

CRS Report for Congress

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Welfare Law and Domestic Violence

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Summary

The Family Violence Option (FVO) of the 1996 welfare law (P.L. 104-193) permits state programs of Temporary Assistance for Needy Families (TANF) to waive federal rules regarding required work, time limited benefits, and child support cooperation for victims of domestic violence. The purpose of the FVO is to enable states to help victims of domestic violence without subjecting them to TANF rules that might “unfairly penalize” them or put them at further risk of abuse. Out of 54 jurisdictions with TANF programs, 44 have adopted the FVO. In the second annual state TANF reports, New York said it gave 8,370 waivers during calendar year 2000, and California reported that it gave 3,505 waivers in FY2001. Several states said their child support waivers outnumbered work waivers. However, some states provided no waiver data. Some of the 10 states that have not adopted the FVO said they provide services to victims of domestic violence. This report details the history, implementation and implications of the FVO. It will be updated for legislative developments or new data.

Introduction

The 1996 welfare law (P.L. 104-193) replaced the entitlement program of Aid to Families with Dependent Children (AFDC) and other related programs with the block grant program of Temporary Assistance to Needy Families (TANF). To receive their full share of federal funding, states must enforce some federal requirements on parents: minimum work participation rates, a 60-month time limit on federally-funded benefits, and cooperation in child support enforcement.¹

¹ Failure by a state to achieve the required work participation rate is to result in a decrease in funding of 5% for the first year of noncompliance, increasing by 2% for each subsequent year that compliance is not achieved, not to exceed 21%. The penalty may be reduced based on the severity of noncompliance or if noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. Penalty for violating the 60-month time limit is a 5% decrease in federal funds. If a state is not enforcing penalties against individuals who fail to cooperate in procedures to enforce child support orders, federal funding is to be decreased by not more than 5%. However, none of these penalties may be imposed if the state is determined to have reasonable cause for noncompliance. (Section 409(b)(2) of the Social Security Act).

Federal statute does not provide for any automatic exemption of individuals from program requirements but does enable states to extend the 60-month benefit cutoff for 20% of the state's caseload on grounds of "hardship" or the family's inclusion of an individual who has been battered or subjected to extreme cruelty. Persons who have a history of domestic violence can be classified by the state as hardship cases within the 20% cap. In addition, a provision called the Family Violence Option (FVO) allows states to exempt qualifying victims of domestic violence from any TANF rule. States that certify that they have adopted the FVO have a greater capacity to exempt other "hardship" cases from the time limit without risk of penalty.

Family Violence Option

The Family Violence Option is an *optional* certification in a state TANF plan, specifying that the state has established and is enforcing standards and procedures to screen and identify TANF recipients with a history of domestic violence, will refer such individuals to counseling and supportive services, and will provide "good cause" waivers of normal program requirements when compliance would make it more difficult to escape domestic violence or unfairly penalize them. The FVO provision defines "domestic violence" as having the same meaning as the term "battered or subject to extreme cruelty" in the time-limit hardship language.²

For persons with a history of domestic violence or who are at risk of further violence, the FVO allows states to waive program requirements. If a state that has granted good cause domestic violence waivers under the FVO fails to meet the minimum work participation rate, it may receive penalty relief on grounds of "reasonable cause" for the failure. These cases still count in the final calculation of the state's work participation rate, but they are eligible for removal from calculation of penalties. The state also will not be penalized for failure to enforce child support cooperation if enforcement would put the victim at risk of further abuse.

States with FVO certification can give time limit extensions above the 20% hardship cap to families that have federally recognized good cause domestic violence waivers. The 60-month federal time limit clock does not stop despite these waivers, but the time limit can be extended for so long as necessary without penalty. Families that have received continuous ongoing cash assistance through a state TANF program for 60 months will lose federal cash assistance unless they are extended by the state under the 20% hardship cap or have been granted a good cause domestic violence waiver.

For federal recognition of good cause domestic violence waivers, the state must provide: 1) individualized responses and services strategies consistent with the needs of individual victims; 2) *temporary* waivers (not to exceed 6 months); and 3) in lieu of program requirements, alternative services for victims consistent with individualized

² Section 408 (a)(7)(C)(iii) of the Social Security Act defines battered or subject to extreme cruelty as having been subjected to physical acts that resulted in, or threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempts at, physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

responses and service strategies. Waivers are available only to individuals in states that have adopted the FVO in their state plan. Outside of the state plan, states also can request approval from the Department of Health and Human Services (HHS) for FVO certification in corrective action plans submitted after failing to meet a federal requirement. This procedure is to deter states from using the FVO as a “quick fix” to avoid penalties instead of as a broad strategy to best serve victims of domestic abuse. States requesting recognition of good cause domestic violence waivers must provide in their annual reports a description of the strategies and procedures in place to serve victims of domestic violence and the aggregate number of waivers granted to them.

