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## Enacted and Proposed Changes to the Child Support Program: An Overview of the Provisions of the 2006 Federal Budget and the 2007 Budget Proposal

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In February 2006, the U.S. Congress passed the fiscal year (FY) 2006 federal budget, called the Deficit Reduction Act of 2005. Subtitle C of Title VII of the Act contains a number of changes to the child support program operated under Title IVD of the Social Security Act.<sup>1</sup> One set of changes defines new rules for the distribution of child support payments collected on behalf of families who currently receive Temporary Assistance for Needy Families (TANF) and those who have received cash assistance in the past. These changes, which allow states to distribute more child support to these needy families, will be explained in a forthcoming CLASP publication.

Subtitle C of Title VII also makes changes to the financing of the state child support program and alters some of the substantive program provisions. This publication describes these changes.<sup>2</sup> It then briefly outlines the proposals offered by the Bush Administration as indicated in its FY 2007 budget.

### **Financial Provisions of the Federal Budget**

**Funding for federal and state staff, research and demonstration programs, and special projects of regional or national significance.** Under current law, an amount equal to 1 percent of the federal share of child support collected for families receiving TANF in the previous year is appropriated for a variety of federal activities including training, technical assistance, information dissemination, and special projects. Under the new distribution rules noted above, the amount of TANF-associated child support going to the federal government is likely to diminish. As a result, the funds available for these federal activities could also be substantially reduced. To insure that there is sufficient money, the new law provides a floor under which the amount available for these activities will not be less than the amount

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<sup>1</sup> 42 USC § 651 *et seq.*

<sup>2</sup> Where appropriate, effective dates for the new provisions are given. However, under Section 7311 of the Deficit Reduction Act, if a state needs to enact legislation in order to meet the new requirements, it has until three months after the first day of the first calendar quarter beginning after the first regular legislative session that begins after the date of enactment. Thus, there will be some state variation in when some of the provisions are operational.

appropriated for Fiscal Year 2002. This change is found in Section 7304 of the legislation which amends 42 USC § 652(j).

**Funding for the Federal Parent Locate Service.** Under current law, an amount equal to 2 percent of the federal share of child support collected for families receiving TANF in the previous year is appropriated for funding the Federal Parent Locate Service (FPLS). To account for the fact that the FPLS was in development and would draw down funding at different rates at different times in the years after its creation, the new law provides that amounts appropriated for Fiscal Years 1997 through 2001 are available until expended.

Moreover, as noted above, under the new distribution rules, the amount of TANF- associated child support going to the federal government is likely to diminish. As a result, the amount available for these federal activities could also be substantially reduced. To insure that there is sufficient funding, the new law provides a floor under which the amount available for the FPLS will not be less than the amount appropriated for Fiscal Year 2002. It also provides that all appropriated funds (even those outside the Fiscal Year 1997 to 2001 period) will remain available until expended. This change is found in Section 7305 which amends 42 USC § 653(o).

**Reduction in Federal Reimbursement for the Costs Associated With Genetic Testing.** The federal government reimburses the states for 66 percent of the costs of running most of the activities of the state child support enforcement program. This is often referred to as FFP or federal financial participation. One exception is that the federal government has paid 90 percent of the costs associated with genetic testing in parentage cases. Under the new law, genetic testing costs incurred on or after October 1, 2006, would be reimbursed at the 66 percent rate. This change is found in Section 7308 which amends 42 USC §655(a)(1)(C).

**Restriction on the Use of Incentive Payment Funds.** As noted above, the federal government pays 66 percent of the basic costs of a state's child support program. The state puts up the other 34 percent in matching funds. States can also earn incentive funds for good performance in five key areas: establishing paternity, establishing support orders, collecting current support, collecting arrears, and cost effectiveness. These incentive funds must be reinvested in the child support program or closely related activities like fatherhood programs. In addition, it has been legal to use incentive funds for the state's 34 percent match. The new law changes this and, effective October 1, 2007, eliminates the state's ability to use incentive funds for state match. This change is found in Section 7309 which amends 42 USC § 655(a)(1).

**Mandatory Fees.** TANF recipients cannot be asked to pay fees or costs associated with child support enforcement services. States may charge former-assistance families as well as families that have never received TANF some fees and costs, but few do so. The bill would require states to charge families that have never received TANF-funded assistance an annual fee of \$25 if the state collects at least \$500 in support. The fee may be collected by taking the funds from collected support in excess of \$500, or billed to the individual who sought the child support services (which could be either the custodial or the non-custodial parent), or charged to the absent parent. It could also be paid by the state. This provision is effective

October 1, 2006, and is found in Section 7310 which amends 42 USC §§ 654(6)(B) and 657(a)(3).

## **Substantive Provisions of the Deficit Reduction Act**

**Use of the Federal Income Tax Intercept Program to Collect Arrears Owed on Behalf of Children Who Are Not Minors.** One of the most potent child support enforcement provisions in current law is the federal income tax intercept program. This program allows tax refunds to be seized and used to pay child support arrears. Under current law, this tool cannot be used if the child is not a minor unless the child became disabled during his/her minority and there is a current support order in effect. The new law erases this restriction, making federal income tax intercept available to collect arrears even if the children are no longer minors. This change is effective October 1, 2007 and is found in Section 7301(f) which amends 42 USC §§ 664(a)(2)(A) and 664(c).

