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CENTER FOR LAW AND SOCIAL POLICY

## **Child Support-Related Provisions in New Katrina Relief Legislation**

**By Vicki Turetsky**

The Temporary Assistance for Needy Families (TANF) Emergency Response and Recovery Act of 2005, P.L. 109-68, was signed into law on September 21, 2005. Of special interest to the child support community, the new law authorizes states to pay TANF emergency benefits to families affected by Hurricane Katrina through September 30, 2006. Because these emergency benefits are not considered TANF “assistance,” recipients are exempt from child support requirements. In addition, the new law waives most 2006 TANF penalties, including child support-related penalties, incurred by states hit by the hurricane. The new law also extends the TANF program through December 31, 2005.

This paper outlines the child support-related provisions of the new law and describes recent Health and Human Services (HHS) policy guidance on the new law issued on October 12, 2005. It also describes related Hurricane Katrina legislation pending in Congress. Finally, it recommends that Congress adopt additional short-term child support measures to help states impacted by the hurricanes restore and maintain child support collections for families.

CLASP is exploring a broader set of recommendations with state child support administrators concerning child support policies and practices needed to address the consequences of major disasters, including the build-up of child support debt resulting from widespread unemployment.

### **TANF Emergency Response and Recovery Act of 2005 (P.L. 109-68)**

The TANF Emergency Response and Recovery Act of 2005 was recently approved by Congress by unanimous consent, and signed into law. The legislation was introduced as H.R. 3672 on September 7 by Rep. Jim McCrery (R-LA). The major provisions of the new law are summarized below.

**The new law authorizes all states to provide federally-funded emergency benefits to displaced families, and makes additional TANF funds available to impacted states.** The new law gives all states access to the TANF Contingency Fund to provide short-term, non-recurrent cash benefits to meet the subsistence needs of families displaced to other states by Hurricane Katrina. States may access the Contingency Fund to pay for emergency benefits to

families if they have moved from a direct impact state, effectively authorizing states to pay for these benefits with 100 percent federal funds.<sup>1</sup>

In addition, the new law accelerates payment of TANF block grants for the first quarter of federal fiscal year 2006 to all states, lifts restrictions on spending prior-year TANF funds, and temporarily extends the TANF program through December 31.

The new law also makes additional TANF funds available to Louisiana, Mississippi, and Alabama for any allowable TANF expenditure.<sup>2</sup> Although these funds are provided as loans, the new law waives any penalty for non-repayment by the direct impact states.

**The new law provides that Hurricane Katrina emergency TANF benefits paid on a short-term, non-recurrent basis are not “assistance.”** Federal TANF regulations exclude cash benefits from the definition and requirements of “assistance” when they are designed to meet a specific crisis situation or need and do not extend beyond four months.<sup>3</sup> Certain TANF program requirements—including time limits, work participation, child support assignment, child support cooperation, and certain data collection activities—apply only to “assistance,” and not to these non-recurrent short-term benefits.

Section 6 of the new law treats Hurricane Katrina emergency benefits as non-recurrent, short-term benefits, rather than as “assistance.” (See section 6 inset for new language.) Although the new law does not specifically address child support assignment and cooperation requirements, there is no indication that Congress sought to impose these requirements. In its October 12, 2005 guidance, HHS made clear that child support assignment and cooperation provisions *do not* apply to Hurricane Katrina emergency benefits (TANF-ACF-PI-2005-07).

**P.L. 109-68, Section 6**

Benefits provided on a short-term nonrecurring basis under a State program funded under part A of title IV of the Social Security Act, during the period that begins with the date of enactment of this Act and ends with the end of fiscal year 2006, to meet a subsistence need of a family resulting from Hurricane Katrina shall not be considered assistance for purposes of section 407 and 408(a)(7) of the Social Security Act.

