

Chapter 9 -- The Family Violence Option: Implementation and Cultural Competency Issues – In Leslye E. Orloff, Leandra Zarnow and Yiris Cornwall, “Facilitating Access to TANF for Battered Immigrants: A Pilot Training Manual for TANF Eligibility Workers”

Chapter Summary:

This chapter reviews the Family Violence Option of the 1996 Welfare Reform Bill. The Family Violence Option of PRWORA allows TANF recipients to opt out of time limits and/or welfare to work requirements if they meet certain federal guidelines. This Option can be an integral part of a battered immigrant woman’s life, giving her time to look for safe housing , flee violent abusers, and pursue legal cases against their abusers. In order to best implement the Option, this chapter discusses how TANF funding is distributed and how to identify the immigrant applicants that would best benefit from the Family Violence Option.

The qualifications in order to receive TANF funding varies from State to State. Because of the differences in State TANAF programs, only 41 states have included the Family Violence Option. This chapter elaborates on the difference in the Family Violence Option programs between states.

The chapter further elaborates on the role of cultural competency in determining the recipients of the Family Violence Option. This elaboration comes in the form of protocol for TANF staff training. The training includes learning the dynamics of domestic violence in immigrant communities, developing communication skills, and making effective referrals. The chapter also sets the guidelines for universal screening of immigrant applicants and offers strategies in interviewing potential Family Violence Option recipients. The chapter concludes with a discussion on the proper handling of immigrant domestic violence cases.

CHAPTER 9-- THE FAMILY VIOLENCE OPTION: IMPLEMENTATION AND CULTURAL COMPETENCY ISSUES¹

INTRODUCTION²

During passage of the PRWORA in 1996 Congress recognized that the abuse experienced by domestic violence victims often serves as a barrier to their ability to move up and out of poverty and that some of the requirements included in PRWORA may exacerbate this problem. As a result, Senators Wellstone (D-MN) and Murray (D-WA) successfully attached the Family Violence Option. The Family Violence Option of PRWORA gives states the discretion to grant “good cause waivers” to TANF recipients which allow them to opt out of time limits, welfare-to-work requirements and other federal requirements that are deemed to cause harm to an individual battered woman. Waivers are granted for a finite time period and can be renewed once the TANF worker has assessed the ongoing need for the waiver.

FVO is a tool TANF workers should use to ensure that TANF program requirements are not enhancing the danger of ongoing about for battered women. For battered immigrant women there are specific ways in which FVO can be used to help battered immigrant women successfully access the welfare safety net as they flee their abusers. FVO urges TANF workers to screen TANF applicants and recipients for eligibility under the Option. If properly implemented, the Family Violence Option offers battered immigrants the flexibility and time to safely leave violent relationships, to address immigration status issues which may include delays in receipt of lawful work authorization and to ensure that they receive the exemption from deeming requirements included granted them in IIRAIRA without regard to whether they have a new or old affidavit of support.

This chapter will explain how TANF block grants are disbursed. It will then discuss the federal language and proper implementation of the Family Violence Option. Since eligibility determinations under the Family Violence Option require TANF workers to screen and assess battered immigrant applicants and recipients, this chapter will also offer culturally competent interviewing strategies.

TANF Welfare Block Grants

¹ This chapter was drafted with the assistance of Rachel Little.

² The Family Violence Option is in addition to and separate from the hardship exemption that States could already grant under federal TANF program guidelines to allow 20% of their caseloads extend past the five year maximum without the State being charged with a financial penalty from the federal government.

Under the TANF program, states are required to decide how to distribute TANF funds block granted to them by the Department of Health and Human Services. States decide which families will receive assistance, the length of funding, and what services will be created to assist TANF recipients.³ TANF offices are given the discretion to assess the needs of their population and decide the specific programming efforts, which will be most affective in serving needy families.

States can use federal TANF funds for:⁴

- Cash assistance**
 - Non-cash assistance**
 - Vouchers**
 - Public service programs**
 - Job training**
 - English as a second language courses**
 - Child care**
 - Administrative costs required to provide services for needy families**
- A specified percentage of TANF funds can be transferred to the Child Care and Development Block Grant and the Title XX Social Services Block Grant programs.**

States cannot use federal TANF funds for:⁵

- Families who have received assistance for 60 months (five years) in their lifetime.**

Exceptions to this federal restriction can be granted to up to 20% of the state welfare caseload for individuals who and prove hardship⁶. A welfare recipient does not become eligible for the hardship exemption until they reach the end of the 5 year time limit. The Family Violence Option, is better for battered recipients who qualify because a recipient can get months of assistance exempted from the time-clock at an earlier stage and they do not have to wait to gamble on being granted the hardship exemption once when their time is up.⁷ Exemptions from the five-year limit

³ Davies, Jill. “The New Welfare Law Implications for Battered Women- Introduction to the Law.” Welfare and Domestic Violence Series: Paper #1. Developed for Battered Women’s Advocates by the National Resource Center on Domestic Violence and the National Network to End Domestic Violence. 1996: 2-3. [hereafter Paper #1].

⁴ Adapted from Paper #1, Ibid 46 at 3.

