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Testimony
Senate Bill 2336 – Department Of Human Services
House Human Services Committee
Representative Clara Sue Price, Chairman
February 28, 2007

Chairman Price, members of the House Human Services Committee, I am James Fleming, Deputy Director and General Counsel of the Child Support Enforcement Division of the Department of Human Services. I am here to ask for your favorable consideration of Engrossed Senate Bill 2336.

Senate Bill 2336 gives the child support enforcement program some additional tools to improve enforcement of medical support for children, including health insurance coverage. It will also allow us to implement an expected federal rule that may require action prior to the 2009 Legislative Session. We appreciate the willingness of legislators to sponsor this bill.

The child support enforcement program started as a way to shift the cost of public assistance programs to parents who had an ability to support their children. In addition to recovering the cost of assistance that has already been provided, further costs can be avoided by establishing and enforcing child support obligations prior to the child receiving public assistance.

As the child support enforcement program evolves and moves into the future, the importance of meeting a child's health care needs is a growing priority, and will become one of the areas in which the performance of our program is measured by the federal government. Late last September, the federal government issued a long-awaited proposed rule that is expected to create new requirements and expectations for the child support enforcement program in the area of medical support.

The existing law regarding the duty of parents to meet their child's health care needs is found in North Dakota Century Code § 14-09-08.10, which would be amended in Section One of the bill. Under this law, every child support order must include a provision for health insurance for the child. The North Dakota Supreme Court has described N.D.C.C. § 14-09-08.10 as creating "a three-step process for determining who should be responsible for health insurance coverage." Berg v. Berg, 2000 ND 36, 606 N.W.2d 895.

1. The custodial parent must provide health insurance if it is available at no or nominal cost.
2. The obligor must provide health insurance whenever it is available at "reasonable cost" or becomes available at "reasonable cost."
3. Other provisions for the child's insurance or health care costs may be ordered in the discretion of the court.

"Reasonable cost" is currently defined in state law to mean insurance available to the obligor on a group basis or through an employer or union. N.D.C.C. § 14-09-08.15. In anticipation of the proposed rule, in 2005, the Legislature gave our program the authority to adopt an alternate definition of "reasonable cost" for health insurance by administrative rule. We are requesting similar flexibility to adopt other health insurance and medical support rules in the upcoming biennium.

It is possible that the method for determining responsibility for medical support will need to change and become more dependent on the facts in each case. In addition to the need for a realistic definition of "reasonable cost," the proposed regulation also observes that insurance available to

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the obligor at reasonable cost may not be accessible to the child. At this time, we expect that more coverage may be required from the custodial parent, with some or all of the cost of the premium being passed on to the obligor. Under the bill, these rules may be adopted either as part of the existing child support guidelines, or as a separate administrative rule.

We are aware that access to private insurance makes a child ineligible for the children's health insurance program. Thus, our goal is to create a medical support methodology under Section One, and a definition of "reasonable cost" under Section Three, that lead to quality health insurance coverage that is accessible to the child and affordable.

We see a need to provide additional tools to the courts to locate available coverage for children. Several child-only policies are currently available in North Dakota. Some states are experimenting with having one statewide group policy sponsored by a private insurer in which a court can order that a child be enrolled by a parent. However, a court is not always aware of these policies. The bill would amend current law to clarify that the child support enforcement program is authorized to compile a list of child-only policies and enter into a contract with one or more insurers to create a group policy for children who are subject to an order under N.D.C.C. § 14-09-08.10.

The cost of the premium would not be subsidized by the State; rather, by having a widely-available insurance policy with a specific premium, the court can order the child to be covered by the insurance and decide how the cost of the premium (as well as deductibles and co-payments) should be allocated to each parent.

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N.D.C.C. § 14-09-08.11(3) directs income payers to withhold funds under an income withholding order, which includes the current monthly child support obligation and the required amount due on arrears, before they withhold the premium for health insurance coverage. Current federal regulations do not mandate a specific withholding priority. However, a pending proposed federal regulation would require withholding for health insurance premiums before any amount due on arrears is withheld.

Section Two of the bill gives us the authority to alter the existing withholding priority in state law by administrative rule if necessary to comply with the final federal regulation.

If insurance coverage is not available for a child, or if health insurance premiums or other health care costs are borne by the custodial parent, it may be appropriate for the court to require payments from the obligor as dollar-specific medical support. If the child is receiving Medical Assistance, this amount is assigned to the State to offset the cost of that assistance.

One approach discussed by the most recent Child Support Guidelines Advisory Committee is to add a dollar-specific medical support obligation to the child support guidelines. In Minnesota, for example, it is common for a child support order to require a specific payment toward medical support. Section Five would give us this option. If dollar-specific medical support is added to the child support guidelines, the obligation would be based on the income of the obligor. Whether or not a dollar-specific obligation is imposed, Section Four provides that the child support guidelines will include consideration of an obligated parent's responsibility for medical support under Section One of the bill.

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Section Six clarifies existing law that a payment for health insurance coverage or other medical support is a form of support for the child and enforceable as child support.

Section Seven provides that certain sections of the bill would not take effect until the end of the rulemaking process, allowing us the time to obtain input and comment from interested parties and complete the rulemaking process before current law is changed. This also gives us time to see what the final federal rule will require.

Madam Chairman, we realize that the proposed bill establishes a new framework for requiring medical support without specifying all the details. Unfortunately, we do not know what will be required by the final federal rule. If the bill is passed, our commitment is to have an open process, as required for all administrative rules, that involves all interested parties and leads to final rules to 1) comply with federal requirements, 2) increase health insurance coverage for children, and 3) fairly establish responsibility for health care costs between the parents.

This concludes my testimony and I would be happy to answer any questions the committee may have.

Hand out:

Medical Support Scenarios