

FUNDING NEW YORK'S DOMESTIC VIOLENCE SHELTER SERVICES

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NYS FUNDING FOR DOMESTIC VIOLENCE SERVICE MODEL

- History of funding structure and established regulations
- Current reform efforts- legislation, funding, emergency regulations, Task Force

Guidance Issued

- Emergency Regulations
- New ADM from the NYS Office of Children and Family Services (OCFS)
- Status

DOMESTIC VIOLENCE PREVENTION ACT OF 1987

- Mandates that counties provide domestic violence services.
 - Legislative Intent
- Created Social Services Law Article 6A
 - Definitions
 - Requires local districts to offer and pay for services either provided by the district or contracted through a non-profit.
 - Anoints OCFS – licensing, monitoring and funding authority
 - Requires confidentiality of residential address.

BACKGROUND

- NYS leads country in demand for DV services
- Outdated DV services system -- over 30 years old
- DV programs in NY are not funded sufficiently to keep up with the demand for services
 - Low staff retention due to low wages, benefits
 - No state funding for primary prevention
 - Many survivors are not able to access services
- Survivors are required to apply for public assistance and/or charged fees for services

NEW YORK'S SOCIAL SERVICES REGULATIONS ADDRESSING DOMESTIC VIOLENCE

- Created shortly after passage of the Domestic Violence Prevention Act of 1987
- Regs haven't substantially changed in 30 years
- OCFS discussed changes to regulations with programs, advocates for more than 10 years
- Released proposed changes in December 2018
- 60-Day public comment period
- Deadline to submit comments- February 17, 2019

ISSUES WITH NY'S FUNDING STRUCTURE

Compliance Issues with federal funders- the Family Violence Prevention Services (FVPSA) and Office on Violence Against Women (VAWA):

1. DV victims cannot be charged a fee for DV services
2. DV victims cannot be mandated to do something as a stipulation of receipt of DV services
3. A DV victim's personally identifying information (PII) cannot be shared without written, time-limited, informed consent by the victim

CHARGING FEES FOR SERVICES

- The practice violates 42 U.S.C §10406(c)(3) -
No fees may be levied for assistance or
services provided with funds appropriated to
carry out this chapter

Federal statute and regulations state:

- No condition may be applied for receipt of emergency DV shelter [42 U.S.C. § 10408(d)(2) subsection (b)(1)(3)]
- No income eligibility standard may be imposed upon individuals with respect to eligibility for assistance or services supported with funds appropriated to carry out this chapter [42 U.S.C. § 10406 (c)(3)]
- DV victims can not be forced to participate in services (i.e. support groups, counseling)- Receipt of supportive services under this chapter shall be voluntary (42 U.S.C § 10408(d)(2))

PERSONALLY IDENTIFYING INFORMATION

FVPSA contains the following confidentiality provisions: Grantees and sub-grantees shall not

- (i) disclose any PII collected in connection with services requested (including services utilized or denied) through grantees' programs; or
- (ii) reveal PII without informed, written, reasonably time-limited consent by the person about whom information is sought, whether for this program or any other Federal or State grant program...

[42 U.S.C. 10406 (c)(5)(I and ii)]

The System Needs Reform

- DV advocates supported elimination of TANF application and fee requirements
- Removal of requirements is only the first step
 - DV programs can't provide survivor-centered services under current 30-year-old system
 - Funding model places emphasis on shelter, which many survivors don't want
 - Too much time, resources spent chasing down inadequate per diem reimbursements

DV Programs Need More Funding

- Funding has been flat for years; Significant funding is needed to fix the system
- Per diem rate is much lower than state-set per diems for other residential facilities
- No state funding for primary prevention and coordinated community response

ISSUES WITH NY'S FUNDING STRUCTURE

- During the 2019 legislative session, requirements placed on DV survivors to apply for public assistance and be charged fees for services were removed from State Statute and regulations.
- This change now brings New York State into compliance with FVPSA as well as the confidentiality provisions promulgated in the federal Violence Against Women Act (VAWA).

REFORM EFFORTS

- 2019 Legislative changes and Executive Budget
- Governor's Task Force- "streamline State funding for DV...to allow DV service providers to ...address both the causes and effects of DV, meet the needs of victims...,
-reduce reporting burdens on providers and State agencies, createfunding strategy based on best practices, grant providers the flexibility to meet the individual needs of domestic violence victims, and enable more effective program evaluation.

2019-2020 PROPOSED EXECUTIVE BUDGET

- Eliminate requirements for survivors to apply for public assistance and be charged fees
- Update system for providing funding to local DV programs
- Consolidate OPDV, OVS and Office of Campus Safety into new Division of Victim Prevention and Response

ONGOING EFFORTS TO UPDATE REGULATIONS

- NYS OCFS and NYSCADV and service providers have been working on updating the established regulations
- Proposed Regulations changes precedes new law
- Emergency regulations for payment released April 2019

NEW PROVISIONS

- Governor Cuomo included an Article VII provision in his 2019 executive budget to remove the requirements that victims pay a fee for services and be required to apply for temporary assistance (TA)
- These provisions were included in the final budget signed by the Governor, taking effect on April 1, 2019

NEW LAW PROVIDES...