⁵ Adopted from Paper #1, Ibid 46 at 3.

⁶ States can designate the categories of recipients who qualify for the hardship exemption.

⁷ FVO allows states to grant temporary exemptions from program requirements such as time limits, child support cooperation, work requirements and in the case of battered immigrants deeming rules for those affected by domestic violence. If a state has not exercised the FVO and hardship exemptions are the only federal option, the state may be required to set up a separate state funded TANF program to help domestic

may be granted to battered immigrant recipients in the same manner as any other battered welfare recipient. It is important to note that hardship exemptions are available in all states, however, the Family Violence Option is only available in states that have formally elected to exercise the option.

Family Violence Option waivers can be particularly useful in cases of battered immigrants who experience delays in having their VAWA immigration case finally adjudicated. Battered immigrant applying for immigration relief under VAWA cannot receive lawful work authorization until after their case has been approved.

Further, battered immigrants who are eligible for benefits based on a family visa petition filed by their spouse who is an abusive lawful permanent resident cannot receive work authorization until they become eligible to adjust their status to that of a lawful permanent resident. The wait between approval of their family based visa petition and adjustment can be up to 5 years. During this waiting period IIRAIRA explicitly granted them access to benefits to help them address survival needs while they wait for their immigration case to wend its way through the system. In most instances battered immigrants who are the beneficiaries of visa petitions filed on their behalf will be significantly along in the 5 year waiting period before they learn about and apply for benefits. These battered immigrants may also be able to expedite the process of receiving work authorization by filing a VAWA immigration case. For this reason battered immigrants with approved family based visa applications should be referred to immigration experts for assistance in moving their case more swiftly.

- Families without children or pregnant individuals
- Parents that are minors, unless they are still dependents
- Certain legal immigrants (as will addressed in the remaining chapters)
- Fugitive felons or certain probation violators
- Individuals convicted of certain drug felons

violence victims. FVO avoids this necessity.

- **Individuals who fail to cooperate with child support enforcement (States must reduce or eliminate assistance unless they can prove good cause for not cooperating the Family Violence Option was designed to provide waivers for this requirement as well.)**

TANF Guidelines Create Protections for Victims of Domestic Violence

The Family Violence Option was created in recognition of the extent to which domestic violence hinders a victim's ability to reach a level of financial stability in a given period of time. It was further intended to lessen hurdles battered women face when transitioning from welfare to work.⁸ The Family Violence Options offers help and flexibility to battered immigrant women welfare recipients in the same manner that it does other battered women receiving welfare. The Family Violence Option allows states to grant temporarily "good cause waivers" of TANF program requirements (such as work requirements, time limits, child support cooperation requirements, and family cap provisions) for new TANF applicants and current recipients who have suffered or continue to suffer from battery or extreme cruelty.⁹ States may allow individuals to submit "good-cause waivers" of all TANF program requirements "for as long as necessary"¹⁰ and in instances where compliance with such requirements would make it more difficult for individuals receiving assistance to escape domestic violence and unfairly penalize individuals who have been victimized by violence or are at risk of further domestic violence.¹¹ For example, spending up to 35 hours in a welfare-to-work placement could take time away from a battered immigrant's efforts to escape a violent relationship. In some cases, her time may need to be spent at court hearings, doctors appointments, or finding safe housing.

Time limits may also unfairly penalize battered women who have used the benefits for five years to become trying to flee their abuser instead of working and becoming financially independent.¹² The Family Violence Option additionally allows states to waive child support cooperation requirements for domestic violence victims. Battered women

⁸ Pollack, Wendy and Davis, Martha. "Family Violence Option of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Interpretation and Implementation." Clearinghouse Review, March-April 1997: 1083.

⁹ The definition of "battery or extreme cruelty" is defined in the Family Violence Option language as "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." **Get cite from regs.**

¹⁰ 42 U.S.C. 607 (a)(7).

¹¹ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option, 12/96, 23.

¹² Marcellene Hearn, "Dangerous Indifference: New York City's Failure to Implement the Family Violence Option." 2000, 4.

may claim good cause for failing to cooperate with child support enforcement if they or their children could be put in danger as a result. Without a waiver or good cause finding, a recipient has to identify the father of her children and supply other information required by the states in order to qualify for TANF benefits. This can be dangerous for battered women since violence may increase when legal or administrative action is taken against the abuser.¹³ Abusers may be able to find a victim who is in hiding, they may threaten to kidnap the children or fight for custody, and if the battered woman has children by a different man than her abuser, this may trigger additional violence.¹⁴

To identify persons eligible for waivers, the option directs TANF agencies to confidentially screen and identify applicants and recipients for domestic violence, conduct individual assessments, and develop temporary safety and service plans (including referrals to domestic violence services) in order to protect battered women from: “. . . immediate dangers, stabilize their living situations and explore avenues for overcoming dependency.”¹⁵ The option gives welfare administrators the discretion to determine the period the waiver will apply and renew the waiver on a case-by-case basis for an indefinite period of time.¹⁶

The Family Violence Option is an option granted to states, but states are not required to implement the option in their welfare plans. As of 2000, 41 states have included the Family Violence Option in their state plans.¹⁷ Moreover, interpretation of which provisions and requirements of the TANF program can be waived is left to the individual states. States are granted the choice and flexibility to specify in their welfare plans the measures they will take to provide access to TANF for victims of domestic violence.¹⁸ Since states are given full discretion when creating individual TANF plans, domestic violence victims will not necessarily have additional protections within TANF plans and their public assistance eligibility may be regulated by the base federal guidelines. There has been some confusion in the states as to the proper implementation of the Family Violence Option (i.e. some states screen for domestic violence but do not provide referrals, some agencies differ in evidence requirement to prove domestic

¹³ “Q & A on Women and Welfare: Violence Against Women” – State Implementation of the Family Violence Option: What Advocates Can Do, 1998, 1.

