

The Family Violence Option In New York

- A. Why is it necessary to treat domestic violence victims differently within the new welfare system?**
Current statistics from the Taylor Institute demonstrate that 20 - 20% of welfare recipients are current victims of domestic violence and cooperating with the new welfare requirements may make it more difficult for victims to leave domestic violence situations (work requirements, child support cooperation and paternity establishments, etc.).
- (See: Keeping Battered Women Safe Through the Welfare -to-Work Journey: How are we doing? A Report on the Implementation of Policies for Battered Women in State Temporary Assistance for Needy Families (TANF) Programs; FINAL REPORT, by Jody Raphael and Sheila Haennicke, Taylor Institute, September 1999).
- B. How are domestic violence victims protected within the Federal Welfare Reform Act?**
- a) States can choose to implement the federal Wellstone-Murray Family Violence Option, which addresses the safety needs of domestic violence victims and their children within the states TANF plan.
 - b) The family violence option sets forth intake procedures for individuals to self-identify as domestic violence victims and mandates that all individuals who indicate that they are a victim of domestic violence be referred to a domestic violence liaison. The domestic violence liaison will assess the credibility of the individual, provide referrals and information on services and determine if any waivers from program requirements are necessary.
 - c) States cannot be penalized financially by the federal government (for not meeting state work participation rates or time limit standards because domestic violence victims are temporarily exempted) as long as:
 - 1) the specific program requirements being waived are identified waivers are granted by a person trained in domestic violence and reevaluated no less often than every 6 months; and
 - 2) waiver must be accompanied by an appropriate services plan developed by a person trained in domestic violence that demonstrates an individualized assessment and to the extent that work is consistent with helping the victim achieve safety - it is designed to lead to work.
- C. Summary of New York's Family Violence Option: (See also 98-ADM-3 which is the administrative directive in NY on how social services districts should implement the FVO) - New York did elect to adopt the federal Wellstone-Murray Family Violence Option and has implemented it.**
1. **Universal Notification** - All applicants and recipients of temporary assistance are given a copy of a universal notification form advising them of domestic violence services that are available and the potential exemptions from welfare requirements, and during orientation all applicants and recipients must be provided with a "palm" card that has this same information on it.
 2. **Universal Screening** - All applicants and recipients must be screened for the existence of domestic violence. This is done by a case worker who uses the state-wide screening tool (see enclosed h/o). If the

applicant answers yes to any of the questions on the screening form, they must be referred to the domestic violence liaison. Once the referral is made, everything else, such as employability and child support referrals, should cease until the domestic violence assessment is completed.

3. The Domestic Violence Liaison

- a) The role of the domestic violence liaison is to assess the credibility and safety of the person, make referrals and determine the need for any waivers, do any emergency safety planning, coordinate with other case managers and maintain all records.
- b) Qualifications - At a minimum, this person must have completed the training sponsored by the OTDA, possess good communication, listening and assessment skill and have a bachelor's degree OR one year of domestic violence advocacy or counseling experience in an approved domestic violence program OR 2 years of relevant advocacy counseling experience OR be a case manager.
- c) This position can also be contracted out to an approved residential program for domestic violence victims
- d) Services Plan - The domestic violence liaison **must** develop a written service plan with the victim designed to lead to safety and self-sufficiency. This service plan must state which waivers were granted and for how long, as well as the recommendations and referrals for the victim. However, the victim must not be mandated to comply with the services and recommendations listed on the services plan. The Department recognizes that it is the individual's choice whether or not to act on any of the referrals and they must not require individuals to participate in any particular activity (See 99 ADM-8).

- Contrast above with the first ADM (98 ADM-3, at page 14) which stated that when considering extensions of waivers, domestic violence victims who are unwilling to take steps or activities that lead to safety and self-sufficiency should be looked at when determining credibility.

4. Waivers

- a) **What program requirements can be waived?**
Program requirements such as work, child support cooperation, paternity establishment, learn fare and signing liens.
- b) **How is credibility determined?**
Through the assessment done by the domestic violence liaison. When looking at the evidence of the abuse, at a minimum, the individual may be asked to sign a sworn statement confirming the truthfulness of the information provided.
- c) **When will waivers be granted?**
Waivers will be granted pursuant to a determination of good cause for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

- A waiver will also be granted from the 60 month lifetime limit on TANF benefits is: "the individual would not be required to participate in work or training activities because of an independently verified physical or mental impairment resulting from domestic violence, anticipated to last for three

months or longer, or if the individual is unable to work because of the need to care for a dependent child who is disabled as a result of domestic violence.”

d) Is there a time limit on waivers?

- Waivers must be granted for an initial period of not less than 4 months.

- Waivers will be subject to on-going review and they can be extended, modified or terminated at any time.

- There is no maximum time limit on waivers - they can be granted for as long as necessary but they must be reviewed at the end of each waiver period.

5. Confidentiality (See 18 NYCRR 357.3) and Privacy Issues:

a) 18 NYCRR 357.3 provides that any information collected as a result of screening, assessment, referrals and waivers shall not be released to any outside party or government agency unless it is required to be released by law or there is an authorization by the temporary assistance applicant or recipient.

b) Employees of the office, SSD's or any agency providing domestic violence liaison services can access client identifiable information only if the employee's specific job responsibilities cannot be done without the information.

c) Exception to confidentiality - Child Abuse and Maltreatment Reporting -

- The Domestic Violence Liaison must report suspected child abuse and maltreatment. If they have reasonable cause to believe a child has been abused or maltreated, they must make a report. However, 98 ADM-3 states that the domestic violence screening procedures were not established for the purpose of identifying suspected child abuse or maltreatment but they provide examples of questions the liaison should weave into the interview if he/she suspects that child abuse or maltreatment is occurring. The ADM also recommends informing the parent/guardian that a report has been made and/or letting them know from the onset that it is the worker's legal responsibility to report suspected child abuse and/or maltreatment.

d) According to 98 ADM-3, privacy should be maximized during the eligibility interview especially if the applicant raises domestic violence issues. Dept. Reg 357.5 states “interviews with clients shall be conducted at a location and in a manner which maximizes privacy.”