<sup>1</sup> The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 established a \$2 billion Contingency Fund in the U.S. Treasury under 42 U.S.C. 603(b). States qualifying as “needy states” based on high unemployment rates or food stamp participation may request additional TANF funds from the Contingency Fund. The Contingency Fund has been used infrequently for a number of reasons related to the technical requirements governing access to the fund.

<sup>2</sup> For additional information about the Act and its implications for the TANF program, see Mark Greenberg, Mark. *New TANF Law Provides Additional Funds for Katrina Relief: Key Improvements Still Needed*. 2005. Available at [www.clasp.org](http://www.clasp.org).

<sup>3</sup> States may use TANF funds to provide families with “assistance,” as well as other types of benefits and services that do not fall within the definition of “assistance.” 45 C.F.R. 260.31(b)(1) excludes cash benefits from the definition of TANF “assistance” when they are non-recurrent short-term benefits (1) designed to deal with a specific crisis situation or episode of need; (2) are not intended to meet recurrent or ongoing needs; and (3) will not extend beyond four months. See Office of Family Assistance, *Helping Families Achieve Self-Sufficiency: A Guide on Funding Services for Children and Families Through the TANF Program*, U.S. Department of Health and Human Services. Retrieved on October 5, 2005 at [www.acf.hhs.gov/programs/ofa.funds2.htm](http://www.acf.hhs.gov/programs/ofa.funds2.htm).

**The new law makes Louisiana, Mississippi, and Alabama eligible for a waiver of most TANF penalties—including all penalties related to child support—through federal fiscal year 2006.** The new law provides the Secretary of Health and Human Services with the authority to waive child support-related penalties during the period between September 21, 2005 and September 30, 2006. The Secretary may waive penalties for compliance failures under 42 U.S.C. 609(a)(2) through (6), and (8) through (14).

For an eligible state to receive a waiver, the Secretary of Health and Human Services must determine that the compliance failure resulted from Hurricane Katrina or reasonable conduct of the state in addressing the needs of victims of Hurricane Katrina. (See Section 7 inset.)

States are subject to a number of federal program penalties against their federal TANF funds, including child support-related penalties. Under 42 U.S.C. 609(a)(5), the Secretary of Health and Human Services must reduce the state's TANF funds by up to 5 percent after determining that the state TANF agency does not enforce child support cooperation sanctions against families receiving TANF assistance. Under 42 U.S.C. 609(a)(8), the Secretary must reduce the state's TANF funds by 1 to 2 percent for the first finding that a state has failed to meet child support performance measures, has incomplete or unreliable child support data, or fails to substantially comply with child support program requirements.<sup>4</sup> In addition, a state is subject to penalties under 42 U.S.C. 652(g) if it fails to meet performance measures related to paternity establishment.

Under 42 U.S.C. 609(b), the Secretary may not impose a TANF penalty if the state has reasonable cause for failing to comply with most program requirements—this includes “[n]atural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure[.]”<sup>5</sup> However, the statute contains an exception for child support-related penalties imposed under 42 U.S.C. 609(a)(8). This leaves child support programs strictly liable for program compliance, even when impaired by a major disaster.

**Section 7, Waiver of TANF Penalties in Hurricane-Damaged States**

The Secretary of Health and Human Services shall not impose a penalty on any of the States of Louisiana, Mississippi, or Alabama under any of paragraphs (2) through (6) or (8) through (14) of section 409(a) of the Social Security Act with respect to a failure to comply with a provision of part A of title IV of such Act during the period that begins with the date of the enactment of this Act and ends with the end of fiscal year 2006, if the Secretary determines that the failure resulted from Hurricane Katrina or reasonable conduct of the State in addressing needs of victims of Hurricane Katrina.

