MEMORANDUM

TO: Interested People

FROM: Paula Roberts and Vicki Turetsky

DATE: July 28, 1998

RE: New Federal Child Support Legislation on Computer Penalties, Incentive Payments, Medical Support and Other Topics

Congress has now passed--and the President has signed-- legislation which makes some fundamental changes in the operation and financing of state child support programs. The new law is called the Child Support Performance and Incentive Act of 1998 (CSPIA). The changes are described below.

FISCAL SANCTIONS FOR FAILURE TO MEET THE IVD PROGRAM AUTOMATION REQUIREMENTS

Background: States receive substantial federal funding for operating their child support (IVD) programs. This includes 66 percent of the basic costs of the system, 80 percent of automation costs, and 90 percent of the genetic testing costs associated with paternity establishment. 42 USC Section 655. In order to draw down this money, a state must have-- and be operating consistently with-- an approved State Plan which meets the requirements of 42 USC Section 654. Moreover, in order to draw down its Temporary Assistance for Needy Families (TANF) block grant funds, a state needs to be able to certify that it has an approved state IVD plan. 42 USC Section 602(a)(2). Thus, failure to have an approved state plan can result in a loss of both IVD and TANF funds under current law.

Among the state plan requirements is that child support functions be automated. 42 USC Section 654(24). Pursuant to this requirement, states were to have completed one set of automation tasks by August 1, 1997.[1] (This paper will refer to these requirements as "basic automation".) As of October 1, 1997, only seventeen states had been certified as meeting their basic automation obligations.[2] Thus, the

[1] 42 USC Section 654(16).The law also required that the Secretary of HHS certify these system as meeting specific federal requirements before they were considered to be completed. 42 USC Section 652(d). Originally, states were required to have certified systems by October 1, 1995. When only one state met this deadline, the deadline was extended for an additional two years.

[2] As of July 24, 1998, twenty- four states remain uncertified. Of these twenty-four, twelve appear to be far from meeting the basic certification requirements. Unfortunately, six of the twelve stragglers are states with both

majority of states were in danger of losing their federal TANF and IVD funds. Since imposition of such sanctions would harm low income families, there was a need to come up with a less draconian penalty system which nonetheless conveys the message that states' failure to automate is a serious breach of the law.

Moreover, many additional automation requirements were contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). For example, the basic automated system must include a central state case registry and interact with a central payment and disbursement system by October 1, 2000.[3] (This paper will refer to these provisions as the "new requirements".) Given past history, it seems likely that some states will miss the deadline for implementing these requirements. HHS needs to have clear authority to penalize states if this happens.

The New Legislation: The new legislation provides a specific penalty for failure to meet both the basic and the new automation requirements. For those who qualify, this penalty would be imposed in lieu of the withdrawal of all TANF and IVD funds. To be codified at 42 USC Section 655(a)(4)(A)(I). Not only is the new penalty considerably smaller[4] than that prescribed in the old law, but it also affects only IVD funds. States' TANF allotments will not be reduced under this new scheme.[5]

For this new penalty provision to apply, the Secretary of HHS will have to find that 1) the state has not met one or more[6] of the automation requirements contained in subsection 654(24); 2) the state has made and is continuing to make a good faith effort to meet the requirements; and 3) the state has

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large IVD caseloads of their own and responsibility for processing a large number of interstate cases. The twelve are California, Hawaii, Illinois, Indiana, Kansas, Michigan, Nevada, New Mexico, North Dakota, Ohio, Pennsylvania, and South Carolina.

[3] The central payment and disbursement unit itself must be operational by October 1, 1998 (or October 1, 1999, if local courts now process payments). P.L. 104-193, Section 312(d).

[4] For example, under the old law California stood to lose $4 billion next year; under the new law it will lose $11 million. Michigan faced a loss of $880 million and will now lose a little less than $4 million. Illinois faced a $650 million loss and will now lose just about $3 million.

[5] To accomplish this, 42 USC Section 609(a)(8)(A)(I)(III) is amended.