Recipients with waived program requirements under the FVO can receive assistance indefinitely, subject to redetermination at least every 6 months. Each recipient must have an appropriate services plan that is developed by a person trained in domestic violence, reflects individualized assessment and is designed to lead to work. The development of an appropriate services plan by a trained professional requires that state TANF programs train staff in domestic violence or coordinate with an agency/organization for assistance in developing individualized plans.

State Implementation of FVO

As of summer, 2002, all TANF jurisdictions except ten states (Connecticut, Idaho, Louisiana, Michigan, Mississippi, Ohio, Oklahoma, South Dakota, Virginia, and Wisconsin), had adopted the FVO. Among the states with FVO certification, there is great variation in procedures for notification and screening, statewide service delivery by professionals trained in domestic violence, waivers of requirements, and length of waiver. States also vary in how they inform recipients of the domestic violence good cause waiver. Some inform recipients orally, encouraging the recipient’s oral disclosure of an abusive situation or history; others rely on questions on application forms and/or supplemental brochures and pamphlets. The different procedures could affect which recipients are notified and how willing a victim is to disclose her history.

As is consistent with the devolution of many state TANF programs, a state that has adopted the FVO is not mandated to have statewide implementation. Colorado has certified adoption of the FVO but defers to each county the option to adopt FVO compliant procedures. Many states defer service development and implementation of domestic violence services to the counties under standards set by the state. Most states grant waivers on a case-by-case basis so there is great flexibility for the caseworker to either deny or pursue a good cause waiver.

In complying with the FVO requirement for development of an appropriate services plan by a trained professional, some states have provided training for caseworkers within the welfare agency. Others have chosen to have the welfare agency coordinate with another agency or organization to develop a plan. (The state of Kansas defines staff who have received training designed by the Kansas Coalition Against Domestic Violence and Sexual Abuse as “persons trained in domestic violence.”)

States determine which requirements to waive on an individual basis as part of the victim’s services plan. One state (Maryland) effectively stops the federal time clock for victims by assisting them with state funds until the barriers caused by domestic violence have been removed. Since domestic violence victims in Maryland are moved into a

separate state program, they are not subject to federal rules, and states cannot be penalized for any exemption made for individuals assisted by a state-funded program. For domestic violence victims in federally-funded TANF programs, the federal clock continues to tick.³ FVO waivers are the only way that domestic violence victims can be assured ongoing federal cash aid after the 60-month time limit, unless the state includes them under the 20% "hardship" exception.

Federal regulations limit waivers to no longer than 6 months, subject to redetermination. Most states provide waivers indefinitely, subject to biannual redetermination. These redeterminations usually assess compliance with the individual's services plan as an indication of progress and grounds for an extended waiver. Some states limit the length of a waiver of certain requirements, according to state documents. For example, Minnesota exempts domestic violence victims from employment requirements for a lifetime maximum of 12 months. Montana provides an exemption to its state time limit for up to 6 months. Texas allows waiver of time limits, child support cooperation, and work requirements for up to 1 year.

Some of the states choosing not to certify for the FVO, including Connecticut, Michigan, and Wisconsin, have procedures in effect to identify and serve victims of domestic abuse. In its 2001 state TANF report, Wisconsin said case managers work closely with domestic violence victims. Wisconsin also said it considered it counterproductive to categorically waive program rules because in the past persons exempted from work rules often had received no services. In Ohio, county departments have the responsibility for devising policy about corroboration and assessment of domestic violence.

Data on Waivers

FY2001 state TANF reports provide these data on good cause waivers granted under the FVO: Alabama, 126 (from work rules); Arizona, 302 (work deferrals); California, 3,505 (72% above the FY2000 figure); Georgia, 1,656; Kansas, 806; Kentucky, 562 (based on monthly average of 46); Massachusetts, 194; Minnesota, 643; Missouri, 1,612; New Jersey, 445; New Mexico, 84; New York, 8,370 in calendar year 2000 (up 76% from CY1999); North Carolina, 10; Pennsylvania, 702 as of September 30, 2001 (542 from child support rules, 160 from work rules); Rhode Island, 178 (151 from child support rules, 20 from work rules, 7 from rules of both programs); South Carolina, 104; Tennessee, 468 (based on monthly average of 39); Texas, 272; and Vermont, 163 waivers of child support rules and 8 work deferrals or exemptions. Florida said that although it granted no waivers, it gave domestic violence "deferrals" from work activity to 494 participants for a limited time (while alternate activity plans were developed). Louisiana said it was unable to provide data. Oregon, which gave no data, said that for reasons of client safety, it had not created an identifier to track FVO waivers.

³ Many states have set benefit cutoff time limits shorter than 60 months, and some of them stop their state clocks for victims of domestic violence; some others do not stop the state clock but provide extensions once the time limit is reached.