Hurricane-impacted states may be subject to data reliability and performance penalties for a number of years, in part because these penalties “build” on one another from year to year. For example, if an HHS audit finds that a hurricane-impacted state has unreliable or incomplete data in 2005 and 2006—due perhaps to the destruction of child support files maintained in flooded courthouses—that state cannot show improved performance in 2007 even if it passes

<sup>4</sup> Under 42 U.S.C. 609(a)(8), the penalty for inadequate child support performance, unreliable child support data, or substantial non-compliance with child support program requirements is 1 to 2 percent for the first finding, 2 to 3 percent for the second consecutive finding, and 3 to 5 percent for the third or subsequent finding.

<sup>5</sup> 45 C.F.R. 262.5(a)(1).

its 2007 data reliability audit, because there is no reliable 2006 data against which to measure progress.

In addition, states stand to lose federal child support incentive payments under 42 U.S.C. 658a, which also depend upon reliable performance data and measures.

## **Child Support Provisions in Proposed Emergency Health Care Relief Act of 2005 (S. 1716)**

Senators Charles Grassley (R-IA) and Max Baucus (D-MT) introduced the Emergency Health Care Relief Act of 2005 (S. 1716), which would further clarify the TANF Emergency Recovery and Response Act, and have particular implications for the child support program. The legislation was introduced on September 15, the same day that the Senate approved P.L. 109-68.<sup>6</sup> S. 1716 would authorize emergency health care coverage under Medicaid and SCHIP, and extend unemployment benefits.

In addition, S. 1716 would make a number of changes to the Hurricane Katrina emergency benefits provisions authorized in the new law. These changes are intended to address concerns raised by Senators Grassley and Mary Landrieu (D-LA) at the time H.R. 3672 came to the Senate floor. However, the bill has since stalled in the Senate over objections over the bill's cost.

**S. 1716 would allow all states to use TANF contingency funds to provide any allowable benefit or service to affected families, and allow Louisiana, Mississippi, and Alabama to use contingency funds for in-state families.** The bill would eliminate the restriction in P.L. 109-68 that contingency funds only be used for families displaced from another state. Under the bill, families (1) must have moved to the state (directly or indirectly) from a direct impact state as a result of Hurricane Katrina, and, (2) if applying for benefits or services on or after October 28, may not be receiving cash benefits from another state. In addition, the bill would allow the three direct impact states to draw on the Contingency Fund to assist families remaining in the state.

**S. 1716 would affirm that child support cooperation and assignment rules do not apply to emergency benefits.** While P.L. 109-68 provides that emergency benefits are not considered TANF assistance, the Grassley-Baucus bill would expressly waive child support requirements contained in 42 U.S.C. 609(a)(2) and (3) and 654(29). Section 203 of S. 1716 would amend section 6 of P.L. 109-68 to read:

(b)(1) IN GENERAL--Hurricane Katrina Emergency TANF Benefits shall not be considered assistance for purposes of sections 407, paragraphs (2), (3), or (7) of section 408(a), 411, or section 454(29) of the Social Security Act (42 U.S.C. 607, 608(a), 611, 654(29)).

**S. 1716 would further clarify that child support services will not be provided to families receiving emergency benefits unless requested.** Paragraph (i) of 42 U.S.C. 654(4)(A)

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<sup>6</sup> The legislative language was modified on September 22 and again on October 4.

requires the state child support agency to automatically provide child support services to families receiving TANF assistance.<sup>7</sup> Paragraph (ii) requires the state to provide child support services to any other family who applies for child support services, regardless of income.

Section 203 of S. 1716 would add a second paragraph to section 6(b) of the new law that would provide a limited waiver of rules under 42 U.S.C. 654(4)(A)(i). This language is intended to clarify that the child support agency would not automatically open a child support case for a family receiving emergency benefits, but would open such a case if a family applies for child support services under paragraph (ii). The provision includes two exceptions for emergency benefits provided to a family who: (1) is already receiving child support services at the time the family is provided emergency benefits, or (2) applies for child support services.

