



WomanView

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New TANF Rules: Less Flexibility, **More Red Tape**

After years of advocacy, debate, and continuing resolutions, Congress reauthorized and funded the Temporary Assistance for Needy Families (TANF) program through September 30, 2010, as part of the Deficit Reduction Act of 2005 (DRA).¹ The DRA's changes in the TANF program decrease the program's flexibility and increase the burden on individuals and states, making it more difficult for individuals and states to meet the work participation requirements and discouraging states from allowing recipients to participate in activities that do not count toward the work participation rates.

The changes include increased U.S. Department of Health and Human Services (HHS) oversight of work participation. The DRA required HHS to draw up regulations specifying when a work activity (e.g., unsubsidized employment, vocational education training, and job search and job readiness assistance) counts as one of the federally listed activities (the list of activities remains unchanged) and to establish uniform reporting requirements and verification requirements for participation.

HHS published the new regulations on June 29.² The rules go into effect October 1, 2006. HHS is seeking written comments on the rules, so there is an opportunity to amend the rules. Written comments are due on or before August 28. These regulations can have a negative impact on the economic well-being of eligible individuals and families, all of whom are already poor, in Illinois and throughout the country.

Defining work activities

Under current law each state must meet a 50 percent work participation rate for all families (single- and two-parent families) and a separately calculated 90 percent work participation rate for two-parent families. Failure to meet these rates could result in financial penalties. This has not changed in the new law (although the DRA's changes in the caseload reduction credit make it more difficult for states to avoid financial penalties). To meet these rates, recipients must participate in "countable" work activities a minimum number of hours each week. Generally recipients must participate for 30 hours for single-parent families and 35 hours for two-parent families.³ Current law (statute and regulations) lists 12 activities in which recipients must participate so that states can meet the required work participation rates. This list of activities has not changed. Nine of these activities, known as "core" activities, may count toward all hours of participation, while three other activities may count only for some of the required hours of participation (hours after the first 20 for single parents and after 30 for most parents in a two-parent family). What has changed is that the new regulations define work activities; current law gives states the flexibility to define the activities. While some of the changes are good, most of the definitions limit the set of work activities that states can get credit for in counting their participation rate activities.

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¹S. 1932; Pub. L. No. 109-171; relevant sections at §§ 7101 *et seq.* For a discussion of the main changes in TANF in the DRA, see *Let's Talk TANF: Congress on the Verge of Reauthorizing TANF*, POVERTY ACTION REPORT, Jan. 2006.

²71 Fed. Reg. 37453 (2006) (to be codified at 45 C.F.R. pts. 261-63, 265) (Interim final rule with request for comments, June 29, 2006).

³There are exceptions to the minimum hours of participation, such as for single-parents with a child under one- and two-parent families where one of the parents is disabled.

For example, job search and job readiness assistance is a core activity. However, the activity is limited by statute to six weeks per fiscal year of which no more than four weeks may be consecutive. Under the new regulations, a broad set of activities can fit under this heading in addition to traditional job search and readiness activities (e.g., résumé writing, job interviews), including activities designed to address barriers to employment such as substance abuse treatment, mental health counseling, or physical therapy. While states may allow recipients to participate in one or more of these activities for as much time as needed, the limitation on the length of time these activities can count toward the participation rate makes it of very limited use. HHS rejected counting specialized programs that serve people with disabilities to count toward the participation rate.

While this time limit on job search and readiness assistance applied in the past, it was not as problematic because many states counted job search and readiness activities under other work activities. Typically states included a job search component as part of its work experience program. The new regulations, however, explicitly exclude job search and readiness activities from the definition of work experience and other activities. This means that activities will have to be tracked separately.

The regulations impose limitations on education and training, such as precluding postsecondary education that leads to baccalaureate or advanced degrees and stand-alone English as a Second Language programs. These limitations get in the way of career-path employment. Also, states may count only supervised study time toward the participation requirements. Participants must make “good and satisfactory progress” for hours in education-related activities to count, and commonly courses, particularly at the postsecondary level, require two or more hours of preparation time for each hour of class time. Implementing monitored study time can prove costly, whether setting up a system online or in a more traditional setting. This requirement will put pressure on the child care system since families will need child care assistance in order to attend structured study sessions and the time spent commuting. Moreover, structured study time may interfere with other TANF work activities and goals, including employment.

Other than unsubsidized and subsidized employment, the work activities “must be supervised on an ongoing basis no less frequently than daily”. What this means is unclear, but it is a new requirement that will certainly add to the already heavy burden on recipients and states alike in their efforts to comply with work activities.