History of the Family Violence Option

The Family Violence Option was enacted as part of the 1996 welfare reform law (P.L. 104-193). The concept behind the FVO can be traced back to a 1995 Wellstone-Murray amendment to H.R. 4, a version of TANF that was vetoed. The amendment would have *required* states to adopt the FVO and *excluded* domestic violence victims with waivers from the calculation of state work participation rates. This provision passed in the Senate but was rejected by the House. Senator Wellstone proposed a similar amendment, calling for mandatory state certification, in the 1996 legislation leading to P.L. 104-193. The amendment passed in the Senate but was not included in the House version of the bill that the Senate subsequently adopted. Since FVO enactment in 1996, the Senate has twice passed a bill to forbid any numerical limit on time-limit hardship exemptions for domestic violence victims, but the House has not followed suit. Representative Schumer proposed bills twice (1996 and 1997) to *require* state certification of the FVO (H.R. 4324, H.R. 2861), and the Battered Women's Economic Security and Safety Act of 1999, S. 1069, proposed to prohibit numerical limits on time limit hardship exemptions for persons with domestic violence waivers under the FVO and to exclude waived individuals from the calculation of state work participation rates.

Incidence of Domestic Violence and Effect on Employment

Numerous studies have attempted to document the prevalence of domestic violence and implications on employment for welfare families. Conferees on P.L. 105-33 directed the General Accounting Office (GAO) to submit a report on the impact of domestic violence on the use of welfare. The GAO conducted an analysis of past studies of welfare recipients and found that between 15% and 56% of the women surveyed reported that they were or had been victims of physical domestic abuse in the 12 months preceding the survey and that 55% to 65% had been physically abused by an intimate partner at some point in their lives (GAO-HEHS-99-12). The broad range reflects differences in survey techniques and sample populations. This abuse rate of abuses is significantly greater than that in the general population, which was found in a 1998 survey to be 1.5% in the 12 months before the survey and 25% at some time. The GAO report cited U.S. Department of Justice surveys that found women aged 20 to 34, divorced or separated, and women with family incomes less than \$9,999 more likely to be victims of domestic violence than women in general. The state of Kansas, in its 2000 TANF report, says that domestic violence issues were disclosed by 4.6% of TANF applicants/recipients (248 out of 5,330) who received information about domestic violence services and were screened in the Topeka office by an "on-site advocate." Of these, 14 were determined to need a domestic violence waiver. The California Research Bureau reports that a 2000 survey by the California Department of Health Women's Health Project found that about 6 percent of the women in California were victims. [<http://www.library.ca.gov/html/statseg2a.cfm>].

The GAO report could not conclude that domestic violence affected the victim's likelihood of work. No study could isolate the effects of domestic violence on employment status. A 1997 Massachusetts study of AFDC recipients found similar employment rates for women who reported having been abused or not (8.8% and 7%, respectively). However, a study of women in a low-income neighborhood in Chicago found that women reported to have been subject to abuse at some point suffered more spells of unemployment, greater job turnover, and significantly higher rates of receipt of

AFDC, Medicaid and food stamps. The GAO report said that women who currently experience domestic violence may differ in their ability to obtain and maintain employment from women who have safely escaped from past violence.

The GAO review suggests that abusers may hinder their victims from obtaining and maintaining employment. Abusers often feel threatened by women's efforts toward self-sufficiency that might afford them the option to leave the abusive relationship. Between 16% and 60% of the women surveyed in five studies reported that their partner had discouraged them from working, and 33% to 46% said their partner prevented them from working. Abusive partners often attempt to sabotage women's work efforts by becoming violent, promising child care and then failing to deliver, destroying or hiding items needed for women's work activities, harassing them at their work site by phone or in person, and inflicting visible signs of abuse so that women will be too embarrassed to attend their work activity. Three studies found that 44% to 60% of respondents had been reprimanded at work for behaviors caused by the abusive situation, and 24% to 52% said they lost their jobs as a result of abuse. Further, domestic violence inflicts physical and emotional health problems on women that can affect their ability to find and maintain employment.

Implications of the FVO

Although most states have certified their adoption of the FVO, many may not need federally recognized good cause domestic violence waivers to escape fiscal penalties for time limit or work participation failures. This is because many states appear unlikely to exceed the 20% hardship cap on time limit extensions or to fail work participation rates, which have been sharply lowered because of caseload reduction. (Because only 2/3s of TANF cases now include an adult recipient, the 20% cap is equivalent to almost 30% of the cases that include an adult recipient [20/67].) When states do request federal recognition of waivers, their reporting of domestic violence need not be comprehensive. States are required only to describe the standards and procedures they have established and the number of waivers for which they seek federal recognition under the FVO. Domestic violence victims may be exempt from work requirements through another category, such as having to care for a young child or handicapped relative. They may also benefit through access to domestic violence services, although not given an exemption from any welfare rule.

Legislation in the 107th Congress

In the 107th Congress, bills were introduced to require states to ensure that TANF programs help victims of domestic violence (H.R. 4655) and to entitle victims of domestic/sexual violence to emergency leave for various kinds of help (S. 1249/H.R. 2670). Further, the Senate HELP Committee proposed, in a bill to reauthorize the Family Violence Prevention Services Act (S. 2998), to provide funding for services for children exposed to domestic violence. It also would have established a secure electronic network to link domestic violence shelters and service providers and the National Domestic Violence Hotline on a confidential website.