The new paragraph would read:

(b)(2) LIMITED WAIVER OF RULES UNDER SECTION 454(4)(A)(I).—

(A) IN GENERAL.--Subject to subparagraph (B), such benefits shall not be considered assistance for purposes of section 454(4)(A)(i) of such Act (42 U.S.C. 654(4)(A)(i)).

(B) EXCEPTION FOR FAMILIES ALEADY RECEIVING CHILD SUPPORT SERVICES OR WHO APPLY FOR SUCH SERVICES.--Subparagraph (A) shall not apply with respect to such benefits that are provided to a family who—(i) at the time such benefits are provided, are [*sic*] receiving child support services under a State plan under section 454 of such Act (42 U.S.C. 654); or (ii) applies for child support services under such a State plan on behalf of a child who is receiving such benefits.

In its guidance, HHS stated that “for custodial families who are receiving short-term benefits and would like to apply for and receive child support enforcement services, we believe it is essential that States provide them with these services during this critical time of family economic distress” (TANF-ACF-PI-2005-07).

**S. 1716 would provide additional flexibility to states providing child support services to families receiving emergency benefits.** Under existing child support rules, there are certain technical and procedural differences in the way child support agencies handle the cases of families receiving TANF assistance and those who apply for child support services. There also are specific rules for families who have stopped receiving assistance, but who continue child support services voluntarily after leaving assistance. These case services rules are linked to 42 U.S.C. 654(4)(A)(i) and its implementing regulation, 45 C.F.R. 302.33. For example:

- Families who apply for child support services must pay an application fee, while families receiving assistance are exempt from fees. In addition, a state may impose

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<sup>7</sup> States also are required to provide automatic child support services to children in federally-funded foster care and Medicaid. States have the option to automatically open a child support case and require child support cooperation for children receiving food stamps, although few states have exercised this option. 42 U.S.C. 654(4)(A)(i).

other fees (such as genetic testing fees or federal tax offset fees) on families applying for service but not those receiving assistance.<sup>8</sup>

- Within five days, the child support agency must notify families who are no longer eligible for assistance that child support services will be continued automatically unless they opt out.<sup>9</sup>
- The child support agency may close the case of families who applied for services or who continued services after leaving assistance if the agency can not contact the families within 60 days. This basis for case closure does not apply to families receiving assistance.<sup>10</sup>
- The child support agency’s federal tax offset authority is more limited for families applying for services than those receiving assistance.<sup>11</sup>

While not altogether clear, the first exception to the waiver of 42 U.S.C. 654(4)(A)(i) contained in new paragraph (6)(b)(2)(B) of section 203 appears to mean that if the family is already receiving child support services as a TANF “assistance” case, the state is not required to impose “non-assistance” requirements—including charging a fee, closing the case if the custodial parent can not be found, providing additional notices, or otherwise changing applying the case services rules governing applicant cases.

However, the exemption does not appear to extend beyond 42 U.S.C. 654(4)(A)(i) to authorize states to treat families receiving emergency benefit cases as “assistance” cases for purposes of child support distribution rules under 42 U.S.C. 657—the rules that govern whether the state or the family keeps collected child support.<sup>12</sup> Ordinarily, when child support is collected for families receiving TANF assistance, the state applies the money toward assigned child support. Once they no longer receive TANF assistance, families keep most of their support under existing distribution rules—whether or not they receive emergency benefits. Families receiving emergency benefits, but who have never received TANF assistance, keep all of the child support collected on their behalf.

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<sup>8</sup> Under 42 U.S.C. 654(6)(B) and 45 C.F.R. 302.33(c), families applying for child support services must pay an application fee, while families receiving TANF assistance, foster care maintenance payments, or Medicaid (or at state option, food stamps) are exempt. In addition, states may charge applicant families other fees and costs under 42 U.S.C. 654(C), (D) and (E).

<sup>9</sup> 45 C.F.R. 302.33(a)(4).

<sup>10</sup> 45 C.F.R. 303.11(b)(10), cross-referring to 45 C.F.R. 302.33(a)(1)(i) and (iii).