[6] In any fiscal year, the state faces only one penalty for failure to meet the statewide automation requirements contained in 42 USC Section 654(24). So, if a state fails to meet the basic requirements and then also fails to meet one or more of the new requirements, it will be subject to only one penalty for that year. To be codified at 42 USC Section 655(a)(4)(A)(ii). However, it should be noted that the mandate to create a central payment and disbursement unit is *not* contained in 42 USC Section 654(24). Therefore, any failure to meet this requirement is covered by the old law, not the new penalty provision. States that fail to implement the disbursement unit as required will face state plan disapproval and potential loss of TANF and IVD funds.

submitted (and HHS has approved) a corrective compliance plan which describes how, when, and at what cost the state will achieve compliance. When these conditions are met, the Secretary will not disapprove the state IVD plan but will instead reduce the state's IVD funding by a prescribed amount.

The penalty is calculated by taking the amount of federal reimbursement for basic program costs (ie. the expenditures eligible for 66 percent federal reimbursement) for the previous fiscal year and multiplying it by the applicable percentage. The applicable percentage-- and thus the size of the potential penalty-- increases each year so that there is an incentive for the state to come into compliance as quickly as possible. In the first year, the applicable percentage is 4 percent; in the second year it is 8 percent; in the third year it is 16 percent; in the fourth year it is 25 percent; and in each subsequent year it is 30 percent. To provide a further incentive to states to come into compliance with the automation requirements, the new law also contains a forgiveness provision. If a state is penalized for failure to meet its basic automation requirements in a fiscal year but achieves compliance by the beginning of the succeeding fiscal year, 90 percent of the penalty amount for that fiscal year will be forgiven.

Finally, there is a provision which allows states which did not meet the October 1, 1997 deadline for meeting *basic* automation requirements but are now ready to request certification of their systems to avoid any penalty. For fiscal 1998, if a state has failed to meet its basic automation requirements, **no penalty** can be imposed if --on or before August 1, 1998--the state has submitted a request for certification of its system, the Secretary timely reviews the system, the state does not fail the review, and the Secretary subsequently certifies the system as meeting program requirements. (This means that those states which did not meet the October 1, 1997 deadline for basic automation but have had their systems certified since then will suffer no financial penalty for failing to meet that deadline.)

WAIVER OF THE REQUIREMENT THAT THE STATE OPERATE A SINGLE AUTOMATED SYSTEM

Background: The basic automation requirements are described at 42 USC Section 654(16). One of these requirements is that the state operate a "*statewide* automated data processing and information retrieval system". The new automation requirements included in 42 USC Section 654a echo this requirement and call for a "*single statewide* automated data processing and information retrieval system" which is capable of 1) accounting for the use of program funds; 2) maintaining the data necessary to meet reporting requirements; 3) calculating performance indicators; 4) establishing and maintaining a central case registry (a single entity which contains an abstract of every child support order being enforced by the IVD agency and any other orders entered or modified in the state after October 1, 1998); 5) interacting with a central collection and disbursement unit separately established by the state; 6) safeguarding data integrity; 7) matching data with other federal and state data bases; and 8) supporting expedited administrative processes. The Secretary of HHS had *discretionary* authority to waive any of the automation provisions (including the statewideness requirement) when the

state wanted to use an alternative system and the Secretary felt that the system enabled the state to substantially comply with IVD program requirements, meet the paternity establishment goals and other performance measures, and submit complete and reliable data.[7] 42 USC Section 652(d)(3).

Most of the states which still have not met the basic automation requirements operate county-based child support systems and/or have heavy local court involvement. They have had difficulty meeting their automation obligations because many of the local actors have resisted the creation of a single, integrated system that operates statewide. While these states could have applied to HHS for a waiver to implement an alternative system, the alternative had to meet all federal certification requirements.[8] In addition, federal funding to pay for an alternative system was limited. While, in an alternative system, enhanced 80 percent funding[9] was available for the base system and its linkages to local systems, *no* federal funds were available for developing the local systems or making major changes in existing local systems.[10]

These states sought an amendment to the statute which would 1) relax the criteria for obtaining a waiver of the single, statewide system requirement; 2) require the Secretary of HHS to grant waivers to those who meet those relaxed criteria; and 3) expand the availability of federal funds for locally-linked systems.

The New Legislation: The new legislation does all of these things. To be codified at 42 USC Section 652(d)(3). However, it also imposes some safeguards and requires the state to absorb some of the cost related to a locally-linked system. The Secretary would continue to have *discretion* to grant a waiver of any of the automation requirements so long as the alternate system allows the state to meet its basic program and performance requirements and provide complete and reliable data on such performance to the federal government. The state must also meet the requirements of 42 USC Section 1115(c)(3) or promise to take steps to improve child support performance as part of its waiver package.