- DV victims cannot be required to fill out a TA application upon admission to a residential DV program
- DV victims cannot be charged for DV services
- DV victims' PII cannot be shared without written, informed, reasonably time-limited consent

Summary of New Rules

- Removes TANF application and fee requirements
 - DSS cannot impose any condition for services
 - DSS cannot use survivor's earned/unearned income
- Permits survivors to voluntarily apply for TANF
 - New written information for survivors to make “informed choice” about TANF
 - TANF benefit to be “reduced by sum of other reimbursement available for such costs”
- County where survivor lives at time of incident is still fiscally responsible

Summary of New Rules (continued)

- If survivor is receiving TANF prior to arriving at shelter, DSS to apply benefit to reimbursement
- DSS will not have access to survivor's PII unless survivor consents
 - Program will only be required to share:
 - Admission and discharge dates
 - Residential program business address
 - Info related to service and safety needs of resident

OCFS Emergency Regulations

- Posted April 24, 2019
- Effective retroactive to April 1, 2019
 - Unlike OCFS proposed changes issued for comment in December
- 60-day public comment period:
 - Comments were due on July 15th:
<https://ocfs.ny.gov/main/legal/Regulatory/er/>

DISTRICT OF FISCAL RESPONSIBILITY (DFR)

The DFR will still be responsible to pay the per diem to DV residential programs for DV victims and their dependents

- DV victims will be given information regarding their right to apply for TA and relevant information to make an informed decision whether to apply

Three possible scenarios:

1. The DV victim is already receiving TA
2. The DV victim chooses to apply for TA
3. The DV victim chooses not to apply for TA

ALREADY RECEIVING TA

- All TA recipients who are receiving a payment for shelter are required to notify the district of fiscal responsibility of any changes to their living circumstances within 10 days
- The district (or DV provider) will share the consent form with the victim and explain the potential benefits of sharing PII and who will have access to their PII if they agree to sign the consent
- If the victim signs the consent form, districts must continue to calculate the TA benefits in accordance with TA budgeting rules

ALREADY RECEIVING TA

- If the victim does not sign the consent form, they can continue to receive TA, and are still responsible to comply with all of the TA requirements but the district can not use the TA funding stream to pay the DV per diem
- Victims will be made aware of the relevant information to make an informed decision when given the opportunity to sign the consent

CHOOSES TO APPLY FOR TA

- The district (or DV provider) will share the consent form with the victim and explain the potential benefits of sharing PII and who will have access to their PII if they agree to sign the consent
- If the victim signs the consent form, districts must continue to calculate the TA benefits in accordance with TA budgeting rules
- If the victim does not sign the consent form, they can apply for TA, and are still responsible to comply with all of the TA requirements but the district can not use the TA funding stream to pay the DV per diem
- Victims will be made aware of the relevant information to make an informed decision when given the opportunity to sign the consent

CHOOSES TO APPLY FOR TA

- If the victim is eligible for TA to pay the entire per diem rate, the district pays the DV residential provider in entirety using TA funds
- If the victim is only eligible for a partial TA payment for the per diem, the district will use TA to pay only the allowable amount
- The DV victim will not be charged the difference. Title XX or other funds will be used by the district to cover any amount the TA funding cannot

CHOOSES NOT TO APPLY

The DV residential program reports only the following to the district of fiscal responsibility (DFR) :

- Date family entered
- Number of persons in the family receiving shelter
- Date family leaves
- District where the victim resided at the time of the DV incident
- The DFR will pay the DV residential program the daily reimbursement rate for the family for the number of nights they stayed at the shelter using Title XX or other funds

- Purpose- to prevent, reduce or eliminate dependency, achieve self-sufficiency, prevent abuse and neglect, and prevent inappropriate institutional care
- Services include, but are not limited to, adult protective, domestic violence, child care, child protective and preventive services

Title XX and other funds will be used:

- For victims currently receiving TANF who do not grant consent
- For victims currently receiving TANF who sign consent, but benefit does not cover full per diem
- For victims who apply for TANF but do not grant consent
- For victims unwilling to apply for TANF

What we know about Title XX:

- Distributed by OCFS to counties as block grants (SSBG)
- 2018 total SSBG Grant: \$96.4M
- NY set-aside for DV/APS: \$66.0M
- Portion DV/APS spent on DV: \$19.14M

FLEXIBLE FUND FOR FAMILY SERVICES (FFFS)

- TANF funding through the FFFS may be dedicated to support domestic violence services at the district's discretion
- District block grant transfers should remain within the following percentages against the \$964,000,000 FFFS for SFY 2019-20:
 - 25% to the Title XX Block Grant; or
 - 30% combined to the CCDBG and Title XX Block Grant

Question:

What other benefits would a survivor receive by applying for TANF?