Counting, tracking, and verifying participation in work activities

The regulations describe how states must collect information about the hours a recipient participates in activities—the documentation to verify the hours participated, states’ “Work Verification Plans” for documenting and verifying hours of participation, and the penalties that states can incur if they fail to develop and follow such plans. Some examples of the regulations:

- Only actual hours, not scheduled hours, of participation may be reported to meet the work participation rate.
- States may not assume that a recipient participated in the scheduled activities; states instead must affirmatively determine that a recipient participated in an activity in order to report it.
- States must support each individual’s hours of participation through documentation in the case file. For employed recipients, this may include pay stubs, employer reports, and time and attendance records. States may allow the documentation of current hours to act as documentation of hours worked over a six-month period, reducing the need for employers or employed recipients to report repeatedly. For individuals in other activities, documentation may include time sheets, attendance records from the work activity program, or school attendance records. Participation in job search and job readiness assistance activities must be documented daily, while hours of participation in other activities must be documented every two weeks.

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- States must submit a Work Verification Plan to HHS by September 30, 2006. For each countable work activity, the state must include in the plan a description of how its program comports with the new federal definitions of each work activity, describe how the state will accurately input data, how the state will track and report hourly participation, and how the state will ensure that only hours in activities that meet the relevant federal definition for a countable activity will be reported. And the plan must describe how the state will monitor its system for reporting and verifying hours of participation to ensure its accuracy. HHS will review the plan. States must be operating under an approved plan starting October 1, 2007.
- HHS authority includes significant flexibility to conduct reviews of state procedures and request information from states, and to impose a work verification penalty for failure to submit a Work Verification Plan or failure to maintain adequate procedures to ensure a consistent measurement of work participation rates.

While states, including Illinois, may already define some work activities or track and document some participation as required under the new regulations, the reality is that the implementation of these regulations places a heavy burden on individuals, entities that operate welfare-to-work programs, and states by decreasing the flexibility of the TANF program and increasing the administrative burden on everyone. These rules will hinder state efforts to serve families in the most effective and appropriate manner and increase the incentive for states to restrict access to assistance for poor families with the greatest needs.

Illinois already suffers from an overall poverty rate of 12.4 percent (1,562,900 people), with 5.7 percent of Illinoisans living in deep poverty (living at or below 50 percent of the federal poverty threshold) and 17.7 percent of Illinois children living in poverty.⁴ The poverty rates have increased at the same time that the TANF caseloads have dramatically decreased (an 82.4 percent decrease between 1994 and 2004).⁵ The existing administrative barriers to public benefits, especially for those recipients required to participate in TANF work activities, certainly have contributed to the decline in the TANF caseload and the increase in poverty in Illinois.⁶ These new regulations have the potential for exasperating an already bad situation. The Sargent Shriver National Center on Poverty Law will be submitting written comments to HHS and will post them on www.povertylaw.org. We encourage other to submit comments also.

Celebrating Ten Years of Advocacy for Women and Girls

WomanView is one of many projects of the Shriver Center's Women's Law and Policy Project (WLPP). The WLPP's mission is to create and promote legal and policy solutions to improve the lives of low-income women and girls. We work to create new rights and opportunities where none exist and improves upon those that do. We bring to bear the full weight and strength of our legal and policy expertise to help low-income women and girls escape poverty permanently.

July marks the beginning of the tenth year of publication of *WomanView*. For the past decade, the newsletter's goal has been to inform women and girls, service providers, advocates, and decision-makers on laws and policies that impact low-income women and girls. By providing information and analysis, and enabling subscribers to voice their concerns, this publication has been a catalyst for discussion and advocacy on a wide range of issues. Actions by readers have both prevented negative policies, and promoted positive change for women and girls. This includes the adoption of the Family Violence Option by the Illinois welfare agency and the passage by the Illinois General Assembly of the Victims' Economic Security and Safety Act (VESSA). Currently readers are actively convincing legislators of the necessity for the Ensuring Success in School Act.

We hope *WomanView* will continue to generate dialogue, provoke readers to voice their opinions to decision-makers, and deepen the advocacy efforts of those who strive to improve the lives of low-income women and girls. We invite your feedback on this issue of *WomanView* and any suggestions for topics that you think should be covered in the newsletter.

**For more information contact Wendy Pollack,
Director of the Women's Law & Policy Project at
the Shriver Center, 312-263-3830 ext. 238 or
wendypollack@povertylaw.org.**

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at: <https://www.povertylaw.org/donate.html>.**

⁴2006 Report on Illinois Poverty, ILLINOIS POVERTY SUMMIT 9, 11, available at www.heartlandalliance.org/maip/.

⁵National Conference of State Legislators, Welfare Caseload Watch (March 9, 2005), available at www.ncsl.org.

⁶For a detailed report and discussion of the administrative barriers, see EVELYN Z. BRODKIN, CAROLYN FUQUA & ELAINE WAXMAN, ACCESSING THE SAFETY NET: ADMINISTRATIVE BARRIERS TO PUBLIC BENEFITS IN METROPOLITAN CHICAGO (Public Benefits Hotline Steering Committee & Legal Assistance Foundation of Metropolitan Chicago 2005), available at www.povertylaw.org.