¹⁴ Jill Davies, “Building Opportunities for Battered Women’s Safety and Self-Sufficiency,” no date, 16.

¹⁵ Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. 62, 124, 62, 128, (1997) (to be codified at 40 C.F.R. pts. 270-5) (proposed Nov. 20, 1997).

¹⁶ Temporary Assistance for Needy Families Program (TANF), 62 Fed. Reg. At 62, 131 (to be codified at 45 C.F.R. 270.30).

¹⁷ Marcellene Hearn, “Dangerous Indifference: New York City’s Failure to Implement the Family Violence Option,” 2000, 4.

¹⁸ PRWORA, tit. I 402(a)(7), Pub. L. No. 104-193, 103(a)(1), 110 Stat. 2105, 2115 (to be codified at 42 U.S.C. 602(a)(7)).

violence.)¹⁹ States also vary in terms of waivers that they allow. Ideally any TANF program requirement that would hurt a battered woman or a battered immigrant should be waivable and nonpermanent waivers should be subject to unlimited renewal.²⁰

Final regulations were issued by the Department of Health and Human Services on April 12, 1999 which clarify the meaning of the Family Violence Option, as well as implementation guidelines (69. Fed. Reg. 17720, April 12, 1999 – need to find this and do cites from it.) First, states will not be penalized for failing to achieve work participation rates due to waivers that it has granted under the Family Violence Option. To avoid these penalties, Family Violence Option waivers must be “federally recognized good cause waivers.” To be considered “federally recognized,” waivers must be granted based on need by a TANF worker trained on domestic violence issues, waivers must be reevaluated every six months, program requirements that are waived must be specified, and the waiver must be accompanied by an appropriate service plan. Service plans must be developed by a person trained in domestic violence, reflect individualized assessment, and be designed to lead to work only to the extent that is consistent with safety. States can postpone work activities if safety dictates that a battered woman cannot take on a work assignment.

Second, the final regulations note that time limit waivers are available for domestic violence victims even if the violence occurred earlier in their welfare dependency or occurs after their time limit has run out. Time limits may be extended based on the need for continued assistance due to current or past domestic violence, or risk of future violence. Women can receive assistance for as long as they need it, extensions will be available, women will not be cut off when they reach the federal time limit if they still need assistance, and they will be able to return for assistance if the need occurs.

FAMILY VIOLENCE OPTION IMPLEMENTATION & CULTURAL COMPETENCY PROTOCOLS

When implementing agency procedures concerning the Family Violence Option, it is important that agencies develop a protocol for screening applicants and existing TANF recipients for eligibility under the

¹⁹ NOW LDEF, “State Implementation of the Family Violence Option: What Advocates Need to Know,” 1998, 1. Some states have adopted practices that are not beneficial to battered women and tied them to the granting of waivers. In some instances participation in a domestic violence counseling programs have been made mandatory. This can pose problems particularly for battered immigrant women who may not be able to access the programs because of lack of access to qualified interpreters. Rural battered women may have transportation problems and safety issues traveling to distant domestic violence programs for services.

²⁰ Ibid. 2.

Family Violence Option. Staff should first receive comprehensive training that covers the following topics:

- the dynamics of domestic violence in immigrant communities (see Chapter 1 of this manual)**
- laws concerning immigrant eligibility for public benefits and information about state programs that can help battered immigrant women (see Chapters 4,5, 6, and 7 of this manual)**
- communication skills, sensitivity to the needs of battered immigrant women, and cultural competency (see below)**
- procedures for granting Family Violence Option waivers, exemptions, or extensions for battered women (see below)**
- State privacy laws and procedures for maintaining applicant/recipient confidentiality (as well as instances where confidentiality must be breached – some states have mandatory reporting requirements for child abuse and neglect cases and all state TANF agencies are required to report applicants who are in the U.S. illegally (see below)**
- Referral sources, making effective referrals, and case management techniques (see below)²¹**

Training strategies for TANF programs will depend on the needs and resources of each individual agency. Agencies may opt to provide specialized training to all workers, which would ensure that all staff have the capacity to respond to the needs of battered immigrants and TANF agency staff have pre-established collaborative working relationships with community agencies that specialize in serving the needs of battered immigrants.²² These programs can serve as useful referrals for battered immigrants.

