

## MEMORANDUM

**TO:** Interested People

**FROM:** Paula Roberts and Mark Greenberg

**DATE:** October 5, 1998

**RE:** New Policy Clarification Affecting Child Support Assignment and Distribution for Recipients of TANF-funded Assistance

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A recent Action Transmittal from the federal Office of Child Support Enforcement (OCSE) provides an important clarification about the rules affecting distribution of current child support for families receiving Temporary Assistance to Needy Families (TANF) assistance in a form other than direct monetary payments. Action Transmittal 98-24 (August 19, 1998) should be posted on OCSE's web site shortly (See <http://www.acf.dhhs.gov/programs/cse/cseats-c.htm>).

The rules governing the TANF program are found at Title IVA of the statute. Those governing child support are found in Title IVD. Pursuant to Title IVA, a family receiving any form of TANF-funded assistance must assign its child and spousal support rights to the state. For Title IVA purposes, the only limit on the assignment is that the amount assigned cannot exceed “the total amount of assistance *provided* to the family”. Pursuant to Title IVD, any support collected for a TANF- recipient family must first be shared between the state and federal governments. However, this distribution is limited to “the total amounts that have been *paid to the family* as assistance.” Based on the statutory distinction between assistance “provided” and assistance “paid to the family”, the OCSE Action Transmittal explains that when assistance consists of cash, checks or warrants paid directly to the family, then child support collected must be distributed between the state and federal governments to reimburse for that assistance. However, if assistance is provided in a different form (e.g., a voucher given to a child care provider), then the assistance is not being paid to the family and any child support collected must be given to the family.

This memo explains the background for and policy articulated in the new Action Transmittal and then summarizes the consequences of receiving TANF cash and non-cash assistance in light of the new Action Transmittal.

### **Assignment and Distribution of Support for Families Receiving TANF Assistance**

Pursuant to 42 U.S.C. §608(a)(3), states must require a family receiving assistance from a state program financed with TANF funds to assign its child and spousal support rights to the state. The assignment gives the state the right to support collected for the family “not exceeding the total amount of assistance *provided* to the family”.(emphasis added) Pursuant to this assignment, the state's child support agency provides services to the family. These services include establishing paternity, obtaining and periodically modifying a support order, and enforcing that order. 42 U.S.C. §654(4)(A)(I)(I). Unless the family obtains a good cause exception, a family receiving TANF assistance must also cooperate with the state in pursuing any support which is owed to the family. 42 U.S.C. §654(29).

When the child support agency makes a collection pursuant to the assignment, it must distribute the money pursuant to 42 U.S.C. §657. That section provides that when a family is receiving TANF assistance, the collected support is first split between the state and federal governments based--in most instances-- on the state's Medicaid match rate.<sup>1</sup> The federal government retains its share and the state has the option of retaining its share or giving some or all of its share of the collected support to the family. 42 U.S.C. §657(a)(1). (In most states, the state elects to keep its share. As a result, when a family receives TANF-funded cash assistance, it sees very little benefit from the collection of support.) However, Section 657 also says that “In no event shall the total of the amounts paid to the Federal Government and retained by the State exceed the total of the amounts that have been *paid to the family* as assistance by the state.”(emphasis added)

### **Distinctions between Title IVA and Title IVD**

For purposes of Title IVA, under proposed HHS regulations, TANF assistance does not just include cash assistance comparable to that provided in the former AFDC program; rather, “assistance” is defined to include an array of other supports. Specifically, under [proposed] 45 C.F.R. §270.30:

Assistance means 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 that do not involve implicit or explicit income support, such as counseling, case management, peer support, and employment services that do not involve subsidies or other forms of income support; and one-time, short-term assistance (i.e., assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain

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<sup>1</sup> The statute refers to this figure as the "federal medical assistance percentage". 42 U.S.C. Section 657(c)(3). For Puerto Rico, Guam, American Samoa and the Virgin Islands the percentage is set at 75 percent. For all others, the definition is the same as the definition found at 42 U.S.C. Section 1396d(b) as in effect on September 30, 1995.

employment and avoid welfare receipt and appliance repair to maintain living arrangements). This definition does not apply to the use of the term assistance at part 273, subpart A, of this chapter [i.e., for purposes of state maintenance of effort expenditures].

