MLRI MASSACHUSETTS LAW REFORM INSTITUTE

99 CHAUNCY STREET
SUITE 500
BOSTON, MA 02111

617.357.0700 PHONE
617.357.0777 FAX
WWW.MLRI.ORG

July 25, 2015

Comments on House Ways and Means Committee Subcommittee on Human Resources Discussion Draft on TANF Reauthorization

Deborah Harris
Massachusetts Law Reform Institute
dharris@mlri.org; 617-357-0700 x 313

Thank you for the opportunity to comment on the Human Resources Subcommittee TANF Reauthorization Discussion Draft. I submit these comments on behalf of the Massachusetts Law Reform Institute (MLRI), the Massachusetts Welfare Coalition, and low-income clients of legal services programs in Massachusetts. MLRI leads advocacy efforts in Massachusetts to improve basic benefits and increase economic security for very needy individuals and families.

We support many of the provisions in the discussion draft, including elimination of the caseload reduction credit and the two-parent work participation rate, the changes in countable activities, and the strengthened assessment requirement. In the following comments, we focus on other provisions in the Discussion Draft and in current law that we think should be modified in order to help TANF serve the most disadvantaged families more effectively.

Despite improvements, the work participation rate continues to pressure states to deny assistance to families where the parent has a disability or other major barriers to employment.

The WPR rewards states for *not* providing basic cash assistance to families with major barriers to employment. This includes families where the parent has a severe disability but does not receive SSI, families who are in crisis (due to homelessness or some other reason), and families where the parent is not proficient in English, is not literate, lacks recent work experience, or does not have a high school degree.

Massachusetts has resisted the pressure to deny assistance to these families somewhat better than many other states. The state has historically recognized that the Supplemental Security Income (SSI) standard, which regards an individual as disabled only if she or he cannot engage in *any* substantial gainful activity, is not the appropriate standard for a parent who must provide for her children's basic needs. Massachusetts has therefore developed an alternative disability standard that is applied by the state's Disability Evaluation Service using medical and vocational criteria similar to but slightly less stringent than SSI's. The state's Disability Evaluation Service also

determines parents disabled if they meet the SSI standard but have not been approved for SSI, including those who are waiting for a decision from the Social Security Administration. Parents who are determined disabled are not subject to work requirements and are not sanctioned if they participate voluntarily but are unable to meet all of a program's requirements. As a result, about 27% of the families receiving TANF cash assistance in Massachusetts are headed by a parent with a severe disability who is not receiving SSI.

Under the Discussion Draft, Massachusetts would be under greater pressure to impose strict work requirements on parents with disabilities because it could no longer reduce the work participation rate through the caseload reduction credit (as the state did some years ago) and could no longer raise its WPR through a worker supplement program (as it is doing currently). While we appreciate and generally support the reasons for eliminating the caseload reduction credit and excluding the state's worker supplement programs from WPR calculations, we are concerned that these changes would add to the pressure Massachusetts is already under to subject parents with disabilities to the same the work requirements as parents who do not have identified limitations, setting them up for failure and the loss of assistance for themselves and their children.

Improvements in the Discussion Draft, while welcome, do not adequately ameliorate the pressure on states to deny assistance to "work eligible" families who are unable to meet one-size-fits-all work activity requirements.

- **The hours requirements remain too stringent for many families with severe barriers to employment.** About half of the parents determined disabled under the Massachusetts state standard have mental impairments – including anxiety disorders, severe depression, and cognitive impairments. About 20% are approved on the basis of severe musculoskeletal impairments. Many suffer from a combination of impairments. *A 30-hour or even a 20-hour per week activity requirement risks aggravating stress and is inappropriate or impractical for many of these families.* Similarly, homeless families cannot focus on housing search, getting their children to schools and medical appointments that are no longer nearby, and helping their children though the trauma of homelessness if they are subject to strict hours requirements. Allowing states partial credit for families participating for fewer than the minimum required hours, although a welcome provision in the Discussion Draft, would not sufficiently mitigate the disincentive to serve these families since the state would have to engage 100% of the families with barriers for at least half of federally required hours in order to achieve a 50% WPR for them.