However, this training option on battered immigrant issues for the entire TANF worker staff could require considerable time and resources, especially if staff turnover is high. Staff may feel overloaded by the additional responsibility and battered immigrants may not get the attention that they need. Additionally, if training all staff, some staff may have violence issues in their personal lives and may feel uncomfortable working with domestic violence victims.²³

²¹ Jill Davies, “The New Welfare Law: State Implementation and Use of the Family Violence Option,” 1996, 14.

²² Jill Davies, “Building Opportunities for Battered Women’s Safety and Self-Sufficiency,” no date, 11.

²³ Ibid. 11.

TANF programs may prefer to train a specialized core of domestic violence staff who could handle Family Violence Option cases after an intake staff determines that an applicant/recipient is in need of such assistance. This FVO staff could receive special training on working with battered immigrant women. Battered immigrants could benefit from this approach because they could receive more personalized interaction and information from TANF staff, specialized staff would have more time to work with immigrant clients, and this core of staff could have increased opportunities to develop strong working relationships with community domestic violence and immigration services.²⁴ If programs decide to pursue this option, this reduces training costs. However, it is important that specialized staff have flexible assignments so that they can meet the demand for services and that these staff be accessible for potential applicants.²⁵

It is particularly important translation service be incorporated into the job description of bilingual staff and their case load requirement be adjusted to reflect their translation work, otherwise staff become overburdened and frustrated because they are asked to translate and handle the same caseload as other staff who do not have the additional burden of translation. Cases of battered immigrants who speak a particular language must be assigned to case-workers who speak that language when there are such case workers on staff. Some state TANF programs have made the mistake of hiring bilingual staff and then assigning them English speaking clients, while assigning for example Spanish speaking clients to English speaking case workers.²⁶ The arrangement is frustrating for all involved.

Finally, TANF programs may wish to integrate their family violence screening work with local domestic violence community resources. Choosing this option offers comprehensive services battered and battered immigrant applicants/recipients, allows recipients to interact with persons who have strong skills and experience with domestic violence, immigration, and cultural competency issues. Having this linkage between TANF staff and community also provides additional and ongoing opportunities for training and the development of collaborative strategies to help battered immigrant women.²⁷ However, outsourcing of domestic violence specialists should only be undertaken by a TANF agency if such services exist, are accessible to battered immigrants, and have the capacity to serve increased numbers of battered immigrants. TANF agencies and community programs will additionally need to clearly define

²⁴ Ibid. 10.

²⁵ Ibid 10.

²⁶ This occurred for example in the District of Columbia.

²⁷ Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 11.

their roles in service delivery to ensure the best quality of assistance to battered immigrants.²⁸ Regardless of the training strategy adopted, staff should be trained to act in a compassionate, nonjudgmental, trustful, and confidential manner, to recognize signs and symptoms of both victims and abusers, to use screening and assessment tools, to uphold confidentiality, and to be knowledgeable of programmatic waivers and exemptions. TANF agencies are encouraged to hire or contract with a domestic violence/immigration advocate to provide ongoing training and support services to the agency.²⁹

UNIVERSAL SCREENING

In order to determine eligibility for relief under the Family Violence Option, staff must identify battered immigrants who qualify for waivers. Asking applicants/recipients to reveal whether or not they or their children are being abused can raise a multitude of complex issues that TANF workers must be cognizant of. Battered women may be ashamed and embarrassed about the abuse. They may fear that they will be punished by their abuser or the TANF office for revealing the abuse. They may be concerned that their children will be taken away from them. They may not know that the Family Violence Option exists. They may fear that they will be deported or lose their pending immigration status. They may be concerned that the TANF worker will tell everyone about the abuse, especially if the TANF office is located in a small community. They may not speak English fluently, feel embarrassed about needing an interpreter, and may not understand what their options are or how the “system” works. Training staff to be aware of these issues will enable them respond appropriately to the needs of battered immigrants and avoid putting them in danger.

It is critical that battered immigrants be able to voluntarily self-disclose that they are suffering from battery or mental cruelty. In order to do so, they must be presented with clear and consistent information that will dispel their fears and allow them to make an informed decision about whether disclosing violence is in their best interest or is safe option for them. By presenting information to every applicant, battered immigrants are not put under pressure to disclose and can learn about benefits without as much risk to their personal safety. Since many battered immigrants must prove that they are victims of domestic violence before they can qualify to receive benefits battered immigrant welfare recipients will already have disclosed the domestic violence in the application process. For these battered immigrants it is important that workers provide them the services available in their state for all other battered women identified

²⁸ Ibid. 12.

²⁹ DHHS, “Ancillary Services to Support Welfare to Work” 9/14/98, <http://aspe.hhs.gov/hsp/isp/ancillary/dv.htm>, p.7.

through screening. Additionally, because being a victim of domestic violence may offer battered non-citizens more access to TANF and other federal public benefits than they would have had if they were not abused, screening can help identify battered immigrants who may have options they have not yet explored who can be referred to immigration experts and battered immigrant women's advocates in the community for additional specialized assistance.

