

HB

192

26-LS0483P
Mischel
3/30/09

CS FOR HOUSE BILL NO. 192()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE COGHILL

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to nonpayment of child support; relating to certain judicial and**
2 **administrative orders for medical support of a child; relating to periodic review and**
3 **adjustment of child support orders; relating to relief from administrative child support**
4 **orders; relating to child support arrearages; relating to medical support of a child and**
5 **the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil**
6 **Procedure; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 **DEFINITION OF "STATE"; LEGISLATIVE INTENT.** (a) It is the intent of the
11 legislature that in order to bring Alaska into conformity with the nationwide Uniform
12 Interstate Family Support Act (UIFSA), as approved by the American Bar Association on
13 February 9, 1993, and as in effect on August 22, 1996, including any amendments officially

1 adopted as of that date by the National Conference of Commissioners on Uniform State Laws,
2 it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States
3 Virgin Islands" in the definition of "state."

4 (b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are
5 conforming amendments that will result in procedural changes in Alaska for enforcement and
6 modification of child support orders from other jurisdictions. UIFSA does not determine the
7 authority of an Indian tribe to enter, modify, or enforce a child support order. In Alaska, the
8 scope of tribal authority to enter, modify, or enforce a child support order is an unsettled legal
9 question, due in part to the lack of Indian country in most of the state. In adopting UIFSA
10 conforming amendments, the legislature does not intend to grant or restrict tribal jurisdiction
11 to enter, modify, or enforce child support orders, and the amendments are not intended, either
12 directly or impliedly, to acknowledge, expand, or restrict tribal jurisdiction.

13 * Sec. 2. AS 11.51.122(a) is amended to read:

14 (a) A person commits the crime of aiding the nonpayment of child support in
15 the second degree if the person knows that an obligor has a duty under an
16 administrative or judicial order for periodic payment of child support, for cash
17 medical support, or for the provision of health care coverage for a child under a
18 medical support order or a cash medical support order, or both and

19 (1) being a person with a statutory duty to disclose information to a
20 child support enforcement agency intentionally withholds the information when it is
21 requested by a child support enforcement agency;

22 (2) being an employer of the obligor, intentionally withholds
23 information about the residence or employment of the obligor, the eligibility of the
24 obligor's children for coverage under the employer's health insurance plan, or the cost
25 of the coverage of the children under the plan, when that information is requested by a
26 child support enforcement agency or when the employer is required by state or federal
27 law to report the information without a request by a child support enforcement agency;
28 or

29 (3) intentionally participates in a commercial, business, employment,
30 or other arrangement with the obligor, knowing at the time that the arrangement is
31 made that it will allow the obligor to avoid paying all or some of the support when it is

1 due or to avoid having a lien placed on assets for the payment of delinquent support;
2 receipt of a substantial asset for less than fair market value from an obligor after the
3 obligor's support order has been established constitutes a rebuttable presumption that
4 the person receiving the asset knew that the transfer would allow the obligor to avoid
5 paying all or some of the support or to avoid having a lien placed on the asset.

6 * Sec. 3. AS 25.25.101(19) is amended to read:

7 (19) "state" means a state of the United States, the District of
8 Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or
9 any territory or insular possession subject to the jurisdiction of the United States; the
10 term "state" includes an Indian tribe and a foreign jurisdiction that has enacted a law
11 or established procedures for issuance and enforcement of support orders that are
12 substantially similar to the procedures under this chapter or under the Uniform
13 Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal
14 Enforcement of Support Act;

15 * Sec. 4. AS 25.27.060(c) is amended to read:

16 (c) In a court or administrative proceeding where the support of a minor child
17 is at issue, the court or agency, as applicable, may order either parent or both parents
18 to pay the amount necessary for support, maintenance, nurture, and education of the
19 child. Regardless of whether a support order for periodic payments is issued, the court
20 or agency shall issue a medical support order, a cash medical support order, or
21 both. The medical support order shall require health care insurance coverage for the
22 child if health care insurance coverage is available to either parent or both parents for
23 the child at a reasonable cost. The court or agency shall consider whether the child is
24 eligible for services through the Indian Health Service or other insurance coverage
25 before ordering either parent or both parents to provide health care coverage through
26 insurance, cash medical support, or other means or a combination of insurance,
27 cash medical support, or other means. The court or agency shall allocate equally the
28 cost of health care insurance for the child between the parents unless there is good
29 cause to allocate the costs unequally. If the obligor has the duty to make periodic
30 payments for non-medical child support, the obligor's periodic payments shall be
31 decreased by the amount of the other parent's portion of payments for health insurance

1 ordered by the court or agency and actually paid by the obligor. If the obligor has a
2 duty to make periodic payments for non-medical child support, the periodic payments
3 shall be increased by the obligor's portion of payments for health insurance if the other
4 parent is ordered to and actually does obtain and pay for insurance. The court or
5 agency shall allocate equally between the parents the cost of reasonable health care
6 expenses not covered by private insurance unless there is good cause to allocate the
7 costs unequally. One parent shall reimburse the other parent for the first parent's share
8 of the uncovered expenses paid by the parent within 30 days after receipt by the first
9 parent of the bill for the health care, payment verification, and, if applicable, a health
10 insurance statement indicating what portion of the cost is uncovered. The medical
11 support order must meet the requirements of AS 25.27.063. Upon a showing of good
12 cause, the court may order the parents required to pay support to give reasonable
13 security for payments.

14 * Sec. 5. AS 25.27.160(c) is amended to read:

15 (c) If the agency is establishing only [A] medical support [ORDER], the
16 notice and finding of financial responsibility must state

17 (1) that health care insurance shall be provided for the child to whom
18 the duty of support is owed if health care insurance is available to the alleged obligor
19 at a reasonable cost and that the alleged obligor and the other parent shall share
20 equally the cost of the health care insurance and the costs of reasonable health care
21 expenses not covered by insurance;

22 (2) the sum of periodic payments of cash medical support for
23 which either parent or both parents are found to be responsible under this
24 chapter;

25 (3) the name of the alleged obligee and the obligee's custodian;

26 (4) [(3)] that the alleged obligor may appear and show cause in a
27 hearing held by the agency why the finding is incorrect, should not be finally ordered,
28 and should be modified or rescinded, because

29 (A) no duty of support is owed;

30 (B) health care insurance for the child is not available to the
31 alleged obligor at a reasonable cost;

1 (C) adequate health care is available to the child through the
2 Indian Health Service or other insurance coverage; or

3 (D) there is good cause to allocate the costs of health insurance,
4 cash medical support, or uninsured health care expenses unequally between
5 the parents;

6 (5) [(4)] that, if the person served with the notice under this subsection
7 does not request a hearing within 30 days, a copy of the medical support order will be
8 sent to the person's employer under AS 25.27.063(b) without further notice or hearing
9 for inclusion of the child in family health coverage if it is available through the
10 person's employer.