Thus, under the proposed regulations, if, for example, a family receives \$300 in cash assistance and a \$300 child care voucher is paid to a provider from TANF funds, the family will be considered to have received \$600 in assistance. (Note that HHS has indicated that until final regulations are issued, states are not bound by the proposed regulations; rather, state behavior and actions will be judged based on whether they reflect a reasonable interpretation of the TANF statute.)

The new Action Transmittal explains that, for Title IVD purposes, not all "assistance" is "assistance paid to the family." "Assistance" is *any* assistance paid to the family under the state's TANF-funded program or under the approved TANF state plan. However, "assistance paid to the family" for child support distribution purposes means *money* payments in cash, checks or warrants immediately redeemable at par *to a family* pursuant to the state's approved TANF plan. Action Transmittal 98-24, p. 4.<sup>2</sup> (Emphasis added) So, if transportation or child care payments are included in the family's cash grant, then these amounts are "assistance paid to the family" and any child support collected for the family can be used to reimburse the state and federal governments for their share of the grant which includes funds for these supports. If, however such supports are funded by direct payment to the service provider or by voucher made out to that provider, then the value of the support does not count as "assistance paid to the family" and therefore the current child support collected cannot be used to reimburse the state and federal governments for the cost of these services. (Action Transmittal 98-24, p. 10). Thus, in the example above, if the noncustodial parent pays \$400 in current support, only \$300 can be retained by the state. The other \$100 must go to the family.

The Action Transmittal also explains that if a state sets up a community jobs program and routes TANF money to an employer who pays it in salary to the recipient, that does not count as "assistance paid to the family" and is therefore not to be reimbursed from current child support collections. (Action Transmittal 98-24, p. 10-11).

Thus, under the Action Transmittal, the family's **assignment** of child support continues to be up to the full amount of the family's assistance, but when current support is paid, any amounts in excess of the family's cash assistance (i.e., the amount of "assistance paid to the family") must be provided to the family.

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<sup>2</sup> HHS bases its interpretation both on the statutory language, and on the language of Conference Report 104-725, 104th Congress, 2d Sess., p. 286. In the Conference Report, Congress limited its discussion of the assignment provision to situations where the family receives cash assistance.

## Key Policy Implications of the Action Transmittal

The Action Transmittal does not modify the definition of “assistance” for TANF purposes, nor does it change the family’s child support cooperation requirement. It does mean that a state’s choices in how TANF assistance is provided to a family will have important implications for whether a family benefits from child support paid.

First, it is important to appreciate that the Action Transmittal makes no change in the definition of assistance for *TANF purposes*. As noted above, under the proposed regulations, a broad array of supports are included in that definition of assistance, and it makes no difference whether the supports are provided in the form of cash or non-cash. Under current interpretations, the following are the principal implications of receiving TANF “assistance:”

- , If a family that includes an adult receives any amount of “assistance” funded with federal TANF dollars, the month counts against the federal TANF time limit if the family includes an adult;
- , If a family that includes an adult receives any amount of TANF assistance (whether federally-funded or state-funded), then the family is considered part of the state’s caseload for purposes of TANF participation rate requirements;
- , If a family receives any amount of TANF assistance (whether federally-funded or state-funded), the family is required to assign its child support to the state.
- , If a family receives any amount of TANF assistance (whether federally-funded or state-funded), the family is considered part of the state’s TANF caseload for purposes of data reporting requirements.

In addition, states are prohibited from using TANF funds to provide “assistance” to certain individuals or categories of families.

The Action Transmittal does not affect any of the non-child support consequences of receiving TANF assistance.

The Action Transmittal does affect when current child support must be distributed to the family and this distinction can be very important in designing the state’s TANF program. States wishing to provide TANF families with the child support collected on their behalf can structure some or all of the TANF-funded assistance in the form of vouchers or direct payments to service providers and/or as subsidies to employers. While families receiving TANF-funded supports in these forms will still have to assign their child support rights to the state and cooperate in the pursuit of such support, the collected child support will be available to them.