<sup>11</sup> 42 U.S.C. 664(a)(1) and (2) authorize states to collect child support from the federal tax refunds of the non-custodial parents of children. 45 C.F.R. 303.72(a)(3) specifies the conditions under which the child support agency may use federal tax offsets in non-assistance cases where child support services are provided under 45 U.S.C. 302.33.

<sup>12</sup> While the application of distribution rules depends upon the family’s case status as a current assistance family, former assistance family, or never assistance family, the distribution rules are not explicitly linked to the provision of child support services under 42 U.S.C. 654(4)(A)(i) and 45 C.F.R. 302.33 (as are the various case services rules governing fees, notice of continued services, case closure, and federal tax offset procedures.) For more background on distribution rules, see Turetsky, Vicki. *In Everybody’s Interests: Why Reforming Child Support Distribution Makes Sense for Government and Families*. 2005. Available at [www.clasp.org](http://www.clasp.org).

The second exception, which relates to new applicants for child support services, provides that if a family receiving emergency benefits applies for child support services, then the a new child support case would not be treated as a “non-assistance” case for purposes of 42 U.S.C. 654(4)(A)(i). The primary effect of this exception appears to be that new applicants for child support services would not have to pay an application fee.

## **Recommendations for Additional Improvements to the New Law**

P.L. 109-68 contains helpful provisions that make additional TANF funds available to states to assist families affected by Hurricane Katrina. CLASP recommends that the Congress or Department of Health and Human Services make additional modifications to help states provide effective child support services to families and mitigate the administrative and fiscal burdens to state child support programs resulting from Hurricanes Katrina and Rita.

**Application and other fees should be waived for families receiving Hurricane Katrina emergency benefits and applying for child support services.** Fee requirements imposed under 42 U.S.C. 654(4)(4) and (6) should be set aside for families applying for child support services.

**States should receive 100 percent federal reimbursement for hurricane-related child support costs.** These include costs incurred by hurricane-impacted states to repair or replace damages and losses that the Secretary of Health and Human Services determines are attributable to Hurricanes Katrina and Rita, including damaged computer equipment, lost case files, and missing data. In addition, states should receive 100 percent federal reimbursement for child support outreach to parents and employers, interstate coordination, support order review and adjustment, and other activities directly related to assisting parents affected by the hurricanes.

**Hurricane-impacted states should be “held harmless” in federal fiscal years 2005 and 2006 for reductions in the amount of their performance incentive payments,** and should receive an amount that is equivalent to the incentive payments due to them in 2004 (or 2005, if higher than 2004).

**Section 7 of P.L. 109-68 should be amended to provide for additional penalty relief.** Section 7 should be amended to include penalty relief under 42 U.S.C. 652(g) and prohibit state plan disapproval under 42 U.S.C 652(a)(3). In addition, the Secretary of Health and Human Services should be given the flexibility to waive child support performance and data reliability penalties for hurricane-affected states in subsequent years upon a determination that the failure is attributable to the hurricanes. To help address these issues, the Secretary of Health and Human Services should use flexible sampling techniques that do not penalize affected states for missing case records attributable to the hurricanes.

**Section 7 of P.L. 109-68 should be amended to provide for TANF penalty relief as of August 29,** the date of Hurricane Katrina, rather than September 21, the date of legislative enactment.

**The “reasonable cause exception” to the TANF penalty statute, 42 U.S.C. 609(b), should be amended by removing the special treatment for child support penalties under paragraph (8).** This would give the Secretary of Health and Human Services the discretion to determine that the state has reasonable cause for failing to comply with child support requirements under 42 U.S.C. 609(a)(8).

**The Secretary of Health and Human Services should have the authority to issue temporary operating instructions.** The Secretary should be able to prescribe or suspend on a temporary basis technical and procedural requirements related to child support program administration, such as case services rules under 42 U.S.C. 654(4), audit instructions under 42 U.S.C. 652(a)(4) and 609, and other provisions needed to help state child support programs respond more effectively and promptly to parents impacted by the hurricanes and other major emergencies.