11 * Sec. 6. AS 25.27.193 is amended to read:

12 **Sec. 25.27.193. Periodic review or adjustment of support orders.** As
13 necessary to comply with 42 U.S.C. 666, the agency, by regulation, shall provide
14 procedures and standards for the modification, through a three-year cycle of
15 [PERIODIC] review or adjustment, of a support order. Regulations adopted under this
16 section must include procedures for periodic notice of the right to request review,
17 procedures for hearings, and standards for adjustments regarding future periodic
18 support payments. A modification under this section may be made without a showing
19 of a material change in circumstances.

20 * Sec. 7. AS 25.27.195(a) is amended to read:

21 (a) A clerical mistake in an administrative order issued by the agency or an
22 error arising from an oversight or omission by the agency may be corrected by the
23 agency at any time [ON THE MOTION OF AN OBLIGOR].

24 * Sec. 8. AS 25.27.195(b) is amended to read:

25 (b) The [UPON THE MOTION OF AN OBLIGOR, THE] agency may, at any
26 time, vacate an administrative support order issued by the agency under AS 25.27.160
27 that was based on a default amount rather than on the obligor's actual ability to pay.

28 * Sec. 9. AS 25.27.900(2) is repealed and reenacted to read:

29 (2) "arrearage" means a debt that is past due and equal to at least one
30 monthly obligation under the support order for one or more of the following:

31 (A) monetary support;

- 1 (B) cash medical support;
- 2 (C) payment of health care costs or maintenance of health
- 3 insurance;
- 4 (D) reimbursement of related costs;
- 5 (E) payment of attorney fees and legal costs and other fees;
- 6 (F) penalty, interest, and other relief as required by a support
- 7 order;

* Sec. 10. AS 25.27.900(12) is amended to read:

(12) "support order" means any judgment, decree, or order that is issued by a tribunal for the support and maintenance of a child or of a parent with whom the child is living; "support order" includes a judgment, decree, or order

(A) on behalf of a child who has reached the age of majority if the judgment, decree, or order was lawfully issued; and

(B) for any or all of the following:

(i) monetary support, including arrearages;

(ii) payment of health care costs or maintenance of health insurance;

(iii) payment of cash medical support;

(iv) [(iii)] reimbursement of related costs;

(v) [(iv)] payment of attorney fees and legal costs and other fees; or

(vi) [(v)] penalty, interest, and other relief as required by a tribunal;

* Sec. 11. AS 47.07.025(b) is amended to read:

(b) Through the child support services agency or on its own behalf, the department may garnish the wages, salary, or other employment income of a person who

(1) is required by a medical support order, **cash medical support order, or both,** under AS 25.27.060(c) to provide **insurance or cash** coverage of the costs of medical care to a child who is eligible for medical assistance under this chapter;

1 (2) has received payment from a third party for the costs of the
2 services; and

3 (3) has not used the payments to reimburse, as appropriate, the other
4 parent or custodian of the child, the provider of the services, or the department.

5 * **Sec. 12.** AS 47.27.200(o) is amended to read:

6 (o) The applicability of AS 25.27 in the case of a recipient under an Alaska
7 Native family assistance program includes the following:

8 (1) an obligor is liable to the Alaska Native family assistance program
9 in the amount of the family assistance provided by the program to a child to whom the
10 obligor owes a duty of support except that, if a support order has been entered, the
11 liability of the obligor for assistance provided by an Alaska Native family assistance
12 program may not exceed the amount of support provided for in the support order, and,
13 if a medical support order, cash medical support order, or both, [ORDER OF
14 SUPPORT] has been entered, the liability of the obligor for assistance granted under
15 AS 47.07 may not exceed the amount of support provided for in the medical support
16 order, cash medical support order, or both, [ORDER OF SUPPORT]; the child
17 support services agency shall send notice of accruing liability under this paragraph in
18 the same manner as required under AS 25.27.120(c), and, if the agency fails to comply
19 with the notice requirement of this paragraph, interest does not accrue on the liability
20 to the Alaska Native family assistance program unless a support order or medical
21 support order, or cash medical support order, as applicable, has been entered;

22 (2) the child support services agency may appear in an action
23 authorized under AS 25.27.045 at the agency's own discretion if an obligor under
24 AS 25.27 is liable to the Alaska Native family assistance program under (1) of this
25 subsection;

26 (3) an Alaska Native family assistance program to which the child
27 support services agency erroneously disburses an overpayment of child support under
28 an income withholding order is liable to the state for the amount disbursed, plus
29 interest at the rate imposed under AS 25.27.062(l)(1);

30 (4) when the right to receive child support has been assigned to an
31 Alaska Native family assistance program, an agreement under AS 25.27.065(a) that

1 has not been adopted as an administrative order of the child support services agency is
2 not effective during a period when the obligee is receiving assistance under an Alaska
3 Native family assistance program;

4 (5) the child support services agency, on behalf of an Alaska Native
5 family assistance program, shall take all necessary action permitted by law to enforce
6 child support orders entered under AS 25.27, including petitioning the court for orders
7 to aid in the enforcement of child support;

8 (6) if an obligor under AS 25.27 is liable to an Alaska Native family
9 assistance program under (1) of this subsection, the state is subrogated to the rights of
10 the obligee to take actions authorized under AS 25.27.130(a);

11 (7) notwithstanding AS 25.27.130(c), the recovery of an amount for
12 which an obligor under AS 25.27 is liable that exceeds the total assistance granted
13 under AS 47.07 and this chapter shall be paid to the obligee;

14 (8) except as provided in AS 25.27.130(f), if an obligee under
15 AS 25.27 is not receiving assistance under AS 47.07 or this chapter at the time the
16 state recovers money in an action under AS 25.27.130(d) or (1) of this subsection, the
17 recovery of any amount for which the obligor is liable shall be distributed to the
18 obligee for support payments, including medical support payments, that had become
19 due and unpaid since the termination of assistance under AS 47.07 or this chapter
20 under a support order in favor of the obligee;