A universal screening protocol should utilize the following guidelines:

1) Information must be provided to all applicants and recipients on the Family Violence Option before the intake interview, during the interview itself, and in ongoing meetings that caseworkers may have with recipients. Battered immigrants who receive TANF are eligible at any time to apply for waivers and may not be prepared at an intake interview to disclose the abuse. As a result, information should be given repeatedly and at each point where temporary relief might be needed, such as when an applicant proceeds with a child support case, when work activities are required or when time limits are about to expire.³⁰

Flyers and brochures on the Family Violence Option waivers should be translated and posted in TANF agency waiting rooms, in bathrooms at TANF offices, and through written notices mailed with other attachments on public benefits so that the abusive partner does not think that his wife or partner specifically requested this information.³¹ Information should also be distributed to domestic violence service providers, immigration legal programs, other public benefits groups, and places where battered immigrants frequent (such as community centers, grocery stores, schools, places of worship, hair salons, or doctor's offices.)

2) Information provided should include an accurate description of an applicant/recipient's rights and options, how to apply for waivers, time extensions or exemptions, how domestic violence disclosure information will be used by the TANF agency, where to get help or ask additional questions, privacy rights, rights to notices of program changes or appeals hearings of adverse decisions, and notification of potential penalties for disclosing abuse.³² Flyers and brochures should also include information on local domestic violence services and shelters, such as emergency hotline numbers and special services for battered immigrants.³³

³⁰ DHHS, "Ancillary Services to Support Welfare to Work" 9/14/98, <http://aspe.hhs.gov/hsp/isp/ancillary/dv.htm>, p.5.

³¹ Jill Davies, "Family Violence Protocol Development: Part I," no date, 5.

³² Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 14-15.

³³ Jill Davies, "Family Violence Protocol Development: Part I," no date, 5.

This information should be given in verbal and written form, and should be available in multiple languages. It is critical that TANF agencies ensure that translators are available to assist battered immigrants with limited English-language capabilities or that agencies consider hiring multilingual or bilingual staff. Federal law requires welfare centers to provide professional interpretation services to welfare applicants and recipients or risk violating federal anti-discrimination laws. Failure to comply with this provision puts battered immigrants in extreme danger and raises confidentiality problems which will be further discussed below.³⁴

3) Information should be provided prior to any questions about paternity or child support.³⁵ As a result of Welfare Reform provisions, states are required to proceed with child support collections cases if the non-custodial parent of a child is not contributing the financial well-being of his/her child. To be in compliance, TANF agencies must now screen applicants/recipients for child support needs and work with Child Support Enforcement agencies on these cases. Battered immigrants typically enter the welfare system by first meeting with TANF workers and child support eligibility is determined as a result of the interview. It is important that battered immigrants be given sufficient information to evaluate the safety of revealing the father of their children to the TANF worker and be informed of safety precautions and waivers that can be utilized by the TANF agency and Child Support Enforcement Office to protect her and her children. This is particularly important in cases of battered immigrant women married to U.S. citizens and lawful permanent residents who have better access to the legal system than battered immigrants who do not speak English. Spurring an abuser of an immigrant woman to begin using the legal system against her can ultimately result if she does not receive the assistance of trained counsel in the loss of access to legal immigration status or the loss of custody of her children.

Interviewing Strategies

Once information has been presented to an applicant or current TANF recipient, the case worker will need to identify whether the applicant/recipient is a victim of domestic violence and offer her the opportunity to voluntarily and confidentially disclose the abuse. In soliciting information from immigrant applicants/recipients, consider using the following techniques:

1) Before any questions are asked, the TANF worker should inform the applicant/recipient that she will be asking her some questions relating to

³⁴ Marcellene Hearn, "Dangerous Indifference: New York City's Failure to Implement the Family Violence Option," 2000, 4.

³⁵ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 27.

domestic violence. The worker should explain that these questions are only being asked to determine whether the applicant/recipient is eligible for relief from program requirements under the Family Violence Option and that the applicant/recipient can choose whether or not to answer the questions without any penalties.³⁶ Applicants/Recipients should be informed that they can disclose domestic violence at any time while they are receiving benefits and that their responses will be kept confidential (see section on this issue below.)³⁷ Presenting this information in this fashion builds trust and makes the interview process less intimidating for the applicant/recipient.

Applicants should not be pressured into admitting that they are domestic violence victims nor should they be required to sign a statement under oath that they are not victims of domestic violence just because they choose to not disclose.³⁸ This could put the applicant in danger of a criminal perjury charge for making an incomplete statement.³⁹ Applicants should also not be punished for denying or failing to disclose domestic violence information at an initial intake interview and then disclosing such information at a later date.⁴⁰ If an applicant/recipient must fill out screening paperwork on domestic violence prior to an interview, she should be able to answer all questions as yes, no or no comment.⁴¹

2) Once this initial information has been presented, the TANF worker will need to ask the applicant/recipient a number of domestic violence-related questions. The applicant/recipient should then choose whether or not she wants to answer them. Suggested questions could include, but are not limited to:⁴²

- _ Are you afraid of your partner or ex-partner?**
- _ Has he ever done anything to hurt or scare you?**
- _ What are you worried about right now? What is your biggest concern for yourself?**
- _ Are you concerned about your safety and/or are you in immediate danger?**

³⁶ Ibid. 27.

³⁷ Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 9.

³⁸ Jill Davies, "Family Violence Protocol Development: Part I," no date, 6.

