

Testimony
Senate Bill 2107 – Department Of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 16, 2013

Chairman Lee, members of the Senate Human Services Committee, I am Jim Fleming, Director of the Child Support Division of the Department of Human Services (Child Support). I am here to support Senate Bill 2107, which was introduced at the request of the Department.

Sections One and Nine

With the sponsorship of Senator Dever and other legislators, legislation was passed in 2007 giving the Child Support Division (Child Support) authority to adopt administrative rules regarding the obligation of parents to provide medical support for their children. Committee Chairman Lee was one of two legislators who served on a medical support advisory committee to develop recommendations for the administrative rules. Shortly before the advisory committee finished its work in 2010, Congress enacted the Affordable Care Act (ACA), and Child Support has been waiting since that time for updated federal program requirements. Following the United States Supreme Court decision regarding the ACA, and the election of 2012, we believe it is likely that the new program requirements will be issued before the Legislature next convenes in 2015.

Since we are unsure what the federal program requirements will be, the proposed changes provide the flexibility that may be needed to appropriately address the requirements in the rulemaking process.

State law would continue to require that each child support order include a provision for the child's health insurance coverage or other medical support. In addition, although a repeal of section 14-09-08.15 regarding reasonable cost of health insurance is proposed in Section Nine, proposed language in Section One would require that the administrative rules include a reasonable cost standard that considers the income of the obligated parent and the cost of coverage.

Section Two

This section is proposed to clarify that the legal standing of Child Support exists whenever a parent applies for services under Title IV-D of the Social Security Act, and is not limited to times when a review of the child support obligation is requested under section 14-09-08.9 or when enforcement of an order for dependent health insurance is requested under section 14-09-08.13.

Section Three

The law proposed to be amended in this section of the bill was enacted in 2003 to regulate, and often prohibit, the offset of debts owed between the parents as a method of paying child support.

Historically, offsetting current child support owed by an obligor parent with debts owed to the obligor by the child's other parent has been prohibited. Such an offset poses a risk of depriving the child of funds needed to purchase groceries and other necessities, even if an equal amount of money is owed to the obligor by the child's other parent for child support arrears or other debts. However, even though an offset of

current support with arrears or other debts is currently prohibited, it would be very practical to enter a credit on a parent's payment ledger instead of requiring the parent to make an actual payment through the State Disbursement Unit (which would often require income withholding to the parent's employer). The key is for an offset to be quickly and easily discontinued if the current custodian of the child needs the funds because of a reduction in income, or if the child begins receiving public assistance and the right to support becomes assigned to the State.

This area may be best explained in the following examples:

Example A: Mom and Dad divorce, with Mom being ordered to pay \$300 per month in child support to Dad on Child's behalf and Dad being required to pay \$300 per month in spousal support to Mom. Both obligations are subject to immediate income withholding and are required to be paid through the State Disbursement Unit.

Example B: Mom had primary residential responsibility of Child and Dad failed to pay child support, resulting in an arrearage of \$3,000 owed to Mom. Later, primary residential responsibility of the Child was changed by the court from Mom to Dad. Mom now owes \$300 per month in child support to Dad on Child's behalf, and is subject to immediate income withholding. At the time of the change in residential responsibility, Dad owes \$3,000 in arrears and is ordered to pay \$300 per month through income withholding toward the arrears. Both obligations are required to be paid through the State Disbursement Unit.

A judicial offset in the examples above would be time-consuming and expensive for the parents to obtain, but Child Support believes that its current administrative offset authority for arrears could be expanded to include a simple, administrative process where the offset of current child support can occur unless an actual payment is requested by either parent. An administrative offset can be discontinued as requested by one of the parents or if the support becomes assigned to the State, and reactivated upon request of the parents or discontinuation of the assignment.

Through the other proposed law changes in this section, we hope to clarify the law in terms of when offsets are prohibited or permitted.

Section Four

The reporting of lump sum payments by employers or other income payers is a helpful way to obtain a collection toward child support arrears. A lump sum payment of \$1,000 or more to an obligor who owes past-due support and is subject to income withholding must be reported by the income payer to Child Support. The income payer must hold at least one-half of the payment for 30 days or until it receives written direction from Child Support, whichever occurs first. However, it is unclear whether the requirements in the statute apply when a lump sum payment of less than \$1,000 is voluntarily reported by an income payer. In addition, an income payer sometimes reports an anticipated lump sum payment, but does not yet know whether the amount will be high enough for the statute to apply. The amendments in this section will clarify the process and make sure that a reported lump sum, no matter what the amount, is not paid in full to the obligor until Child Support has an opportunity to

review the case and decide whether to intercept the withheld portion of the payment.

Section Five

The law proposed to be amended in Section Five is from the Uniform Parentage Act (UPA). Child Support recommends that the two-year challenge period in the uniform law be adopted. When the UPA was adopted in 2005, the challenge period in prior law was one year, and Child Support suggested that the shorter period had been workable and should not be extended to two years. However, the exception for fraud or material mistake of fact in prior law was more forgiving than in the UPA. The amendment will give legal fathers more time to obtain genetic tests after they have signed an acknowledgment of paternity (which includes a specific waiver of the right to genetic tests) but later have reason to doubt whether they are the child's father. If this change is adopted, Child Support will work with the Vital Records Division to revise the voluntary paternity acknowledgment form accordingly.

Sections Six, Seven, and Eight

These sections need to be amended to comply with new federal mandates for new hire reporting. Our understanding is that federal law was changed to improve the unemployment insurance program, which is authorized by current law to receive new hire data.

Assuming the changes in these sections are adopted, Child Support will conduct outreach to employers similar to what has been done for new employer mandates in previous sessions. When the law was changed

effective January 1, 2012, to require new hire reports to include a health insurance indicator and to require large employers to submit their new hire reports electronically, Child Support conducted extensive outreach before and after the effective date of the new law. We are pleased to report that 91.23 percent of new hire reports in 2012 were received electronically (peaking at 94.12 percent in September), and the percent of new hire reports that included the new health insurance indicator rose to 99.17 percent in December.

Section Ten

The first part of Section 10 provides a contingent effective date so the change in state law coincides with the effective date of the administrative rules on medical support that would be adopted to replace the statutes. The second part of Section 10 provides a delayed effective date so employers have the maximum time to prepare for the expanded new hire reporting data elements.

Madame Chairman and members of the committee, this concludes my testimony on Senate Bill 2107, and I would be glad to answer any questions the committee may have.