21 (9) after payment to the obligee under (8) of this subsection, the state
22 may retain an amount not to exceed the total unreimbursed assistance paid on behalf
23 of the obligee under AS 47.07 or this chapter;

24 (10) if an alleged obligor is liable to an Alaska Native family
25 assistance program under (1) of this subsection, and a support order has not been
26 entered, the child support services agency may, at its own discretion, undertake an
27 action to establish paternity and a duty of support using the procedures prescribed in
28 AS 25.27 and may enforce a duty of support using the procedures prescribed in
29 AS 25.27; the agency may also institute administrative proceedings to determine the
30 paternity of a child born out of wedlock upon application of an Alaska Native family
31 assistance program; the agency may not recover costs of genetic tests required under

1 this paragraph from a person who is a recipient of assistance under an Alaska Native
2 family assistance program;

3 (11) when a hearing officer makes a determination under
4 AS 25.27.170(d), the hearing officer shall, in addition to the factors described in
5 AS 25.27.170(e), consider the amount of the alleged obligor's liability to an Alaska
6 Native family assistance program under (1) of this subsection;

7 (12) notwithstanding AS 25.27.255(a), the child support services
8 agency may not pay to an obligee any money that has been assigned to an Alaska
9 Native family assistance program.

10 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **INDIRECT COURT RULE AMENDMENT.** AS 25.27.060(c), amended by sec. 4 of
13 this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing
14 standards for issuance of medical and other support orders by the court.

15 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **APPLICABILITY.** This Act applies to actions filed on or after the effective date of
18 this section and to motions filed on or after the effective date in proceedings filed before, on,
19 or after the effective date of this section.

20 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt
23 regulations necessary to implement this Act. The regulations take effect under AS 44.62
24 (Administrative Procedure Act), but not before July 1, 2009.

25 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **NO CONDITIONAL EFFECT.** Because Rule 90.3, Alaska Rules of Civil Procedure,
28 is a substantive rule, sec. 4 of this Act takes effect even if sec. 13 of this Act fails to receives a
29 two-thirds majority vote of each house.

30 * **Sec. 17.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

31 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2009.

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Sponsor(s): REPRESENTATIVE COGHILL

A BILL

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1 **"An Act relating to nonpayment of child support; relating to certain judicial and**
2 **administrative orders for medical support of a child; relating to periodic review and**
3 **adjustment of child support orders; relating to relief from administrative child support**
4 **orders; relating to child support arrearages; relating to medical support of a child and**
5 **the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil**
6 **Procedure; and providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
9 to read:

10 **DEFINITION OF "STATE"; LEGISLATIVE INTENT.** The amendment made to the
11 definition of "state" in AS 25.25.101(19) under sec. 3 of this Act is intended to conform state
12 law to recent recommendations made for the Uniform Interstate Family Support Act. The
13 change is not intended to alter or expand in any way the governmental relationship between

1 federally recognized tribes and the state.

2 * Sec. 2. AS 11.51.122(a) is amended to read:

3 (a) A person commits the crime of aiding the nonpayment of child support in
4 the second degree if the person knows that an obligor has a duty under an
5 administrative or judicial order for periodic payment of child support, for cash
6 medical support, or for the provision of health care coverage for a child under a
7 medical support order or a cash medical support order, or both and

8 (1) being a person with a statutory duty to disclose information to a
9 child support enforcement agency intentionally withholds the information when it is
10 requested by a child support enforcement agency;

11 (2) being an employer of the obligor, intentionally withholds
12 information about the residence or employment of the obligor, the eligibility of the
13 obligor's children for coverage under the employer's health insurance plan, or the cost
14 of the coverage of the children under the plan, when that information is requested by a
15 child support enforcement agency or when the employer is required by state or federal
16 law to report the information without a request by a child support enforcement agency;
17 or

18 (3) intentionally participates in a commercial, business, employment,
19 or other arrangement with the obligor, knowing at the time that the arrangement is
20 made that it will allow the obligor to avoid paying all or some of the support when it is
21 due or to avoid having a lien placed on assets for the payment of delinquent support;
22 receipt of a substantial asset for less than fair market value from an obligor after the
23 obligor's support order has been established constitutes a rebuttable presumption that
24 the person receiving the asset knew that the transfer would allow the obligor to avoid
25 paying all or some of the support or to avoid having a lien placed on the asset.

26 * Sec. 3. AS 25.25.101(19) is amended to read:

27 (19) "state" means a state of the United States, the District of
28 Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or
29 any territory or insular possession subject to the jurisdiction of the United States; the
30 term "state" includes an Indian tribe and a foreign jurisdiction that has enacted a law
31 or established procedures for issuance and enforcement of support orders that are

1 substantially similar to the procedures under this chapter or under the Uniform
2 Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal
3 Enforcement of Support Act;

4 * Sec. 4. AS 25.27.060(c) is amended to read:

5 (c) In a court or administrative proceeding where the support of a minor child
6 is at issue, the court or agency, as applicable, may order either parent or both parents
7 to pay the amount necessary for support, maintenance, nurture, and education of the
8 child. Regardless of whether a support order for periodic payments is issued, the court
9 or agency shall issue a medical support order, a cash medical support order, or
10 both. The medical support order shall require health care insurance coverage for the
11 child if health care insurance coverage is available to either parent or both parents for
12 the child at a reasonable cost. The court or agency shall consider whether the child is
13 eligible for services through the Indian Health Service or other insurance coverage
14 before ordering either parent or both parents to provide health care coverage through
15 insurance, cash medical support, or other means or a combination of insurance,
16 cash medical support, or other means. The court or agency shall allocate equally the
17 cost of health care insurance for the child between the parents unless there is good
18 cause to allocate the costs unequally. If the obligor has the duty to make periodic
19 payments for non-medical child support, the obligor's periodic payments shall be
20 decreased by the amount of the other parent's portion of payments for health insurance
21 ordered by the court or agency and actually paid by the obligor. If the obligor has a
22 duty to make periodic payments for non-medical child support, the periodic payments
23 shall be increased by the obligor's portion of payments for health insurance if the other
24 parent is ordered to and actually does obtain and pay for insurance. The court or
25 agency shall allocate equally between the parents the cost of reasonable health care
26 expenses not covered by private insurance unless there is good cause to allocate the
27 costs unequally. One parent shall reimburse the other parent for the first parent's share
28 of the uncovered expenses paid by the parent within 30 days after receipt by the first
29 parent of the bill for the health care, payment verification, and, if applicable, a health
30 insurance statement indicating what portion of the cost is uncovered. The medical
31 support order must meet the requirements of AS 25.27.063. Upon a showing of good

1 cause, the court may order the parents required to pay support to give reasonable
2 security for payments.