³⁹ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 26.

⁴⁰ Jill Davies, "Family Violence Protocol Development: Part I," no date, 13.

⁴¹ Jill Davies, "Family Violence Protocol Development: Part I," no date, 13.

⁴² We encourage TANF programs to develop screening questions in conjunction with local domestic violence and immigration service providers. Note other resources....

- **What kinds of services would be most helpful for you at this point (i.e. legal assistance, child care, work)?**
- **How do you want me to help you?**
- **Under what conditions do you think it would be most safe for you to leave?**
- **What are your safety needs if you plan to leave your partner?**
- **Do you want to try to leave your abuser?**
- **If you were to leave, are there things that would make it difficult for you to leave?**
- **Does your abuser try to stop you from going to work or leaving the house?**
- **Has your abuser ever threatened to report you to INS?**

Staff should not expect women to immediately disclose the abuse and need to be prepared for a variety of responses from applicants/recipients to these questions. Some women may be grateful that someone cares enough to inquire about the abuse. For some, the TANF worker may be the first person that they disclose the abuse to and they may feel frightened. Some may find it extremely difficult to disclose in spite of the steps that the TANF agency takes to create a comfortable environment for the victim. Some may never feel comfortable disclosing.⁴³ This variety of responses requires flexibility, empathy, and patience from the TANF worker. The worker should use the applicant's/recipient's response to protect her safety and develop a case plan in conjunction with her (see below.)

3) If the applicant/recipient does not speak English, a trained interpreter should be available for all interviews or the applicant/recipient should be assigned to a bilingual case worker. This will ensure that the battered immigrant receives the information that she needs and that her right to make an informed choice is protected.

4) A battered immigrant woman may have well-founded fears about the potential consequences of disclosing the abuse. TANF workers should take all necessary steps to ensure that the abuser does not find out about the disclosure and retaliate (see confidentiality section below.) She may also be concerned that she will be placed in less desirable programs or discriminated against by the TANF program.⁴⁴ TANF workers should

⁴³ Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 9.

⁴⁴ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option,"

ensure that Family Violence Option protocols do not discriminate against battered immigrants or put them in danger for disclosing the abuse. Implementing proper confidentiality measures can address many of these concerns.

CONFIDENTIALITY

Screening and identifying applicants/recipients as domestic violence victims will not necessarily ensure their safety, particularly if there is a danger of the abuser finding out that the violence has been disclosed. TANF agencies must therefore ensure that confidentiality rules are put in place to protect battered immigrants. Agency procedures should be created for staff that state the particular purposes for which family violence information can be collected and used so as to prevent improper disclosures of this information. A confidentiality protocol should include the following elements.

1) Private interview spaces should be made available so that persons waiting in the halls or waiting room cannot overhear any conversations between battered immigrants and TANF workers.⁴⁵ If possible, the battered immigrant and case worker should meet alone so that she can speak freely. This protects children from having to hear about the abuse, prevents friends who may accompany the battered immigrant from sharing the information with others, and keeps the abuser from participating in the interview and intimidating the battered immigrant.

2) Protocols should be developed to prevent disclosure of information from files and databases, particularly if a battered immigrant is in hiding. Staff should be trained to not leave files open on desks where other staff or recipients could read them.⁴⁶ Guidelines should prohibit the release of information on the whereabouts of one party to another party against who a protection order has been entered, as well as information on the whereabouts of this party to the abuser if this could harm the former party.⁴⁷ Batterers can use a variety of information to locate their partners. As a result, such information as the recipient's address, phone number, post office box, training site, job placement site, and children's school must be protected.⁴⁸ Confidentiality provisions are all the more important if multiple staff have access to computerized records or if the agency is in a rural area where the TANF worker may know the recipient and/or her abusive partner. Many child support enforcement databases are now automated and integrated to make it easier to locate noncustodial

12/96, 12.

⁴⁵ Jill Davies, "Family Violence Protocol Development: Part I," no date, 7.

⁴⁶ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option,"

12/96, 16.

⁴⁷ Ibid. 29.

⁴⁸ Ibid. 29.

parents.⁴⁹ Creative strategies should be considered to protect these records, such as keeping a battered immigrant's address out of certain child support records, flag her address in records as protected, making sure she gives paternity samples on a separate day from the abuser, and allowing her to appear at the child support court hearing on a different day so that the abuser cannot follow her home.⁵⁰

3) The TANF agency should not contact the abuser for the purposes of corroborating a battered immigrant's statement unless the applicant gives the agency written permission to do so. If the TANF agency must contact the abuser, information should only be disclosed that is necessary for accomplishing the task at hand and no information should be disclosed that would endanger the applicant.⁵¹

4) Applicants/recipients should be informed how the TANF confidentiality provisions interact with state and federal confidentiality laws. For example, many states require TANF workers to report disclosures about child abuse and neglect.⁵² The federal government also requires TANF workers to report persons who are present in the U.S. illegally. TANF agencies should determine what their state confidentiality laws are and ensure that written materials contain this information. Potential breaches of confidentiality provisions should also be discussed during screening interviews.