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[7] Although the statute appears to require that a state demonstrate that it already 'has" an alternative system in place in order to apply for a waiver, implementing federal regulations provide that a state may apply for a waiver by presenting a "plan" or "approach" for an alternative system configuration. See, 45 C.F.R. Sections 307.5 (c) and (d).The Secretary must also find that the waiver request meets the requirements of 42 USC Section 1115(b) *or* that the state will take steps to improve child support performance.

[8] See, 45 C.F.R. 307.5(h). See, also Department of Health and Human Services, AUTOMATED SYSTEMS FOR CHILD SUPPORT ENFORCEMENT: A GUIDE FOR STATES (rev. 1993).

[9] Prior to enactment of PRWORA, the enhanced federal reimbursement rate for automated systems was 90 percent.

[10] 66 percent federal reimbursement was available for making minor alterations to local systems and for their basic operational costs.

The Secretary will be *obligated*[11] to grant a waiver of the single, statewide system requirements contained in 42 USC Sections 654(16) and 654a to any state which meets those basic criteria and can demonstrate to her satisfaction that it has or can develop an alternate system or systems which enables the state to:

- meet all the functional requirements of 42 USC Sections 654(16)and 654a.
- calculate the distribution of collections in accordance with 42 USC Section 657 and properly account for distribution in interstate cases and cases where obligors have support orders for children in different families and/or different sub-state jurisdictions.
- maintain one point of contact which provides seamless case processing for *interstate* cases and provides coordinated, automated *intrastate* case management.
- use standardized data elements, forms, and definitions throughout the state.
- process cases as quickly, efficiently and effectively as such cases would be processed through a single statewide system.[12]

In addition, to obtain a waiver of the single statewide system requirement, a state must demonstrate that the locally-linked system can be completed in no more time than it would take to complete a single statewide system. Finally, the state must submit to HHS (and HHS must accept as accurate) certain financial information. This includes an estimate of the total cost of developing and completing a single statewide system as well as the cost of maintaining and operating that system for 5 years. It also includes an estimate of those same costs for the alternative system or systems.

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[11] However, it is important to note that the Secretary does have the right--and the obligation-- to reject an unacceptable proposal. As is noted in the House report accompanying H.R. 3130, "If the Secretary concludes that the proposed linked system will not be effective, she is required by the Committee provision to reject the waiver request....The burden to prove that an alternative system will be equal to the single State system required under current law rests with the State. The Committee expects the Department of Health and Human Services to take very seriously its responsibility to approve or disapprove any waiver request." H.R. Report 105-422, p. 24.

[12] In the past, HHS had insisted that those wanting a waiver had to meet all the certification requirements applicable to a single statewide system. This new list replaces that waiver requirement with a more functional test. As noted in the House report accompanying H.R. 3130, "Although the Committee provision...specifies in considerable detail the functions an alternative system must perform, it is not the intent of the Committee that States applying for a waiver from the single Statewide system requirement be subject to all of the requirements appropriate for single Statewide systems." The report then outlines specific requirements in the CERTIFICATION GUIDE, *supra*, which do not apply to alternative linked systems. H.R. Report 105-422, p. 21.

Rather than the 80 federal funding available for development of a single statewide system, a state which obtains a waiver to implement an alternative system will receive regular 66 percent federal funding for the locally-linked system. In addition, the amount eligible for even 66 percent federal funding is limited to the lower of the two cost estimates submitted with the waiver request (the estimate for the single statewide system and that for the alternative system described above). This ensures that "the total federal reimbursement will not exceed the amount the State would have received to build and operate a single Statewide system."[13] So, if the Secretary approves an alternative system which is more costly than a single statewide system, the state will be eligible for 66 percent of the estimated cost of the single statewide system. On the other hand, if the state claims that the alternate system will be less costly, the state will be limited to 66 percent of the estimated cost of the alternative system.

