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OFFICE OF FAMILY STABILITY LETTER #49D

February 19, 2008

TO: Directors, County Departments of Job and Family Services

FROM: Jeanne Carroll, Deputy Director
Office of Family Stability

SUBJECT: TANF Reauthorization: Final HHS Rules

On February 5, 2008, the TANF final rules were published by the United States Department of Health and Human Services (HHS) in the Federal Register. There are some significant changes that occurred from the original publication of the interim final rules on June 29, 2006. The changes resulted from comments to the interim final rules submitted during the 60-day comment period. Those providing comments represented State human service agencies, State legislators, national associations, advocacy and disability groups, community and faith-based organizations, Indian Tribes and Tribal organizations, educators, and the general public.

Implementation of final rules

The final rules are effective October 1, 2008. We are preparing Ohio Administrative rule changes for clearance and welcome your comments during the clearance period. We are also pursuing CRIS-E and reporting programming to support the changes. This letter contains a summary of the changes. The February 5, 2008 Federal Register containing the final rules can be found on the Office of Family Stability TANF Reauthorization website at http://jfs.ohio.gov/ofam/TANF_Info.stm.

To keep counties informed, we will provide updates at upcoming monthly technical assistance video conferences.

Overview of the final rules

Definition of work-eligible individual

The interim final rules introduced the definition of “work-eligible individual”. All “work-eligible individuals” must be in the denominator of the work participation rate. Excluded from the definition were parents providing care for a disabled family member living in the home who is not attending school on a full-time basis, provided that there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member. The final rules remove the school attendance language.

In the interim final rules, recipients of Supplemental Security Income (SSI) could be included or excluded in the definition of “work-eligible” at the option of the State. If the SSI recipient had employment, the State had the option of including them in the definition of “work-eligible” to help meet the State’s work participation rate. The final rules give States the option of expanding this list to include recipients of

Social Security Disability Insurance (SSDI) benefits. They can be included or excluded on a case-by-case basis from the definition of “work-eligible”.

Individuals who subsequently are found eligible for SSI or SSDI may be removed from the participation rate for the time for which they are found disabled as long the months are within the timeframe permitted for resubmitting the federal TANF data report. States may revise data as late as December 31 for the prior federal fiscal year.

Post Secondary Education

With the final rules, HHS has expanded the definition of vocational education to include baccalaureate or advanced degrees. The statutory 12-month limitation on participation in vocational education is still applicable, so the county departments of job and family services (CDJFS) can only count one year of participation in vocational education training for any individual toward the work participation rate. After the 12-month limitation has been met, verified attendance at an educational institution for a baccalaureate or advanced degree could then be used to meet the non-core requirement under Job Skills Training Directly Related to Employment as long as it was directly related to a specific job or occupation.

Basic Skills Education and English as Second Language (ESL)

In the interim final rules, basic skills education and ESL were permissible under vocational education but only if they were of a “limited duration”. With the issuance of the final rules, HHS clarified that basic skills education and ESL may count as vocational education as long as it is a necessary or regular part of the vocational educational training. Both must be integral to the vocational education, not a stand-alone program.

Background checks and on-site assessments

HHS has clarified in the preamble to the final rules that the work activity definitions permit background checks and the on-site assessment of an individual’s suitability for a particular work activity. These activities can now be included in the definitions.

Unsupervised Homework Time

The final rules permit a State to count up to one hour of unsupervised homework time for each hour of class time. The total homework time (supervised and unsupervised) being counted toward participation cannot exceed the hours required or advised by a particular educational program. If unsupervised homework time is counted, documentation must include a statement about the amount of homework or study time advised by the particular educational program.

Documentation of Unpaid Activities

The CDJFS will not be required to receive documentation of attendance daily for job search/job readiness activities or bi-weekly for other unpaid activities. Documentation of participation in unpaid activities will need to be reported monthly and the documentation in the case file must support what is reported.

Good or satisfactory progress

Currently, individuals participating in the two non-core activities “Education directly related to employment” and “Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence” are required to make “good or satisfactory progress” in order for their

hours of participation to count. Our rules defined this as a standard of progress that is developed by the educational institution or program in which the recipient is enrolled. This will no longer be required in order for the hours to count and will be removed from the rules.

Holidays and Additional Excused Absences

In the interim final rules, holidays could be counted toward the work participation rate and States were able to provide up to 10 additional days per year (no more than two days per month) of excused absences to count as participation. As a result of numerous comments, HHS has clarified that States are limited to 10 holidays and they may excuse up to 80 additional hours of excused absences in a year, not more than 16 of which can be reported in a month. We have chosen to maintain the 10 federal holidays currently in rule 5101:1-3-12 of the Administrative Code. The calculation of the excused absences occurs in CRIS-E and we are beginning the programming to calculate hours, instead of days of excused absences. There will be no change to the good cause reasons set forth in rule 5101:1-3-12 of the Administrative Code.

Job Search/Job Readiness

The time limitations will now apply to the preceding 12-month period rather than to the federal fiscal year. The six week maximum job search/job readiness is converted to an hourly determination (20 or 30 hours per week up to 120 or 180 hours per year), but for purposes of the 4 consecutive week limit, any participation in a week counts as a week. The final rules define a week as seven consecutive days. We are currently reviewing the implications of this change.

Fair Labor Standards Act (FLSA) Deeming Issues

The final rules state that in determining the maximum number of hours of work experience and/or community service that may be required of a recipient to meet the minimum wage requirements of the FLSA, States must calculate the amount of assistance less any child support collections received in the month and retained to reimburse the State or Federal government for the current month's assistance payment. The final rules do not specify the operational procedure that States must follow to determine the benefit amount, but provided options that were available under the former Aid to Families with Dependent Children program. We are currently exploring these options to determine which will be the option that will benefit both the client and the counties.

The final rules take effect October 1, 2008. We will continue to keep you apprised of the progress of policy changes as they are implemented.

If you have any questions about the final rules, you can submit them to the WACTA or TANF-FSTA mailbox.

JCC:ke

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