5) Special confidentiality provisions exist as well when working with interpreters. The TANF agency should ensure that interpreters are professionally trained, are sensitive to domestic violence issues, and are bound by agency confidentiality regulations. Family members or friends should never serve as interpreters during interviews because they may reveal confidential information to the battered immigrant's abuser or to her community. Because of the shame that is often associated with domestic violence in many cultures, the battered immigrant may not disclose the abuse while someone she knows is present and may miss an opportunity to qualify for a waiver.

ESTABLISHING ELIGIBILITY FOR WAIVERS AND CASE MANAGEMENT ISSUES

In addition to screening and identifying applicants or recipients who have been abused, DHHS regulations require TANF agencies to establish case plans to respond to the needs of all battered women including

⁴⁹ Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 15.

⁵⁰ Ibid. 17.

⁵¹ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 30.

⁵² NOW LDEF, "State Implementation of the Family Violence Option: What Advocates Need to Know," 1998, 2.

battered immigrants. Staff need to be trained how to properly grant waivers and connect battered immigrants with helpful services and referrals. There is no single framework for case plans – every plan will be different and will be determined by the particular needs of a battered immigrant. Furthermore, case plans will often need to be adapted as the circumstances of the battered immigrant change. During screening, TANF workers should listen carefully to the needs of the battered immigrant and avoid making assumptions about her needs. For example, she may not need temporary relief from program requirements. She may just need job training, ESL classes, counseling classes in her own language, childcare, or transportation.⁵³

Eligibility Considerations

Once a battered immigrant self-discloses, the TANF worker will need to conduct an assessment of her eligibility for waivers under the Family Violence Option. The worker will need to determine that the applicant/recipient is indeed a victim of battery or mental cruelty (see definition above) and that compliance with work requirements, time limits, or child support enforcement would make it more difficult for her to escape a violent relationship or that compliance with TANF requirements would unfairly penalize her because is, was or continues to be at further risk of domestic violence.⁵⁴ This is particularly the case if compliance would increase the risk of harm for the battered immigrant or her children, force her to take actions that would jeopardize her safety or privacy, impede her safety plan or hold her responsible for meeting a requirement that is not within the individual’s control.⁵⁵ For example, an abuser could prevent a battered immigrant from fulfilling her work requirements or retaliate against her for filing for benefits in the first place by beating her, detaining her against her will, failing to provide child care when she is required to be at her job site, or threatening to report her to the INS (even if she is legally present in the United States.)

To prove that battered immigrants qualify for waivers, TANF programs should have reasonable, clear, and flexible eligibility standards and documentation requirements.⁵⁶ An individual’s statement alone should serve as valid proof of eligibility unless there is an independent, reasonable basis to doubt the truth of the statement. If programs must require corroborating evidence, a variety of forms should be accepted, including protection orders, police or court records, and/or statements

⁵³ Jill Davies, “Family Violence Protocol Development: Part I,” no date, 8.

⁵⁴ Jill Davies, “The New Welfare Law: State Implementation and Use of the Family Violence Option,” 12/96, 32.

⁵⁵ Ibid. 33.

⁵⁶ Jill Davies, “Family Violence Protocol Development: Part I,” no date, 11.

from shelter workers, attorneys, clergy, medical professionals, or counselors. Batterers should never be contacted for verification.⁵⁷

It is important to note that all of these pieces of evidence may not be available to every applicant. Immigrant women may have difficulty producing specific evidence. For example, she may have called the police to report a domestic violence incident and the responding officer may have never filed a report. If a report exists, she may not be able to pay for the copying costs, may not have transportation to the police station, may not be able to get records in time, may not speak enough English to successfully obtain the papers, or may not be able to take time away from work. She may face the same dilemmas with obtaining court or medical records.

It is important that TANF workers carefully evaluate the applications of battered immigrants and not dismiss their cases because of immigration status issues. If a battered immigrant is proven to be eligible for public benefits under the U.S. Attorney General's Guidance, there is no reason for her to be treated differently from a U.S. citizen applicant.

Throughout the waiver determination process, applicants/recipients must be informed of the circumstances under which a request for temporary relief will be granted. Immigrant women should also be made aware of their appeal rights, statutory or other presumptions regarding credibility of any application statements that allege domestic violence and under what circumstances "additional" evidence will be required. TANF offices should further ensure that applications for temporary relief immediately stop program actions until the application is granted or denied.⁵⁸ TANF workers are encouraged to grant eligible persons full as opposed to partial waivers as these more effectively protect battered immigrants. For example, some states grant partial employment waivers which may direct women to work assignments in a neighborhood where the batterer does not live. This can be problematic in smaller cities, does not address the issue of where the batterer works, and may not give a battered immigrant the time that she needs to obtain legal assistance or other remedies for herself and her children. Moreover, there is no authority in state or federal law for partial waivers.⁵⁹

⁵⁷ Jill Davies, "The New Welfare Law: State Implementation and Use of the Family Violence Option," 12/96, 33.

⁵⁸ Jill Davies, "Family Violence Protocol Development: Part I," no date, 11.

⁵⁹ Marcellene Hearn, "Dangerous Indifference: New York City's Failure to Implement the Family Violence Option," 2000, 13.