3 * Sec. 5. AS 25.27.160(c) is amended to read:

4 (c) If the agency is establishing only [A] medical support [ORDER], the
5 notice and finding of financial responsibility must state

6 (1) that health care insurance shall be provided for the child to whom
7 the duty of support is owed if health care insurance is available to the alleged obligor
8 at a reasonable cost and that the alleged obligor and the other parent shall share
9 equally the cost of the health care insurance and the costs of reasonable health care
10 expenses not covered by insurance;

11 (2) the sum of periodic payments of cash medical support for
12 which either parent or both parents are found to be responsible under this
13 chapter;

14 (3) the name of the alleged obligee and the obligee's custodian;

15 (4) [(3)] that the alleged obligor may appear and show cause in a
16 hearing held by the agency why the finding is incorrect, should not be finally ordered,
17 and should be modified or rescinded, because

18 (A) no duty of support is owed;

19 (B) health care insurance for the child is not available to the
20 alleged obligor at a reasonable cost;

21 (C) adequate health care is available to the child through the
22 Indian Health Service or other insurance coverage; or

23 (D) there is good cause to allocate the costs of health insurance,
24 cash medical support, or uninsured health care expenses unequally between
25 the parents;

26 (5) [(4)] that, if the person served with the notice under this subsection
27 does not request a hearing within 30 days, a copy of the medical support order will be
28 sent to the person's employer under AS 25.27.063(b) without further notice or hearing
29 for inclusion of the child in family health coverage if it is available through the
30 person's employer.

31 * Sec. 6. AS 25.27.193 is amended to read:

1 **Sec. 25.27.193. Periodic review or adjustment of support orders.** As
2 necessary to comply with 42 U.S.C. 666, the agency, by regulation, shall provide
3 procedures and standards for the modification, through a three-year cycle of
4 [PERIODIC] review or adjustment, of a support order. Regulations adopted under this
5 section must include procedures for periodic notice of the right to request review,
6 procedures for hearings, and standards for adjustments regarding future periodic
7 support payments. A modification under this section may be made without a showing
8 of a material change in circumstances.

9 * **Sec. 7.** AS 25.27.195(a) is amended to read:

10 (a) A clerical mistake in an administrative order issued by the agency or an
11 error arising from an oversight or omission by the agency may be corrected by the
12 agency at any time [ON THE MOTION OF AN OBLIGOR].

13 * **Sec. 8.** AS 25.27.195(b) is amended to read:

14 (b) The [UPON THE MOTION OF AN OBLIGOR, THE] agency may, at any
15 time, vacate an administrative support order issued by the agency under AS 25.27.160
16 that was based on a default amount rather than on the obligor's actual ability to pay.

17 * **Sec. 9.** AS 25.27.900(2) is repealed and reenacted to read:

18 (2) "arrearage" means a debt that is past due and equal to at least one
19 monthly obligation under the support order for one or more of the following:

20 (A) monetary support;

21 (B) cash medical support;

22 (C) payment of health care costs or maintenance of health
23 insurance;

24 (D) reimbursement of related costs;

25 (E) payment of attorney fees and legal costs and other fees;

26 (F) penalty, interest, and other relief as required by a support
27 order;

28 * **Sec. 10.** AS 25.27.900(12) is amended to read:

29 (12) "support order" means any judgment, decree, or order that is
30 issued by a tribunal for the support and maintenance of a child or of a parent with
31 whom the child is living; "support order" includes a judgment, decree, or order

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(A) on behalf of a child who has reached the age of majority if the judgment, decree, or order was lawfully issued; and

(B) for any or all of the following:

(i) monetary support, including arrearages;

(ii) payment of health care costs or maintenance of health insurance;

(iii) payment of cash medical support;

(iv) [(iii)] reimbursement of related costs;

(v) [(iv)] payment of attorney fees and legal costs and other fees; or

(vi) [(v)] penalty, interest, and other relief as required by a tribunal;

* Sec. 11. AS 47.07.025(b) is amended to read:

(b) Through the child support services agency or on its own behalf, the department may garnish the wages, salary, or other employment income of a person who

(1) is required by a medical support order, cash medical support order, or both, under AS 25.27.060(c) to provide insurance or cash coverage of the costs of medical care to a child who is eligible for medical assistance under this chapter;

(2) has received payment from a third party for the costs of the services; and

(3) has not used the payments to reimburse, as appropriate, the other parent or custodian of the child, the provider of the services, or the department.

* Sec. 12. AS 47.27.200(o) is amended to read:

(o) The applicability of AS 25.27 in the case of a recipient under an Alaska Native family assistance program includes the following:

(1) an obligor is liable to the Alaska Native family assistance program in the amount of the family assistance provided by the program to a child to whom the obligor owes a duty of support except that, if a support order has been entered, the liability of the obligor for assistance provided by an Alaska Native family assistance

1 program may not exceed the amount of support provided for in the support order, and,
 2 if a medical support order, cash medical support order, or both, [ORDER OF
 3 SUPPORT] has been entered, the liability of the obligor for assistance granted under
 4 AS 47.07 may not exceed the amount of support provided for in the medical support
 5 order, cash medical support order, or both, [ORDER OF SUPPORT]; the child
 6 support services agency shall send notice of accruing liability under this paragraph in
 7 the same manner as required under AS 25.27.120(c), and, if the agency fails to comply
 8 with the notice requirement of this paragraph, interest does not accrue on the liability
 9 to the Alaska Native family assistance program unless a support order or medical
 10 support order, or cash medical support order, as applicable, has been entered;

11 (2) the child support services agency may appear in an action
 12 authorized under AS 25.27.045 at the agency's own discretion if an obligor under
 13 AS 25.27 is liable to the Alaska Native family assistance program under (1) of this
 14 subsection;

15 (3) an Alaska Native family assistance program to which the child
 16 support services agency erroneously disburses an overpayment of child support under
 17 an income withholding order is liable to the state for the amount disbursed, plus
 18 interest at the rate imposed under AS 25.27.062(l)(1);

