Testimony
Health and Human Services Committee
Representative Robin Weisz, Chairman
August 5, 2010

Chairman Weisz, members of the Health and Human Services Committee, I am Barbara Siegel, Policy Analyst with the Child Support Enforcement Division of the Department of Human Services and Chairman of the Medical Support Advisory Committee. I am here to provide preliminary information on the impact of the federal health care reform legislation on the Child Support Enforcement program. We also offered similar testimony earlier this week to the Industry, Business, and Labor Committee.

We expect that the program will be directly affected by health care reform for reasons that will be the focus of my testimony today. We also believe the program will be indirectly affected because of, for example, changes to the Medicaid program.

One of the major service areas of the program, since the mid-1980s, is the establishment and enforcement of medical support. (Child Support Amendments of 1984) This has included the establishment of orders for parents to provide private health insurance coverage for their children and the enforcement of those orders.

Over time, federal law has strengthened the program's ability to provide medical support services, including:

- the Omnibus Budget Reconciliation Act (OBRA) of 1993 which prohibited discriminatory health insurance coverage practices and allowed employers to deduct the cost of health insurance premiums from the noncustodial parent's income;
- the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 which required a provision for health insurance coverage in all support orders;
- the Child Support Performance and Incentive Act (CSPIA) of 1998 which required the development of a standard National Medical Support Notice (NMSN) to be used to enforce employer-based health insurance coverage and created the Medical Support Working Group, jointly established by

the federal Department of Health and Human Services and the Department of Labor to address other issues and barriers; and

- the Deficit Reduction Act (DRA) of 2005 which required sweeping changes to the provision of medical support services, including looking to either or both parents to provide medical support rather than focusing on the noncustodial parent.

Proposed federal rules to implement the DRA changes and address recommendations from the Medical Support Working Group included the requirement to ensure health insurance coverage was ordered if available, and if not, that cash medical support be ordered. It also required states to redefine the affordability (reasonable cost) standard and required the incorporation of accessibility and comprehensiveness concepts into the medical support process. Based upon these proposed federal rules, 2007 North Dakota Senate Bill 2336 granted the Department of Human Services rulemaking authority and provided effective dates contingent upon those rules.

Following the issuance of final federal rules, the Department convened an advisory committee in 2009 to make recommendations with regard to administrative rules. This advisory committee's membership included legislators, customers, the insurance department, Blue Cross/Blue Shield, county social services, the judiciary, the private bar, and the Medicaid, CHIP, and Child Support Enforcement programs. Five meetings were planned. After the majority of the meetings had been held and much progress had been made in many areas including recommendations with regard to the establishment of a hierarchy in determining which parent should be providing medical support, as well as definitions of accessibility, comprehensiveness, and affordability, health care reform was signed into law. While the advisory committee continued with its five meetings, it was with the knowledge that much may change because of health care reform.

For example:

- **Current** state law requires that the custodial parent be ordered to provide health insurance coverage if it is available at no or nominal cost and, if not, that the noncustodial parent be ordered to provide health insurance coverage if it is available at "reasonable cost" (defined as available through an employer or other group).

- **Pre-Health Care Reform Recommendations** by the advisory committee would have the custodial parent ordered to provide health insurance coverage if "accessible," "comprehensive," and available at "reasonable cost." (Terms which had draft definitions.) If not, then the noncustodial parent would be ordered to provide health insurance coverage if accessible, comprehensive, and available at reasonable cost.

  If the custodial parent was required to provide health insurance coverage, it was recommended that the noncustodial parent may be ordered to contribute a cash medical support amount.

- **Health Care Reform** appears to put the responsibility to show that the child has public or private coverage on the parent who claims the child as a dependent on his or her tax returns and the penalty for not doing so would be against that parent as well.

Since the passage of health care reform, the federal Office of Child Support Enforcement (OCSE) has issued a reprieve for states, like North Dakota, that have not yet implemented the DRA changes. In the coming months, OCSE intends to analyze medical support federal requirements to identify any modifications necessary to reconcile those requirements with health care reform. While health care reform does not amend Title IV-D of the Social Security Act, it enacts policies that address children's health care coverage and establishes parents' responsibility for their children's coverage – areas that will undoubtedly affect the program's medical support services. OCSE plans to update the medical support federal rules based on the health care reform legislation.

Therefore, the extent of the impact on the program is unknown. However, preliminary estimates would include the following considerations.

There are currently about 30,000 orders for health insurance in North Dakota. Of those,

- About 23,000 are associated with cases receiving services through the program (IV-D) and

- About 7,000 are associated with cases not receiving services through the program (nonIV-D).

If one assumes that all 23,000 orders will need to be reviewed, and possibly modified, to include the proper medical support language, and often affecting the child support amount as well, it becomes quite clear that additional resources will be needed in the program. In a previous fiscal note, we had estimated that each review takes an average of 10 hours of staff time. We anticipate that this will also create a need for additional time in the district courts.

In addition, the program will need to:

- Develop rules, policies, and procedures to accommodate the new requirements.
- Determine the changes needed to FACSES, our computer system.
- Provide training and outreach to:
  - Staff
  - Parents
  - Private bar
  - Judiciary
  - Medicaid and CHIP staff

We look forward to the opportunity to keep this Committee informed as additional information becomes available to us.

Mr. Chairman, that concludes my testimony and I would be happy to address questions.