Case Management

In addition to the granting waivers, the Family Violence Option regulations require TANF workers to develop case plans with recipients and provide referrals to domestic violence services. Case plans will vary greatly depending on the needs of the recipient and should be developed on an individualized basis with the full cooperation and involvement of the recipient. These plans must account for the particular risks that the battered immigrant faces, the nature of the abuse, and the options available to address these risks. Applicants/recipients should be informed of the resources that the TANF agency will provide to help them with their case plans, their rights and responsibilities, sanctions or consequences for failure to meet requirements, and how to establish that she has met requirements.⁶⁰

Since the circumstances of battered immigrants may constantly change while they are receiving public benefits, case plans must be flexible. For example, a battered immigrant may need multiple waivers for work requirements, time limits, or child support/paternity cooperation agreements and these waivers may need to be extended. Additionally, the needs of battered immigrants will be in constant flux and case plans will need to respond to changes as they take place. For example, when an immigrant woman initially applies for benefits, she may be in hiding in a shelter and have specific fears and needs. A year later she could be living independently and may be more concerned about getting job training or counseling for her children. Case plans must first and foremost preserve the safety of a battered immigrant and her children.

It is important when developing a case plan that TANF workers listen to the needs that battered immigrants self-identify and avoid making assumptions about what these needs should be. Women should not necessarily be excluded from job training programs if they feel that they can safely work. However, they may at the same time fear that complying with a child support enforcement case will trigger reprisals from their abusers or lengthy custody disputes.

In helping the battered immigrant determine her needs, TANF workers will often need to provide referrals as many of the services that battered immigrants will need will not necessarily be provided by the TANF office. Referrals should match the need expressed by the battered immigrant, should provide information necessary for an applicant/recipient to access the service (phone number, location, eligibility requirements), should be culturally and linguistically accessible, and should explain what services the referral can provide and how it might help.⁶¹

⁶⁰ Jill Davies, "Family Violence Protocol Development: Part I," no date, 12.

⁶¹ Jill Davies, "Family Violence Protocol Development: Part I," no date, 10.

Referrals and assistance should be provided wherever possible. This assistance could include helping the battered immigrant relocate to safe affordable housing and job training programs; having access to child care and health care; participating in substance abuse treatment programs that will not require the battered immigrant to give the children to abuser; transportation to work, court, or service providers; or temporary relief from program requirements or time limits to allow time to identify and pursue safety options or because her abuser sabotaged her safety plan.⁶² If a battered immigrant arrives at a TANF office and is in immediate danger (i.e. her abuser threatens her in the office or is stalking her), the TANF worker follow office safety procedures and provide the battered immigrant with emergency referrals to shelter or legal assistance if these are requested.⁶³

In the process of developing and maintaining referral lists, TANF staff will find it beneficial to form collaborative relationships with community service providers. These relationships have numerous benefits for battered immigrants and TANF workers. Specialized services can be provided by providers in the community who may have more expertise than TANF workers and battered immigrants will receive improved and better coordinated services. In forming these partnerships, TANF agencies will need to assess the extent to which current local domestic violence services exist and work creatively with service providers to fill gaps in services to ensure that battered immigrants can fulfill their case plans.⁶⁴

TANF agencies may wish to have community domestic violence advocates or counselors on staff, including in communities with large immigrant populations, battered immigrant women's advocates to provide enhanced services in conjunction with referrals.⁶⁵ Safe child support enforcement should also be included in case plans and coordination between TANF and Child Support Enforcement programs is critical to protect confidentiality, ensure that enforcement does not proceed if waivers are put in place, and allow the battered immigrant to develop a safety plan to protect herself and her children from potential violence that could result.⁶⁶

TANF workers should take caution to avoid developing safety plans that do not enhance safety or put the battered immigrant at increased risk of future violence. A battered immigrant should not be held responsible for

⁶² Ibid. 9.

⁶³ Ibid. 9.

⁶⁴ DHHS, "Ancillary Services to Support Welfare to Work" 9/14/98, <http://aspe.hhs.gov/hsp/isp/ancillary/dv.htm>, p.7-8.

⁶⁵ Ibid. 5.

⁶⁶ Jill Davies, "Family Violence Protocol Development: Part I," no date, 12.

her abuser's behavior. For example, a battered immigrant should not be required by her safety plan to keep her partner from interfering in her work activities.⁶⁷ To do so would be both inappropriate and dangerous.

Furthermore, battered immigrants should not be required to pursue options that are unavailable or beyond their control to access. Shelters may not be exist, transportation to services may be unavailable, expensive, or require the battered immigrant to take too much time away from her other responsibilities. She may not meet the eligibility requirements of a program (i.e. income limits, geographic requirements, sobriety requirements). Finally, some safety options have specific legal requirements that must be met before a court will order them. Civil Protection Orders require a specific relationship between the batterer and victim that may not exist for the battered immigrant, protection orders may not recognize emotional or mental abuse, and abusers may try to avoid being served with the Order.⁶⁸

⁶⁷ Jill Davies, "Building Opportunities for Battered Women's Safety and Self-Sufficiency," no date, 12.

⁶⁸ Ibid. 13.