INCENTIVE PAYMENTS

Background: In addition to the basic program funding described above, states also receive incentive payments. These incentive payments are now based on a state's success in collecting child support and its cost efficiency, 42 USC Section 658. There is no limit on the amount of incentive payments a state can receive.[14]

PRWORA required the Secretary of HHS, in consultation with the states, to develop a recommendation for restructuring the child support incentive payment system. The goal was to design a more performance-based incentive system which rewarded states for a variety of program outcomes, not just collections. The one constraint imposed by Congress was that the new scheme had to be cost neutral. That is, it could not cost more than the current incentive payment system costs the federal government. Pursuant to this law, HHS established an Incentive Funding Work Group. The recommendations of this group were used in fashioning the new legislation.

The New Legislation: The legislation authorizes the implementation of a new incentive payment system which will be gradually phased in starting in FY 2000 and will be fully implemented by FY 2002. During the transition period, part of the state's incentive payment will be based on the old incentive payment formula and part will be based on the new formula. (The existing incentive payment system will remain in place for FYs 1998 and 1999.). The Secretary of HHS has 9 months to issue regulations

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[13] H.R. Report 105-422, p. 21.

[14] However, in an effort to encourage service to families receiving public assistance, the amount of incentives available for making collections in non-public assistance cases is tied to public assistance collections. A state's incentive payment for non-public assistance cases is limited to 115 percent of its incentive payment for public assistance cases. Thus, the better the job a state does in making collections for families receiving public assistance, the more incentive payments it can receive for collections in non-public assistance cases.

governing the new incentive payment system and the transition to it. The Secretary is also required to make several reports to Congress on implementation of the new system. The reports, due by October 1, 2000 and October 1, 2003, are to include any recommendations the Secretary has for further change.

The goal of the new incentive payment system is to encourage and reward improvement in IVD program performance. To insure that incentive payments only go to states which have actually improved their performance (or sustained a high level of performance), the new law emphasizes the importance of states' submitting good data. A state will receive **no incentive payment** for a performance measure unless HHS determines--pursuant to an audit-- that the data submitted by the state pursuant to the requirements of 42 USC Section 654(15)(B) and used to determine the state's performance level for that measure is complete and reliable. To be codified at 42 USC Section 658a(b)(5)(B).

If it submits good data, a state may be eligible to receive an incentive payment for good performance. The total amount of the incentive payment depends on four factors: the total amount of money available in a given fiscal year from which to make incentive payments, the state's success in making collections on its case load, the state's performance in five areas, and the relative success or failure of other states in making collections and meeting these performance criteria.

The total amount available from which to make incentive payments. The new legislation limits (caps) the amount of money available each year to make incentive payments to the states.[15] (This amount is based on the principle of cost neutrality discussed above.)The statute actually provides the exact amount to be made available in each year between FY 2000 and FY 2008. Thereafter, the total amount available will be the FY 2008 figure adjusted for changes in the Consumer Price Index. This amount is referred to as the "incentive payment pool".To be codified at 42 USC Section 658a(b)(2).

The state's success in making collections. The state's share of the incentive payment pool in a given year will depend, in part, on its "collections base". The collections base is determined by adding together the total amount of assigned support collected on behalf of current and former public assistance families[16] and the total amount of unassigned support collected on behalf of former public assistance families and multiplying this number by 2. To this is added the total amount of support

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[15]Consistent with the principle of cost neutrality, these numbers were calculated based on projections about incentives that would have been paid under the current system. The amount actually goes up (between FYS 2000 and 2003) then down (between FYS 2004 and 2005) then back up again. By FY 2008, the pool of money available is $483 million.

[16] Families receiving benefits funded by TANF, as well, as those receiving IVE foster care services are required to assign their child support rights to the state. Once they no longer receive these benefits, the assignment ends. By the time the new incentive scheme is put in place, unassigned support for post-TANF families will include current support and both pre-and post-assistance arrears. 42 USC Section 608(a)(3).

collected for non-public assistance families.[17] The result is the "state collections" base. To be codified at 42 USC Section 658a(b)(5)(C). (The point of this weighting system is to give states an added incentive to collect support for public assistance and former public assistance families.)

The state's actual performance. The actual amount of the incentive payment a state will receive also depends on the applicable incentive percentage for each of five performance areas. These five areas are: establishing paternity, establishing support orders, collecting current support, obtaining payment on arrears, and cost-effectiveness.[18] To be codified at 42 USC Section 658a(b)(6). In each area, a state has to achieve a minimum level of performance to obtain any incentive payment. After achieving this minimal performance level, the applicable incentive percentage gradually increases as performance improves.