6. Implications on Other Programs -

a) Food Stamps

- There are no specific provisions to allow for waivers of food stamp program requirements for victims of domestic violence. However, state food stamp plans do allow districts to exempt victims from food stamp work requirements under the criteria of “substantial barriers to employment.”

b) Different Standards - There are different standards for the good cause exception to child support cooperation and the family violence waiver. For recipients of temporary assistance, Medicaid and foster care services, in order to claim good cause for not cooperating with child support cooperation, you must demonstrate one of the following: (there is a slightly less stringent standard for recipients of child care) (See 18 NYCRR 369.2(b), 99-ADM-5 at pgs. 355-36)

Cooperation would result in physical or emotional harm of a serious nature to the child for whom

support is sought

- i. Cooperation is expected to result in physical or emotional harm of a serious nature to the parent/caretaker relative grantee sufficient to impair their ability to care for the child adequately;
 - ii. Child was conceived as a result of incest or forcible rape;
 - iii. Adoption of the child is pending before a court, or the caretaker is receiving preadoption counseling services (for up to three months after the child's birth)
*when evaluating emotional harm, workers must consider the following:
 - present emotional state of the individual subject to emotional harm
 - individual's emotional health history
 - intensity and probable duration of the emotional impairment
 - extent of cooperation with the child support enforcement process which would be required
 - if alleging emotional harm to the child: extent to which the child would be involved in the paternity establishment and support enforcement activities
 - d. **Problems/Challenges with NY's Implementation of the Family Violence Option**
(See "Keeping Battered Women Safe Through the Welfare-to-Work Journey: How are we doing?," A Report on the Implementation of Policies for Battered Women in State Temporary Assistance for Needy Families (TANF) Programs: Final Report, By: Jody Raphael and Sheila Haennicke, Taylor Institute, September 1999)
- 1) **Narrowly construed waiver -**
 - The waiver applies to situations where there is a current danger.
 - The waiver will not allow for situations where there may not be a current danger/safety issue but there is still a need for time for recover. The individual may not be in immediate danger but still cannot cooperate fully with welfare requirements.
 - 2) **Problems with child support cooperation -**
 - Most domestic violence notices across the country do not even mention that child support enforcement and paternity establishment obligations can be waived as well (for good cause). They do not link the Family Violence Option with the child support waiver and domestic violence usually will connect them.
 - NY allows the agency to go after the father without the cooperation of the victim. For example, they can find good cause for victim not to cooperate but can then determine that it can still proceed without risk to the victim and/or the children without her cooperation (For example, if the victim has panic attacks upon seeing husband but there is no current domestic violence - can grant good cause for not cooperating but still proceed because supposedly no risk at the moment - See 98 ADM3, at page 14).
 - Problems with good cause definition being child centered and threat of domestic violence must be so severe it would reduce ability to care for the child - whereas with the domestic violence definition in the FVO there is not as high of a standard to meet.
 - 3) **Confidentiality issues:**

- victims are told up front that everything disclosed in the screening process will be kept confidential except for child abuse and neglect, but what are the standards for this? Is it enough that a woman left as soon as she learned of the abuse against the child? Many women may not answer the questions truthfully for fear that they will be charged with failure to protect.

4) **KEY ISSUE: how do you effectively assess for domestic violence?**

- Many individuals may not want to identify as a “domestic violence” victim - New York’s form is called the domestic violence screening form

- There is an inherent difficulty in having a stranger (case manager) not comfortable with domestic violence administering the screening tool. Individuals may feel shame, embarrassment, etc. - very personal questions are being asked by a virtual stranger. The process seems to work better when questions are not asked so formally (without the screening tool).

- There are difficulties with questions on the screening tool itself - is there really a need to ask about specific abuse? Instead of general questions, the questions could be framed within the context of meeting work, child support, paternity requirements, etc.

- Lastly, disclosing domestic violence is not the individual’s immediate concern, he/she is in an economic crisis. The immediate concern is how to economically care for oneself and/or one’s children.

e. **How to improve implementation of Family Violence Option -**

See “Keeping Battered Women Safe Through the Welfare-to-Work Journey: How are we doing?”- A Report on the Implementation of Policies for Battered Women in State Temporary Assistance for Needy Families (TANF) Programs: Final Report, By: Jody Raphael and Sheila Haennicke, Taylor Institute, September 1999)

** Studies are finding that a very low number of waivers have been granted around the country - this does not coincide with the statistics on the number of welfare recipients who are also victims of domestic violence. ***

Suggestions for Improvement:

1. More appropriate screening questions:
- Examples of more appropriate screening questions: Alaska’s form says: “Tell us if working, looking for a job, or going to school may put you or your children in danger of physical, emotional or sexual abuse, we may be able to excuse you from these activities until the situation is resolved.” (Link them to work, school, etc. - not as embarrassing)
2. Require a signature on the notice form - this would ensure that the notice is being given.
3. Link the child support cooperation good cause waiver with the family violence option in order to create a more unified notice.
4. Place a DV advocate on site in the TANF office: Individuals might self-disclose more easily to an advocate instead of a caseworker.