OCFS: Child care subsidies, SNAP, temporary cash assistance, rental assistance when they move out of shelter

Question:

What funding will DSS use for per diems?

OCFS Response:

- TANF
- Title XX
- Other Funds

Question:

What does OCFS mean by “other funds”

Regulations:

- DSS must reduce per diem reimbursement by “sum of any other reimbursement available for such costs”
- DSS may choose to seek reimbursement of expenditures for shelter through Title XX or “any other funding source, so long as reimbursement is in accordance with applicable funding source requirements”

Question:

A victim needs to grant consent to share PII for a DSS to use TANF funds to pay a per diem. Does PII need to be shared in order for a DSS to use Title XX funds to pay a per diem?

OCFS: No PII needs to be shared with a DSS for it to use Title XX funds to pay per diems.

Question:

If a survivor wants to apply for TANF or is already receiving TANF, but does not grant consent, do they need to inform DSS that they are in shelter?

OCFS: Yes. All TANF recipients who are receiving a payment for shelter are required to notify DSS within 10 days of any changes to their living circumstances.

Question:

DSSs do not receive enough Title XX funding to cover per diems

OCFS Response:

DSS can choose to transfer up to 25% of TANF funding (via Flexible Fund for Family Services) to Title XX block grant

Question:

FFFS is used to support survivors who are below the 200% income threshold. How can DSSs use FFFS if the income of the survivor is not quantified?

OCFS Response:

Title XX funds would be used in this case.

UNKNOWNNS

- Would DSS use child's SSD/SSI benefit to pay shelter reimbursement?
- If TANF recipients refuse to grant consent, would they be able to keep more of the TANF benefits for themselves because it could not be used to fund the per diem?

NEXT STEPS

DV Task Force

- Consisting of representatives from districts, residential and non-residential DV providers, NYSCADV, other state agencies (including OPDV, OTDA, DCJS)

Monthly check-ins

- NYSCADV
- OCFS Regional Office

NEW YORK'S SOCIAL SERVICES REGULATIONS ADDRESSING DV

- Part 452: General Provisions for Residential Programs
- Part 453: Shelters
- Part 454: Safe Home Networks, Safe Homes
- Part 455: Sponsoring Agencies, Safe Dwellings
- Part 462: Non-Residential Programs

PROPOSED CHANGES TO CURRENT REGULATIONS

- **Released proposed changes in December 2018**
- **60-Day public comment period**
- **Deadline to submit comments- February 17, 2019**

OVER-ARCHING COMMENTS ON PROPOSED CHANGES

- Do not address Federal non-compliance issues
- Do not change per diem reimbursements
- Do not change role of DSS, including provision of non-res services
- Do not change monitoring or reporting requirements
- Do not lessen oversight or requirements for local DV programs

DEFINITION OF DV REVISED

“Such act or acts that have resulted in actual physical, **sexual, economic** or emotional injury or have created a substantial risk of **coercive control**, physical, **sexual, economic** or emotional harm to such person or person’s child.”

ANTI-DISCRIMINATION LANGUAGE

- Programs must provide **“appropriate available services for all victims of DV, regardless of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability.”**
- Reasonable accommodation for person with “disability”
- Removes ability of programs to refer survivors they can't accommodate

AGE OF A VICTIM SEEKING SHELTER

“Victim of domestic violence means any person 16 years of age or older, any married person or any parent accompanied by **his/her** minor **children...**”

EMERGENCY CORE SERVICES: RES PROGRAMS

- OCFS would now require programs to “offer and provide directly” all core services
- Definitions for each service has been expanded
- Core services now include language access
- OCFS adds “acceptance” of service by resident is “voluntary”

EMERGENCY CORE SERVICES: NON-RES PROGRAMS

- OCFS also would require non-res programs to “offer and provide directly” all core services
- Definitions are essentially the same as for res programs
- Community outreach, transportation and language access services are “optional”

ANIMALS IN SHELTER

- New definitions for service animals, therapy dogs, emotional support animals
- Permits service animals, therapy dogs in shelters, as long as no “undue burden” on the program
 - Care, supervision of animals is resident responsibility
- No requirement for emotional support animals, but programs can permit them

FOOD FOR THOUGHT: FACILITY ADDRESS

- No change to requirement that facility address be kept confidential
- Very difficult in today's digital environment for programs to comply
- Are programs out of compliance if their facility address is known locally?
- Is it time to advocate for change?
 - Many states have eliminated requirement with no known negative consequences

Next Steps

- OCFS to issue guidance, which is expected to include:
 - Example scenarios
 - FAQs for DSSs and local programs
 - Brochure for survivors explaining TANF benefits and sharing of PII
 - Consent form

Next Steps

- OCFS accepted public comments on emergency regulations
 - Posted:
<https://ocfs.ny.gov/main/legal/Regulatory/pc/>
 - Deadline: July 15, 2019
 - To submit comments: regcomments@ocfs.ny.gov
- OCFS monthly meetings with NYSCADV
- OCFS monthly meetings with regional staff
- Governor's Task Force

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