- For paternity establishment, the first step is to determine the state's paternity establishment percentage (PEP) under 42 USC Section 652(g)(2). If the PEP is less than 50 percent and is not at least 10 percentage points higher than the previous year's PEP, the applicable incentive percentage is 0; in other words, the state is entitled to no incentive payment for paternity establishment. If the PEP is less than 50 percent but at least 10 percentage points higher than the previous year's PEP, then the applicable incentive percentage is 50 percent. For PEPs of 50 percent or higher, the applicable incentive percentage starts at 60 percent and goes up until --at a PEP of 80 percent or higher-- the applicable incentive percentage is 100 percent.[19] To be codified at 42 USC Section 658a(b)(6)(A).

- For obtaining orders, the first step is to determine the percentage of IVD cases in which there is a support order. If this percentage is less than 50 percent and is not at least 5 percentage points higher than the previous previous year's percentage, then the applicable incentive percentage is zero. If the percentage of cases with an order is less than 50 percent but at least 5 percentage points higher than the previous year's percentage, then the applicable incentive percentage is 50 percent. If the state has an order in 50 percent or more of its cases, the applicable incentive percentage starts at 60 percent and goes up until--at 80 percent or higher-- the applicable incentive percentage is 100 percent. To be codified at 42 USC Section 658a(b)(6)(B).

- For current collections, the first step is to determine the percentage of current support due

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[17] For collections made in interstate cases, both states can count the amount collected as part of their base. To be codified at 42 USC Section 658a(c).

[18] The legislation authorizes development, but not implementation of, a sixth factor--medical support enforcement. This will be discussed below under Medical Support Enforcement.

[19] For this and the other performance measures discussed below, the statute actually contains a chart specifying the applicable incentive percentage for each level of performance above the minimum.

which was actually collected. This is done by dividing the total amount of current support collected by the amount of current support due in the fiscal year. If this percentage is less than 40 percent and is not at least 5 percentage points higher than the previous year's percentage , the applicable incentive percentage is zero. If the percentage is less than 40 percent but is at least 5 percentage points higher than the previous year's level, then the applicable incentive percentage is 50 percent. If the percentage of current support collected is 40 percent or higher, then the applicable incentive percentage is 50 percent and this gradually increase until--at 80 percent or higher-- the applicable incentive percentage is 100 percent. To be codified at 42 USC Section 658a(b)(6)(C).

- For arrearage collections, the first step is to determine the percentage of cases in which an arrearage was collected and either paid to the family or retained by the state under a public assistance assignment. This is done by dividing the number of IVD cases in which arrears payments were received and so distributed during the year by the total number of cases on which arrears were owed. If this percentage is less than 40 percent and is not at least 5 percentage points higher than the previous year's percent, then the applicable incentive percentage is 0. If the percentage is less than 40 percent but is at least 5 percentage points higher than the previous year's level, the applicable incentive percentage is 50 percent. If the percentage of current support collected is 40 percent or higher, then the applicable incentive percentage is 50 percent and this gradually increase until--at 80 percent or higher-- the applicable incentive percentage is 100 percent. To be codified at 42 USC Section 658a(b)(6(D).

- For cost effectiveness, the first step is to determine the state's cost effectiveness ratio. This is done by dividing the state's total IVD collections in the given fiscal year by the total amount expended by the IVD system during that year. If the ratio is less than 2 (i.e. the state collects less than $2 for every $1 it expends), then the applicable incentive percentage is 0. If the cost effectiveness ratio is between 2 and 2.5 the applicable incentive percentage is 40 percent. This gradually increase until at a cost effectiveness ratio of 5 or higher the applicable incentive percentage is 100 percent. To be codified at 42 USC Section 658a(b)(6)(E).

Once the applicable incentive percentage has been determined, it is applied to the appropriate collections base. For the PEP, establishment of orders and current support collected, the applicable incentive percentage is applied to the full collections base. For collecting arrears and cost efficiency, the applicable incentive percentage is applied to 75 percent of the collections base. To be codified at 42 USC Section 658a(b)(5).Because this is a bit complicated, an example might be helpful here.

