" provided with state MOE funds is subject to the drug felony restrictions, however, if a state has not opted out of the ban. Of course, individuals with drug felony convictions can receive "assistance" in state welfare programs that are not funded through TANF, subject to state law.

- Another source of funding for treatment for welfare families is the "Welfare-to-Work" (WTW) program.¹⁸

The program, administered federally by the Department of Labor and locally by Private Industry Councils (PICs), is designed to serve long-term welfare recipients, including those "requiring substance abuse treatment for employment." Federal guidelines to implement the program make clear that "substance abuse treatment" falls within the scope of "job retention and supportive

¹⁵ § 273.12 of the NPRM.

¹⁶ § 404(d)(1)(A) of P.L. 104-193, as amended by Section 5002 of P.L. 105-33.

¹⁷ Under a provision of the "Transportation Equity Act for the 21st Century" (P.L. 105-178).

¹⁸ Created in Title V of "The Balanced Budget Act of 1997" (P.L. 105-33) and appropriated \$3 billion for Fiscal Years 1998 and 1998.

services” authorized in the law.¹⁹ Non-custodial parents who would meet TANF and WTW criteria, if they were living with their children, are also eligible for assistance.

Conclusion

The 1996 welfare law increases states’ flexibility to fund alcohol and drug treatment services through their welfare programs for welfare recipients who need treatment to enter recovery, find and keep jobs, and take care of their families. Whatever innovations states adopt, however, TANF funds should not be used to offset other state or local funding currently supporting alcohol and drug treatment or to create new treatment systems. Increases in available treatment are needed to meet the urgent need for these services by the welfare population and should fund capacity in the existing system of licensed community-based providers that have historically served these individuals.

For More Information

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¹⁹ Summarized Highlights of Proposed Draft Regulations, October 22, 1997.