- **The bill should be revised to give states credit for serving *more* parents with disabilities and other barriers to employment, rather than fewer such parents.** For example, states could be given a credit against the WPR for families determined – in accordance with reasonable state standards – to have major barriers to employment. Alternatively, or in addition, states could be encouraged to design programs for these parents with reduced hours requirements tailored to what the parent can realistically do, consistent with the Discussion Draft provisions on assessment.

- **At a minimum, individuals who are applying for SSI or in the SSI appeals process should not be considered "work eligible."**

The cap on the share of the work participation rate that can be satisfied by participation in training or education should be eliminated.

Massachusetts' economy, like that of the rest of the country, is increasingly knowledge-based. More than 40% of TANF cash assistance adults in Massachusetts lack a high school diploma or GED. About 20% are not proficient in English. Families are less likely to become self-supporting if they are pushed into unstable low-wage jobs or unpaid community service than if they have help to address these deficits. If the cap is not changed or is only lifted, then it is also important to eliminate the provision that counts young parents maintaining satisfactory school attendance toward the cap. This has been an issue for Massachusetts, which has an excellent school program for parenting teens receiving TANF cash assistance. When the young parents in that program are added to the number of countable individuals in vocational education, Massachusetts exceeds the cap if participants in its worker supplement program are not counted in the work participation rate.

The bill should require HHS to allow more flexibility in how participation hours are counted.

Current rules require the state to track each participant's hours of participation. This is an enormous burden on programs that provide services, results in sanctions of parents who are doing their best to comply, and penalizes states that focus on helping participants succeed rather than documenting hours. We urge Congress to direct the Secretary to revise current rules in the following ways:

- **Allowing for holidays and days of program closure.** Current regulations allow only 10 holidays per year. However, many nonprofit and public employers are closed for more than 10 days per year, especially if they close for the week between Christmas and New Year. Similarly, many education and training programs, job search programs, and job readiness programs are closed for more than 10 days per year, including holidays, semester breaks, and days when the program is closed for staff training or other reasons. During the past winter in Massachusetts, schools and many employers were closed for seven or more days because of weather. On several days, the Governor directed non-essential employees to stay home. Public transportation in the Boston area stopped working and roads throughout the state were impassible or dangerous. The Secretary should be directed to allow states to count days when the employer or program is closed, or alternatively, to calculate monthly compliance excluding such days.

- **Allowing for excused absences.** Current regulations allow only 80 hours of excused absences – including vacation and sick time – over the course of a year, and no more

than 16 hours in any given month. This is more rigid than the absence rules of many employers. Parents get sick and should be encouraged to stay home rather than infect others in the workplace. Children get sick too, and parents need to stay home to care for them. Parents also need to go to medical appointments for themselves and their children, attend school conferences, and deal with breakdowns in transportation or child care arrangements. Massachusetts workers by law can earn and use 40 hours a year of sick time in addition to vacation time. The bill should direct the Secretary to allow states to count a reasonable amount of sick time, in addition to a reasonable amount of personal time, including vacation.

- **Reducing the documentation burden.** Current regulations allow states to project hours for up to six months based on current information on work hours for individuals in paid employment. This is similar to and dovetails with the SNAP (food stamp) Simplified Reporting option, which allows states to require SNAP recipients to report earnings only twice a year (unless their income goes over a specified limit). The bill should similarly direct the Secretary to reduce the documentation burden for persons in other activities that can be expected to last more than a month – including participation in training and education programs. Once an individual is enrolled in program that meets the hours requirement, the state should be allowed to count that individual for the requisite number of hours for the duration of the program provided the state verifies continued participation at appropriate intervals.

- **Standardizing the number of hours per month.** Under current rules, the number of hours each month varies depending on the number of days in the month, adding to the documentation burden. The Secretary should be directed to allow states to require the same number of hours each month, 80 hours a month instead of 20 hours a week or 120 hours a month instead of 30 hours a week. This would retain a clear federal standard but would be easier to administer than the current rule.

