



DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATION FOR
CHILDREN AND FAMILIESRegion VIII
Federal Office Building
1961 Stout Street
Denver, CO 80294-3538

May 25, 2006

The Honorable Tom Fischer
North Dakota Senate
1524 Sundance Square South
Fargo, ND 58104-7606

Dear Senator Fischer:

This is in response to a request we received from the North Dakota Department of Human Services, Child Support Enforcement Agency for our review of two initiated measures that are currently being circulated for signatures in North Dakota. These two initiated measures are the Joint Custody and Shared Parenting Initiative and the Family Law Reform Initiative. This letter clarifies the consequences if a State fails to enact laws or otherwise conform to Federal statutory requirements of the Social Security Act (the Act).

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 Act.

A further provision, specified at section 467 [42 U.S.C 667] requires that "(a) each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every four years to ensure that their application results in the determination of appropriate child support award amounts; (b) (1) The guidelines established pursuant to subsection (a) shall be made available to all judges and other officials who have the power to determine child support awards within such State; (2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case." The statute is further clarified in Federal regulations at 45 CFR 302.56(c) which provides that the guidelines established must at a minimum take into consideration all earnings and income of the noncustodial parent, be based on specific descriptive and numeric criteria and result in a computation of the support obligation. Also

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section 466(b) of the Act defines "income" as any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest. Under both the Joint Custody measure and the Family Law Reform measure, calculating a child support obligation using a method other than established State guidelines, and/or to exclude any portion of the noncustodial parent's income would put North Dakota's child support enforcement program out of compliance with Federal requirements.

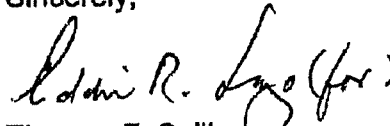
Further, the Family Law Reform measure requires jury trials in family law matters. The Social Security Act, at section 466 (a)(5)(I), requires that States have in effect a law that specifically prohibits jury trials in an action to establish paternity.

Any State law or procedure that does not comply with these requirements is contrary to the Federal statute. When a State fails to comply with all Federal statutory requisites, its State Plan is subject to disapproval by the Federal 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 of the Act for the operation of the State's child support enforcement program.

Therefore, 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. In addition, in order to be eligible for a block grant for the Temporary Assistance to Needy Families (TANF) program, 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, TANF funding would also be jeopardized if the State failed to enact required child support legislation or enacted legislation which is contrary to Federal statutory requirements.

Due to the gravity of the consequences that may result, we urge you to take whatever steps are necessary to ensure that initiated measures are not enacted that would render the State's statutes out of compliance with the Federal law.

Sincerely,



Thomas F. Sullivan
Regional Administrator