19 (4) when the right to receive child support has been assigned to an
 20 Alaska Native family assistance program, an agreement under AS 25.27.065(a) that
 21 has not been adopted as an administrative order of the child support services agency is
 22 not effective during a period when the obligee is receiving assistance under an Alaska
 23 Native family assistance program;

24 (5) the child support services agency, on behalf of an Alaska Native
 25 family assistance program, shall take all necessary action permitted by law to enforce
 26 child support orders entered under AS 25.27, including petitioning the court for orders
 27 to aid in the enforcement of child support;

28 (6) if an obligor under AS 25.27 is liable to an Alaska Native family
 29 assistance program under (1) of this subsection, the state is subrogated to the rights of
 30 the obligee to take actions authorized under AS 25.27.130(a);

31 (7) notwithstanding AS 25.27.130(c), the recovery of an amount for

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which an obligor under AS 25.27 is liable that exceeds the total assistance granted under AS 47.07 and this chapter shall be paid to the obligee;

(8) except as provided in AS 25.27.130(f), if an obligee under AS 25.27 is not receiving assistance under AS 47.07 or this chapter at the time the state recovers money in an action under AS 25.27.130(d) or (1) of this subsection, the recovery of any amount for which the obligor is liable shall be distributed to the obligee for support payments, including medical support payments, that had become due and unpaid since the termination of assistance under AS 47.07 or this chapter under a support order in favor of the obligee;

(9) after payment to the obligee under (8) of this subsection, the state may retain an amount not to exceed the total unreimbursed assistance paid on behalf of the obligee under AS 47.07 or this chapter;

(10) if an alleged obligor is liable to an Alaska Native family assistance program under (1) of this subsection, and a support order has not been entered, the child support services agency may, at its own discretion, undertake an action to establish paternity and a duty of support using the procedures prescribed in AS 25.27 and may enforce a duty of support using the procedures prescribed in AS 25.27; the agency may also institute administrative proceedings to determine the paternity of a child born out of wedlock upon application of an Alaska Native family assistance program; the agency may not recover costs of genetic tests required under this paragraph from a person who is a recipient of assistance under an Alaska Native family assistance program;

(11) when a hearing officer makes a determination under AS 25.27.170(d), the hearing officer shall, in addition to the factors described in AS 25.27.170(e), consider the amount of the alleged obligor's liability to an Alaska Native family assistance program under (1) of this subsection;

(12) notwithstanding AS 25.27.255(a), the child support services agency may not pay to an obligee any money that has been assigned to an Alaska Native family assistance program.

* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to read:

1 INDIRECT COURT RULE AMENDMENT. AS 25.27.060(c), amended by sec. 4 of
 2 this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing
 3 standards for issuance of medical and other support orders by the court.

4 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
 5 read:

6 **APPLICABILITY.** This Act applies to actions filed on or after the effective date of
 7 this section and to motions filed on or after the effective date in proceedings filed before, on,
 8 or after the effective date of this section.

9 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
 10 read:

11 **TRANSITION: REGULATIONS.** The Department of Revenue may proceed to adopt
 12 regulations necessary to implement this Act. The regulations take effect under AS 44.62
 13 (Administrative Procedure Act), but not before July 1, 2009.

14 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
 15 read:

16 **NO CONDITIONAL EFFECT.** Because Rule 90.3, Alaska Rules of Civil Procedure,
 17 is a substantive rule, sec. 4 of this Act takes effect even if sec. 13 of this Act fails to receives a
 18 two-thirds majority vote of each house.

19 * **Sec. 17.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

20 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2009.



**ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN**

State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

Sponsor Statement

HB192 – Child Support Enforcement Amendments

Civil Rule 90.3, the child support guidelines, was enacted by the Alaska Supreme Court in 1987. Civil Rule 90.3 is substantive law and should have been passed by the legislature. The courts decide individual cases and enact procedural rules. This bill will enact the current rule as a statute and correct a long-standing deficiency.

Additionally this bill amends existing statute to conform to the new medical support regulations set by the federal government in July 2008 that require how one or both parents will provide healthcare needs for their child.

It gives a tribunal the authority to order either or both parents to pay cash medical support. CSSD will now review support orders on a three-year cycle rather than periodically. The definition of arrearage and support now includes cash medical support.

Finally the bill removes language limiting who may request a clerical mistake correction on an administrative order or vacating an administrative order based upon a default income.

STATE OF ALASKA
DEPARTMENT OF REVENUE
CHILD SUPPORT SERVICES DIVISION

SARAH PALIN, GOVERNOR

Please Reply To:

CSSD, MS DIR
550 WEST 7th AVE., SUITE 310
ANCHORAGE, AK 99501-6699

March 26, 2009

Rynniva Moss
Representative John Coghill's Office
Juneau AK 99801

RE: HB 192

Dear Ms. Moss:

As per your request, following is a sectional analysis of HB 192:

Section 1. Adds reference to cash medical support to the crime of aiding the nonpayment of child support in the second degree.

Section 2. Amends order of support provision to include both parents, medical support, and insurance.

Section 3. Adds medical support to provision authorizing the initiation of administrative action to establish a duty of support.

Section 4. Amends periodic reviews of support orders to require a three year cycle of review.

Section 5. Deletes motion requirement for correcting an administrative mistake in a support order.

Section 6. Deletes motion requirement for vacating a support order that is based on a default amount.

Section 7. Redefines "arrearage" for child support purposes.

Section 8. Amends the definition of "support order" to include cash medical support.

Section 9. Amends garnishment provision to include insurance and cash medical support.

Section 10. Amends the Alaska Native family assistance program to include obligations for cash medical support.

Section 11. Provides for an indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure for changes made in the bill.

TOLL FREE (In-state, outside Anchorage): (800) 478-3300

SOUTHEAST: (907) 465-5887

MAT-SU: (907) 357-3550

ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6914

FAIRBANKS: (907) 451-2830

TDD machine only: (907) 269-6894 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-6894

Page 2
HB 192
March 26, 2009

Section 12. Makes bill changes applicable to child support actions filed on or after the bill's effective date.

Section 13. Authorizes the Department of Revenue to proceed to adopt regulations needed under the bill.

Section 14. Provides for a conditional effect for the court rule amendment in sec. 11 only for two-thirds majority vote.

Section 15. Makes sec. 13 effective immediately.