A strategy other than (or in addition to) a floor on spending is necessary to redirect TANF and MOE funds to cash assistance, work supports and child care.

The TANF cash assistance caseload in Massachusetts has dropped by 30% since October 2012, due to a combination of an improving economy, harsher implementation of state work requirements and time limits, and state agency business process changes that make it harder for families in need to access and maintain benefits. The caseload is now less than have of what it was in 1996. The state has not invested the "savings" from the caseload decline in long overdue increases in benefits (which have lost nearly half their value to inflation since the late 1980s) and also has not invested in services to help families address severe barriers to employment. Instead, increasing amounts of TANF and MOE are used for worthwhile programs other than the cash assistance program. Center on Budget and Policy Priorities calculations show that the Massachusetts TANF-to-poverty ratio is now less than half of what it was in 1996.

However, unlike many other states, Massachusetts is already spending about 30% of TANF and MOE on cash assistance and work activities (though that will decline if the caseload continues to

decline) and is already spending an additional 30% of TANF and MOE on child care in addition to the 20% of the block grant that is transferred from TANF to CCDF. Thus, a 50% floor (which we understand was suggested at the hearing) would likely not redirect funds to cash assistance or work supports in Massachusetts if the floor includes child care spending.

Moreover, a floor will not be effective in redirecting funds to cash assistance and work supports for the neediest families as long as the WPR continues to penalize states for providing those benefits to persons with disabilities and other barriers to employment. Rather than risk a penalty, states may create worker supplement or other programs that comply with the new requirements but only help families at higher income levels. This is especially likely if the state anticipates that it will be difficult to increase MOE to satisfy a penalty.

One alternative would be to require states to take incremental steps towards a TANF-to-poverty ratio of at least 75 TANF cash assistance families for every 100 families in poverty, the national ratio in 1994-1995 according to the Center on Budget and Policy Priorities. Other ways to achieve the goal of directing funds back to serving the families with the greatest need should also be considered.

States should be allowed to use sampling or other methods to comply with the proposed prohibition on claiming TANF or MOE for families with incomes at or above 200% of the federal poverty line.

The Discussion Draft reasonably allows states to claim spending for *programs* that provide benefits or services to families with incomes at or above 200% of the federal poverty line as long as the *family's* income is below 200% FPL when the family applies. Thus, states would be able to claim at least some of the spending for programs that seek to reduce "cliff effects" by having higher income limits or by phasing out the benefit amount or raising co-pays incrementally for families with higher incomes. Encouraging states to support such programs with TANF and MOE is especially important in a high cost state like Massachusetts where a 200% FPL limit for programs would exclude many families who are struggling to survive.

However, we anticipate that Massachusetts and other states may have difficulty tracking and reporting each family's income data at the time of application. We therefore suggest that the bill expressly allow states to use a sample rather than individual case data to determine the amount that can be claimed for families below 200% FPL who are served in programs that also serve families with higher incomes. States should also be allowed to establish that a family in the sample has income below 200% FPL by doing a match with the SNAP caseload (as is done to verify eligible for the National School Lunch Program) or through a match with other data sources such as the state's quarterly wage data. Because sampling would likely determine income at a point in time after application rather than at the time of application, the bill language should be revised to allow a claim for families whose incomes are below 200% FPL at any point during the sample period as well as families whose incomes are below 200% FPL at the time of application.

States should be held accountable but the outcome measures and penalties should be revised.