**Opening a Case File When High-Volume, Automated, Administrative Enforcement is Used in Interstate Cases.** Under current law, states are required to use high-volume, automated administrative enforcement techniques in interstate cases to the same extent they are used in intrastate cases. If such services are provided in an interstate case, the case is not considered to have been transferred to the receiving state. However, there has been some confusion about whether the receiving state can open a case file for the case. The new law provides the receiving state with the option to do so. This change is effective October 1, 2005 and is found in Section 7301(g) which amends 42 USC § 666(a)(14)(A)(iii).

**Mandatory Review and Adjustment of Child Support Orders.** Under current law, state are required to have a process pursuant to which child support orders are reviewed and adjusted (if appropriate) at least once every three years if either parent requests a review and adjustment. If the family is receiving TANF, a triennial review must also be conducted if requested by the TANF agency. The bill strikes this latter provision and makes other changes in the language. As a result, effective October 1, 2007 states will be required to conduct triennial reviews in all TANF cases. They will also be required to conduct triennial reviews in non-TANF cases at the request of either parent. This change is found in Section 7302 which amends 42 USC § 666(a)(10)(A)(i).

**Decrease in the Amount of Arrears that can Trigger a Passport Denial.** Under current law, if a case is being handled by the state child support enforcement agency and the obligated parent is more than \$5,000 in arrears, that individual may not be able to obtain a passport. If the individual already has a passport, the passport may be revoked or limited. Under the new law, effective October 1, 2006, if more than \$2,500 is in arrears is owed, the passport denial/revocation procedures may be invoked. This change is found in Section 7303 which amends 42 USC §§ 652(k)(1) and 654(31).

**Information Comparisons with Insurance Data.** Currently, there is no matching of information about delinquent obligors and potential insurance coverage at the federal level. Under the new law, effective October 1, 2005, the Federal Parent Locate Service (FPLS) is

authorized to make such matches. If information is obtained, it will be transmitted to the state child support agency. The new law also holds insurers harmless (under both state and federal law) for revealing such information. This provision is found in Section 7306 which adds a new subsection (l) to 42 USC § 652.

**Establishing and Enforcing Medical Child Support Obligations.** One of the duties of the state child support agency is to pursue health care coverage for the supported child or children if it is available to the *non-custodial* parent through employment and at a reasonable cost. The law does not address situations where such coverage is not available or advisable through the non-custodial parent but is available through the custodial parent. That parent might be able to obtain coverage for the child especially if the non-custodial parent contributed to the associated costs (premiums, co-pays, deductibles). State agencies have been reluctant to pursue custodial parent coverage (and associated cost-sharing) because it was not clearly covered by the governing statute. In addition, it was not clear that activities associated with this activity were eligible for FFP. Moreover, there has been some ambiguity about situations in which no health care coverage is available to either parent. Should the child support agency seek an order that addresses payment for the child's uncovered medical expenses in those cases?

The new law addresses all these issues. Effective October 1, 2005, (1) all orders enforced by the state child support enforcement agency must include a provision for medical support; (2) the state may look to either or both parents to provide such support; and (3) the state child support agency may enforce a medical support order against both custodial and non-custodial parents. In addition, the new law contains a definition of "medical support" which includes both health insurance and payment for medical expenses incurred on behalf of a child. As a result, if health insurance coverage is available to either parent, states will be required to establish an order requiring that the children be placed on such coverage with appropriate cost sharing. States will also be able to enforce such orders against both custodial and non-custodial parents. If health insurance coverage is not available, states can pursue cost-sharing of the expenses associated with the child's medical expenses. These changes are found in Section 7307 which amends 42 USC §§ 652(f), 666(a)(19) as well as 29 USC § 1169 note.

### **Additional Changes Suggested in the Administration's FY 2007 Budget Proposal**

On February 6, 2006, the President released his proposed budget for FY 2007. Budget proposals are usually accompanied by proposals for programmatic changes that will have a fiscal impact. This year's budget was no exception. As described in the documents related to the budget for the Department of Health and Human Services (HHS), the Administration will seek additional changes in the child support program. The programmatic proposals are familiar: most have been discussed in previous budgets. They include:

- Authorizing direct access to the FPLS by Tribal IVD agencies and giving contractors as well as Tribal IVD agencies access to tax offset data.
- Enhancing states' ability to collect arrears through a variety of mechanisms including garnishment of Longshore and Harbor Worker's Compensation Act benefits, intercept of

gambling proceeds, and withholding of OASDI benefits. In addition, the federal government would take over seizing accounts in multi-state financial institutions.

- Assuring that children do not face long gaps in health care coverage by requiring health care plan administrators to notify the appropriate IVD agency when a child who is covered pursuant to an order loses health care coverage.
- Increasing the funding for access and visitation programs.

HHS estimates that, over five years, these proposals will generate a net federal savings of \$17 million while increasing collections to families by almost \$1.6 billion.

In addition to these child support program changes, there are proposed changes in the Medicaid program which could impact the child support program. While not fully spelled out, the Medicaid portion of the budget suggests that renewed emphasis will be placed on pursuing third parties (including non-custodial parents) who may be responsible for prenatal and preventive pediatric care claims. In addition to possible legislation that would allow states to place claims against liability settlements to recover federal Medicaid matching payments, there is a reference to administrative action to eliminate “pay and chase.” These changes could result in a greater role for child support agencies in seeking Medicaid reimbursement in a timelier manner.