Section 16. Provides for a July 1, 2009 effective date for all other bill sections.

Let me know if you have any questions concerning this analysis.

Thank you,

Sincerely,



John Mallonee
Director

LAT/JM

TOLL FREE (In-state, outside Anchorage): (800) 478-3300

ANCHORAGE: (907) 269-6900 FAX: (907) 269-6813 or 6914

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 192
 () Publish Date: _____

Identifier (file name): HB192-DOR-CSS-03-30-09 Dept. Affected: Revenue
 Title Cash Medical Support for Minor Children RDU Child Support Services Division
 Component Child Support Services Division
 Sponsor Representative Coghill
 Requester _____ Component Number 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Debt Service								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1092 MHTAAR								
Bond Proceeds								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation does not require any additional funding.

Prepared by: John Mallonee
 Division: Child Support Services Division
 Approved by: Ginger Blaisdell, Director
Administrative Services Division

Phone 269-6801
 Date/Time 3/30/2009 at 12:00 PM
 Date 3/30/2009

State of Alaska
Department of Revenue
Administrative Services Division



SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

March 20, 2009

The Honorable John Coghill
Chair, House Rules Committee
Alaska State Legislature
State Capitol, Room 214
Juneau, AK 99801

Dear Representative Coghill;

The Department of Revenue, with support of the Governor asked you to introduce legislation regarding Child Support Services needs for legislative change to their statutes. Thank you for sponsoring this legislation and introducing HB 192 last week. This letter outlines the need for the legislation to pass during this legislative session both for content of the bill and fiscal impact to the citizens of the state.

The Alaska Child Support Services Division (CSSD) needs to amend state law on three issues.

1. The requirement for cash medical support
2. The three year review cycle
3. The change of the definition of state in UIFSA

The first two amendments are less controversial and only require that child support orders include a provision for obligors to pay cash medical assistance to the custodial parent to help with health costs when insurance is not provided for that child, and that the division performs regular reviews of its cases.

The third amendment could be considered more sensitive. The Uniform Interstate Family Support Act (UIFSA) contains a definition of "state." Under federal law, all states must adopt the uniform act's definition of "state" that includes "the United States Virgin Islands" and "an Indian tribe." For Alaska, the impact of adopting a definition that would include Indian tribes, means Indian tribes can issue and serve income-withholding orders on employers. The obligor would be entitled to contest the jurisdiction of the tribe to issue the order and the usual rights to contest the validity or enforcement of an order by an obligor would still apply. The change would also affect the process for state recognition of tribal orders. A tribal child support order would be registered in the Alaska state courts under the UIFSA procedures instead of a comity process. These changes are consistent with the purpose of UIFSA. The purpose of UIFSA is to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws.

One question raised by the changes required by UIFSA is whether the tribal amendment would result in an expansion of tribal authority. The Department of Law has examined this question and came to the

following conclusion:

“UIFSA’s underlying purpose is not to define jurisdiction. Nor does the state have the ability to define tribal jurisdiction. The overall purpose of UIFSA is simply to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws. These purposes do not trigger broader jurisdictional concerns.”

Intent language could be included in the introduced child support legislation (SB 96) to ease concerns of legislators who are not comfortable with issues related to Indian tribes. Or a letter of intent could be attached as a separate letter to the bill. I might suggest the following as an amendment:

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) failure to bring AS 25.25.101 into compliance with the federal Social Security Act Title IV-D could result in the loss of approximately \$17,000,000 in administrative funding;

(2) of the 33 states that have federally recognized tribes, Alaska is the only state that has not yet passed conforming legislation; and

(3) to bring Alaska into conformity with UIFSA, the legislature finds that it is necessary to amend AS 25.25.101 to include “an Indian tribe” and “the United States Virgin Islands” in the definition of “state.”

(b) It is the intent of the legislature that this Act not alter or expand in any way the governmental relationship between federally recognized tribes and the state.

A zero fiscal note accompanies the legislation because passage of the bill would result in no additional impact to the Department of Revenue, Child Support Services Division. The fiscal impact to non-passage of SB96, or another like bill, could be detrimental to 62,000 Alaska’s children under age 19. If the state remains out of compliance after this legislative session, CSSD could lose nearly the entire operating budget required to operate the child support activities mandated by state and federal law and could jeopardize the entire TANF block grant received by the Department of Health and Social Services, Division of Public Assistance. (The division currently has a budget of \$174,000 General Funds.)

\$11,000,000	Federal receipts paid through Title IV-D of the Social Security Act for child support services.
\$12,708,403	Each year CSSD collects funds from families who also receive state benefits through the State’s TANF (Temporary Assistance for Needy Families) program. The collections received on behalf of the children receiving funding through TANF are retained by CSSD and used as match to obtain additional federal funding for child support, \$6,070,137 state match, and \$6,638,266 to be used as part of the total federal receipts to be paid to CSSD for its services. *FY08 totals

\$ 1,025,761	Annual collections from obligors whose children are in state foster care are sent to the Department of Health and Social Services to help pay for foster care costs. *FY08 totals
\$ 860,560	Annual collections from obligors whose children are institutionalized are sent to the Department of Health and Social Services to help pay for non-federal foster care. *FY08 totals
\$60,000,000	Federal TANF Block Grant is part of the Social Security Act. If any part of the Act is not in compliance, the State would risk losing the entire block grant. The majority of this funding is appropriated in the Department of Health and Social Services. Action Transmittal OCSE-AT-97-05 dated April 28, 1997 describes that CSSD funding would be lost and that non-compliance could also put at risk Title IV-A funding. The language from this Action Transmittal follows:

AUTHORITY:Section 455(a)(1)(A) of the Act specifies that funds appropriated under title IV-D shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a Child Support Enforcement program unless such State has an approved State IV-D plan.

Section 466 of the Act requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws.

Section 454 of the Act sets the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that OCSE review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but OCSE retains authority for determining that a State IV-D plan is not approvable.

As stated above, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with OCSE's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Section 402(a)(2) of the Act (as amended by PRWORA) provides that the chief executive officer of a State must certify that it will operate a child support enforcement program under an approved IV-D plan as a condition of eligibility for a TANF block grant under title IV-A of the Act. Therefore, States should be aware that TANF funds may also be at risk.