**The Federal Parent Locator Service should be made available, with appropriate safeguards, to assist federal and state agencies in locating missing parents and their children who have been separated or dislocated in major disasters.** The service is currently used for limited purposes by state and local agencies operating programs funded under title IV, XIX, and XXI of the Social Security Act (including child support, TANF, child welfare, Medicaid, and unemployment insurance programs), the Social Security Administration, and the federal Office of Juvenile Justice and Delinquency Prevention (and the National Center for Missing and Exploited Children) to locate kidnapped children under 42 U.S.C. 653 and 663.<sup>13</sup>

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<sup>13</sup> On October 14, 2005, the Secretary of Health and Human Services proposed a new rule on child support parent locator data sharing. Comments are due December 13, 2005.



## Appendix

### Section 6 of P.L. 109-68 provides:

WORK REQUIREMENTS AND TIME LIMITS UNDER TANF PROGRAM NOT TRIGGERED BY RECEIPT OF TEMPORARY TANF BENEFITS BY FAMILIES AFFECTED BY HURRICANE KATRINA.

Benefits provided on a short-term, nonrecurring basis under a State program funded under part A of title IV of the Social Security Act, during the period that begins with the date of the enactment of this Act and ends with the end of fiscal year 2006, to meet a subsistence need of a family resulting from Hurricane Katrina shall not be considered assistance for purposes of sections 407 and 408(a)(7).

### Section 7 of P.L. 109-68 provides:

“WAIVER OF TANF PENALTIES IN HURRICANE-DAMAGED STATES.

“The Secretary of Health and Human Services shall not impose a penalty on any of the States of Louisiana, Mississippi, or Alabama under any of paragraphs (2) through (6) pr (8) through (14) of section 409(a) of the Social Security Act with respect to a failure to comply with a provision of part A of title IV of such Act during the period that begins with the date of the enactment of this Act and ends with the end of fiscal year 2006, if the Secretary determines that the failure resulted from Hurricane Katrina or reasonable conduct of the State in addressing needs of victims of Hurricane Katrina.”

### S. 1716 would amend section 6 of P.L. 109-68 to read:

“Sec. 6. RULES FOR RECEIPT OF HURRICANE KATRINA EMERGENCY TANF BENEFITS AND APPLICATION TO CHILD SUPPORT REQUIREMENTS.

“(a) IN GENERAL.—During the period described in section 3(a)((1), a State described in paragraph (2) or (3) of section 3(a) or an Indian Tribe with a tribal family assistance plan approved under section 412 of the Social Security Act (42 U.S.C. 612) may provide Hurricane Katrina Emergency TANF Benefits under the State or tribal program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

“(b) CERTAIN RULES WAIVED.—

“(1) IN GENERAL.--Hurricane Katrina Emergency TANF Benefits shall not be considered assistance for purposes of sections 407, paragraphs (2), (3), or (7) of

section 408(a), 411, or section 454(29) of the Social Security Act (42 U.S.C. 607, 608(a), 611, 654(29)).

“(2) LIMITED WAIVER OF RULES UNDER SECTION 454(4)(A)(I).—

“(A) IN GENERAL.--Subject to subparagraph (B), such benefits shall not be considered assistance for purposes of section 454(4)(A)(i) of such Act (42 U.S.C. 654(4)(A)(i)).

“(B) EXCEPTION FOR FAMILIES ALREADY RECEIVING CHILD SUPPORT SERVICES.—Subparagraph (A) shall not apply with respect to such benefits that are provided to a family who—

- (i) at the time such benefits are provided, is receiving child support services under a State plan under section 454 of such Act (42 U.S.C. 654);
- (ii) applies for child support services under such a State plan on behalf of a child who is receiving such benefits.”