We support the inclusion of outcome measures to assess how individuals fare after they leave TANF. This could have a salutary effect in Massachusetts where a short 24-month time limit, work sanctions, procedural case closings, and lack of investment in work supports pushes many families off assistance before they able to support themselves. However, under the Discussion Draft, a state could count a family towards the performance target even if the parent is employed only a few hours a week. There should be a minimum amount of earnings that will count towards the performance target, which should bear some relationship to the state minimum wage times the number of hours required for a family to count towards the WPR. For similar reasons, the Discussion Draft's proposed earnings gain measure should be revised to measure earnings at a point in time and should give states credit only for families who meet specified earnings levels such as, at a minimum, the federal poverty level. We support the concept of setting performance goals that allow for variations among states' economic conditions, wages and cost. However, we are concerned that allowing each state to negotiate its own target will prompt some states to try to set the bar low to avoid the risk of penalties and will make it impossible to compare performance states. The bill should therefore direct the Secretary to develop standard measures, which could be state specific, such as a percentage of median income.

Although such performance measures could discourage states from pushing families off assistance who cannot support themselves, focusing only on employment success could create an incentive to states to make it harder for families who have major barriers to employment to access cash assistance in the first place. Outcome measures should therefore also be designed to discourage states from denying assistance to these parents. The TANF-to-poverty ratio could be one such measure.

We share the concern of others that the penalty structure in the draft needs to be revised. As drafted, the bill would hold back a portion of the block grant and require states to earn back the withheld amount by meeting outcome measure goals. This risks penalizing *families*, who will ultimately suffer if block grant funds are reduced. We suggest that instead of such a draconian penalty the bill would authorize the Secretary to require the state to submit a corrective action plan setting forth the steps the state will take to address the failure. The bill could authorize the Secretary to reduce the amount the state can claim for administrative expenses it the state fails submit and comply with a corrective action plan. The bill could also authorize the Secretary to require the state to increase its investment in cash assistance, work supports and childcare. The Food and Nutrition Service of the Department of Agriculture uses a similar penalty process to enforce compliance with SNAP (food stamp) rules.

The Family Violence Option should be redesigned to allow states to exclude domestic violence survivors from the work participation rate denominator in appropriate circumstances.

Studies in Massachusetts have determined that as many as two-thirds of all TANF cash assistance recipients are survivors of or currently experiencing domestic violence. However, for FFY 12, Massachusetts reported having granted only 25 good cause domestic violence waivers. Most other states also reported having granted very few domestic violence waivers. One reason for this is that granting a domestic violence waiver only helps the state to the extent that the state can show that but for the waiver the state would have met the WPR or would not have failed to comply with the five-year limit. States should be allowed to exclude from the WPR calculation families who qualify for a domestic violence waiver from the work requirement. The bill could limit the number of such exclusions and could require the Individual Opportunity Plan to detail the grounds for the waiver and a timeline for review of it.

Additional funding is needed.

The block grant has lost 30% of its value since it was established. The freeze on funding is one reason that TANF cash assistance benefits in most states have not kept pace with inflation. Cash assistance benefits are so low that families who receive them live from crisis to crisis. TANF cannot help families move towards economic security if it does not first meet their basic needs. Low benefit levels are also a factor in the increasing numbers of very poor families who are over-income for their state's cash assistance program yet face similar survival challenges. The block should be increased, should be indexed to inflation for future years, and at least some of the increases should be directed to states that increase their cash assistance benefits and cover more of the state's poorest families with children.

The drug felon bar should be eliminated.

Massachusetts has opted out of the drug felon bar for SNAP and has limited it for TANF cash assistance recipients so that it only applies to persons who were incarcerated for the felony and released from prison within the previous year. Although the remaining bar is a real issue for the very few families who are affected and potentially interferes with their rehabilitation and return to society, the main problem with the remaining bar in Massachusetts is that adds yet another rule to an already overly complicated program and does not serve any of the primary goals of TANF. We therefore recommend that the drug felon bar be eliminated.

Thank you very much for your consideration of these comments and for the Committee's commitment to making TANF do a better job of helping the nation's neediest families achieve economic stability.

Submitted by:

Deborah Harris
Massachusetts Law Reform Institute
99 Chauncy Street, Suite 500
Boston, MA 02111
Phone (617) 357-0700 x 313
Fax (617) 357-0777

dharris@mlri.org s