CSSD Federal Compliance Impact Letter

March 20, 2009


Page 4 of 4

In conclusion:

1. Monthly distribution of child support payments to custodial parents averages \$9,350,000.
2. One out of six citizens (approximately 125,000 people) in Alaska are somehow involved in a child support case.
3. If this legislation does not pass in the next 30 days, Alaska risks losing its entire child support services program and could lose its state TANF block grant that serves low-income citizens in every community.

Thank you for working with us on this issue.

Sincerely,



Ginger Blaisdell
Director



DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

2201 Sixth Avenue, RX-70
Seattle, WA 98121

MAR 27 2009

Mr. John Mallonee, Director
Child Support Services Division
550 West 7th Avenue, Suite 310
Anchorage, AK 99501

Dear Mr. Mallonee:

This is in response to your request for clarification of the potential Federal consequences if a State fails to enact laws to meet the State plan requirements with section 466(f) of the Social Security Act (the Act). The Act mandates that on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act (UIFSA), as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform States Laws. Specifically, Alaska State's UIFSA does not include Indian tribes in the definition of 'State'.

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

When a State fails to comply with any statutory requirement, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D to operate the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved may result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. This suspension includes the Federal share of administrative expenditures as well as any performance based incentive payments to the State.

In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, Alaska should be aware that TANF funds may also be at risk if the State does not enact conforming child support legislation.

Page 2 - Mr. John Mallonee

In Federal Fiscal Year (FFY) 2008, the Federal share of Alaska's IV-D expenditures was \$14,657,800 and the State's TANF award amount was \$46,732,590. In addition, Alaska received \$1,794,516 in child support incentives for FFY 2007 (the latest year with available data).

We trust this statement of requirements and penalties clarifies our position. We are attaching our Action Transmittal 97-05 issued April 28, 1997 which outlines our procedures for determining that a State IV-D Plan is disapproved. Due to the gravity of the consequences that may result, we urge you to take all necessary steps to have the required UIFSA legislation enacted and implemented as soon as possible.

If you have any questions, please contact John Cheng at (206) 615-2566.

Sincerely,



Linda Gillett

Regional Program Manager, Region 10
Office of Child Support Enforcement

Enclosure: Action Transmittal 97-05

cc: Ms. Donna Bonar, Acting Commissioner, OCSE



U.S. Department of Health and Human Services

Administration for Children & Families

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THE OFFICE OF CHILD SUPPORT ENFORCEMENT

Giving Hope and Support to America's Children

PROGRAM INSTRUCTION

ACTION TRANSMITTAL

OCSE-AT-97-05

April 28, 1997

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Procedures for Determining That a State IV-D Plan is Disapproved

BACKGROUND: Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, made a number of amendments to sections 454 and 466 of the Social Security Act (the Act), requiring States to either establish new, or modify existing, procedures effective either October 1, 1996, March 1, 1997 or October 1, 1997. For States which require legislation in order to conform their State IV-D plans to the revised statute, section 395(b)(2) of PRWORA provides a grace period until not later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of enactment of PRWORA (August 22, 1996). In cases which require that the State constitution be amended, section 395(c) of PRWORA provides a grace period until one year after the effective date of the State constitutional amendment, but no later than five years after the date of enactment of PRWORA.

CSE is tracking the progress of each of the States in enacting the new State plan requirements and mandatory laws, and is noting the date when each State's 1997 legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan. A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE.

STATUTORY

AUTHORITY: Section 455(a)(1)(A) of the Act specifies that funds appropriated under title IV-D shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a Child Support Enforcement program unless such State has an approved State IV-D plan.

Section 466 of the Act requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws.

Section 454 of the Act sets the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that OCSE review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but OCSE retains authority for determining that a State IV-D plan is not approvable.

As stated above, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with OCSE's decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Section 402(a)(2) of the Act (as amended by PRWORA) provides that the chief executive officer of a State must certify that it will operate a child support enforcement program under an approved IV-D plan as a condition of eligibility for a TANF block grant under title IV-A of the Act. Therefore, States should be aware that TANF funds may also be at risk.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The State will then be permitted the opportunity to waive reconsideration of the OCSE's final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth in 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of OCSE's decision, no further administrative appeal will be allowed.

ATTACHMENT: Instructions for State Plan Disapproval

Timetable of Effective Dates

1997 Legislative Calendar

SUPERSEDED

MATERIAL: OCSE-AT-86-21

INQUIRIES: ACF Regional Administrators

/ S /

Anne F. Donovan

Acting Deputy Director

Office of Child Support Enforcement

Instructions for State Plan Disapproval

I. Notice of Intent to Disapprove

OCSE will issue a Notice of Intent to Disapprove a State Plan to the State umbrella agency head when it has been determined that either of the following situations exist:

Pursuant to the requirements at 45 CFR 301.13(d) the State IV-D plan no longer meets the requirements for an approved State plan based on relevant Federal statutes and guidelines.

Pursuant to the requirements at 45 CFR 301.13(e) or (f) the State IV-D plan or amendment submitted for approval does not meet the requirements under title IV-D of

the Act and regulations issued pursuant to the Act.

II. Notice Of Opportunity For Hearing

The Notice of Intent to Disapprove will provide opportunity for the State to request a hearing prior to the issuance of the final decision if the State waives its right to a reconsideration of OCSE's decision under 45 CFR 301.14. The State must request a hearing within 60 days of the date of the Notice of Intent to Disapprove. If the State does not request a hearing, OCSE shall proceed according to the procedures set forth under Determination to Withhold outlined below.

Upon request of the State for a hearing, OCSE will issue a Notice of Hearing which will state the time and place of the hearing, the issues which will be considered, and shall be published in the Federal Register. The hearing procedures contained in regulations at 45 CFR Part 213 shall apply to these proceedings.

III. Negotiations

As provided in regulations at 45 CFR 213.1(b) the hearing process does not preclude or limit negotiations between OCSE and the State, whether before, during or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of the issues are not part of the hearing, and are not governed by the hearing procedures, except as expressly provided for in such procedures.

IV. Determination to Withhold

If OCSE concludes that the State does not have an approved State IV-D plan under section I of these instructions, it will notify the State that further Federal payments under title IV-D of the Act will not be made to the State until a State IV-D plan is submitted and approved. Until a State IV-D plan is approved, no further Federal payments under title IV-D will be made to the State for any child support enforcement activities. Pursuant to 45 CFR 213.33, the effective date for the withholding of Federal funds shall not be earlier than the date of OCSE's decision and shall not be later than the first day of the next calendar quarter following such decision.

V. Reconsideration

Any State which has not waived its right to reconsideration and is dissatisfied with OCSE's decision that the State does not have an approvable State plan may request reconsideration of the decision pursuant to regulations at 45 CFR 301.14. Funding, however, will be suspended and may not be restored unless OCSE subsequently determines that the original decision to withhold Federal IV-D funding was incorrect.

CHILD SUPPORT LEGISLATION IN 104TH CONGRESS

TIMETABLE OF EFFECTIVE DATES FOR STATE REQUIREMENTS

Based on Dates in Text of Title III of PL 104-193

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Section 395 states that, except as specifically provided in the legislation, the effective date for provisions of PL 104-193 is 10/1/96 for provisions under "454 & 466 of the Act. Section 395 allows a grace period for State law changes and State constitutional amendments. For State law changes, the grace period is until the effective date of the State implementing provisions, but no later than the first day of the first quarter after the close of the first regular legislative session that begins after enactment of PL 104-193. For State constitutional amendments, the grace period is until one year after the effective date of the State constitutional amendment, but no later than five years after enactment of PL 104-193.

Requirements Effective 10/1/96

Income withholding ['314] -- '466(a)(1) and (b)

Locator networks; access to motor vehicle and law enforcement data ['315] -- '466(a)(12)

SSNs on applications for professional, commercial drivers, occupational and marriage licenses; on records of divorce decrees, support orders, and paternity determinations; and death records & certificates ['317] -- '466(a)(13)

Administrative enforcement in interstate cases ['323] -- '466(a)(14)

State laws providing expedited procedures, including:

Ordering genetic testing for paternity establishment; Issuing subpoenas for information and impose penalties for failure to respond; Requiring all entities in a State to promptly respond to inquiries by State agency and sanction failure to respond; Obtaining access to records of other State and local government agencies and records held by private entities including public utilities and financial institutions; Changing payee in cases subject to an assignment; Ordering income withholding; Securing assets to satisfy arrearages by intercepting or seizing periodic or lump-sum payments from a State or local agency and judgments, settlements, and lotteries; attach assets held by financial institutions; attach retirement funds; and impose liens; Increasing the amount of monthly support payments to include amounts for arrearages; Filing of information on location/identity of parties in State case registry upon entry of order; Statewide jurisdiction over orders and transfer of cases between local jurisdictions without additional filing; and Using of automated system to maximum extent feasible to implement expedited administrative procedures ['325] -- "466(c) & 454A(h)

State laws concerning paternity establishment, including:

Establish paternity before age 21 (retroactive to 8/16/84); Genetic tests in contested cases upon request w/sworn affidavits; Payment for genetic testing; Provide for a simple civil process for voluntarily acknowledging paternity with prior explanation/written notice to parents; Birth record agency must offer voluntary paternity establishment services, and other may; Name of father included on birth record only if both mother and father have signed an acknowledgment, or court or administrative authority has adjudicated paternity; Development of affidavit for voluntary acknowledgment of paternity which must be given full faith and credit in any other State; Procedures where voluntary acknowledgments and adjudication of paternity are filed with the State registry of birth records for comparison with State case registry; Admissibility of test results if performed by accredited laboratory; Rescission timeframe of 60 days for signed voluntary paternity acknowledgments; Elimination of judicial/administrative ratification proceedings on unchallenged paternity acknowledgments; Default orders; No right to jury trial in paternity cases; Issuance of temporary support orders in paternity cases; Evidentiary treatment of birth expenses/bills; and Opportunity for putative fathers to initiate paternity proceedings ['331(a)] -- '466(a)(5)

State plan requirements for paternity outreach activities ['332] -- '454(23)

Cooperation/good cause ['333] -- '454(29)

State use of definitions for collecting & reporting data ['343(b)] -- '454(30)

Simplified review & adjustment process ['351] -- '466(a)(10)

Voiding of fraudulent transfers ['364] -- '466(g)

Work requirement for persons owing child support ['365] -- '466(a)(15)

Reporting arrearages to credit bureaus ['367] -- '466(a)(7)

Liens on real/personal property by operation of law; full faith and credit to liens without registration of order ['368] -- '466(a)(4)

State law authorizing the suspension of licenses ['369] -- '466(a)(16)

International CSE -- State treatment of international requests ['371(b)] -- '454(32)

Financial Institution data matches ['372] -- '466(a)(17)

Enforcing orders against grandparents in cases of minors ['373] -- '466(a)(18)

State cooperative agreements with Indian Tribes ['375(a)] -- '454(33)

Enforcement of orders for health care coverage ['382] -- '466(a)(19)

Explicit statutory requirement that Title IV-D services be provided to nonresident applicants; enforce child support & support due on behalf of child's custodian ['301(a)] -- "454(4)&(6)

Continuation of IV-D services for former recipients of IV-A assistance [301(b)] -- '454(25)

Requirements Effective 3/1/97

Use of forms by States in interstate cases ['324(b)] -- '454(9)(E)

Requirements Effective 10/1/97

Annual State self-reviews & reports ['342(a)] -- '454(15)

Data submitted on compliance with Federal performance requirements ['342(a)] --'454(15)

State privacy safeguards ['303(a)] -- '454(26)

State procedures-notices & copies of orders ['304(b)] -- 454(12)

State directory of new hires ['313] -- 454 (28)

ADP systems meeting all IV-D requirements enacted on or before Family Support Act ['344] -- '454(24)

Denial/restriction/revocation of passport if arrears greater than \$5000 ['370] -- "452(k) & 454(31)

Requirements Effective 1/1/98

Adoption of UIFSA (with modifications) ['321] -- '466(f)

Requirements Effective 10/1/98

All support orders established or modified on or after 10/1/98 included in State central registry, which must be in place by 10/1/2000 ['311 and '344(a)(2)] -- '454A

Centralized automated unit for collections and disbursements ['312] -- '454(27)

Collection through State centralized collection unit of orders under wage withholding['312] -- '454B

State new hire reporting systems in existence prior to P.L. 104-193 must meet rest of new requirements ['313] -- '454(28)

Requirements Effective 10/1/99

End of optional exception period for local court collection of child support in lieu of State centralized collection unit ['312] -- '454B

Requirements Effective 10/1/2000

ADP systems must meet all IV-D requirements enacted on or before this law (with additional time tied to regulation issuance) ['344(A)(4)] -- '454(24)

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