Assume that, in FY 2004, State A collected $10 million in assigned public assistance support, $50 million in unassigned support for families which formerly received public assistance and

$100 million for families which never received assistance. Further assume that its PEP was 50 percent, the percentage of cases with orders was 60 percent, it collected 30 percent of current support owed in its cases (this was 7 percent better than last year), it collected arrears for 35 percent of its cases (this was 2 percent better than in the previous year) and it collected $2.30 for every dollar in IVD costs.

Step 1. Calculate the State's Collections Base.

2($10 million + $50 million) +$100 million = $220 million.

Step 2. Calculate the Applicable Percentage for Each Category.

- PEP=50%. The applicable percentage is 60%.
- % of cases with orders =60%. The applicable percentage is 70%.
- % of current support collected =30%. This would generate 0% except that the state's performance in this area has improved by at least 5%. Therefore the applicable percentage is 50%.
- % of cases with an arrearage collection = 35%. Since this is below the minimum threshold (40%) and performance has not improved at least 5% from the previous year, the applicable percentage is 0%.
- cost efficiency = 2.3. The applicable percentage is 40%.

Step 3. Multiply the Applicable Percentage by the Appropriate Collections Base.

- PEP = 60% x $220 million =$132 million
- Orders = 70% x $220 million =$154 million
- Current Collections = 50% x $220 million = $110 million
- Arrears = 0% x $165 million (75% of $220 million) = $0
- Cost Efficiency = 40% x $165 million (75% of $220 million)= $66 million

Step 4. Add the Results

$132 m.+ $154 m. + $110 m. + $0 = $66 m = $ 462 million

The success of other states. The state's share of the incentive payment pool in a given year will also depend on how successful other states are in making collections. For each fiscal year, HHS will make an individual calculation of the collections base for each state in the manner described above. It will then add all of those numbers together to obtain a national base. It will divide the state's base by the national base. To be codified at 42 USC Section 658a(b)(3). The resulting percentage will be applied to the

available pool for that year and that is the amount the state will get in incentive payments. To be codified at 42 USC Section 658a(b)(1).

So, in the example above, also assume that the sum of the incentive base amounts for all states in FY 2004 is $12 billion and that the incentive payment pool is $ 454 million.

Step 5. Calculate the State Incentive Payment Share.

$462 million / $12 billion = 3.8%

Step 6. Multiply the State Incentive Payment Share by the Amount in the Pool

3.8% x $454 million = $17.5 million

Finally, it should be noted that each state will now be required to reinvest its incentive payment money into either the IVD program or some other activity which might lead to improving the efficiency or effectiveness of the IVD program. To be codified at 42 USC Section 658a(f). The latter includes services such as mediation, parenting classes, and efforts to improve the earning capacity of non-custodial parents. The reinvestment requirement is a significant shift in child support incentive policy. Under the old incentive system, states and counties were free to spend incentive payments on purposes unrelated to the child support program.

MEDICAL SUPPORT ENFORCEMENT

Background: All child support orders being enforced by the IVD agency are supposed to contain a provision relating to health care coverage. 42 USC Section 666(a)(19). When health care coverage can be obtained at "reasonable cost" through the private insurance available to a non-custodial parent, IVD agencies are required to seek such coverage in the order. 42 USC Section 652(f). Coverage available through an employer is defined to be available at "reasonable cost". 45 CFR Section 303.31(a). Child support agencies will also enforce those orders, if need be, by informing the non-custodial parent's employer that coverage is required and making sure that the employer enrolls the children, provides their custodial parent with forms and other basic information, and deducts any premiums owed for the coverage from the non-custodial parent's wages.

There are several problems in the present system. One is that IVD agencies often lack information about the availability of health insurance to the noncustodial parent. Lacking specific information about the type of plan available, they may not act to seek coverage in the order or they may not enforce a health insurance order when one has been obtained.

Another problem is that when the non-custodial parent's health insurance is provided through a plan governed by the Employee's Retirement and Income Security Act (ERISA), IVD agencies are often unable to get the employer to provide the ordered coverage. ERISA employers only have to respond to requests that are embodied in a Qualified Medical Child Support Order (QMSCO). Many ERISA employers also require additional information about exactly what coverage is being sought. If the QMSCO doesn't provide this information, the ERISA employer will not honor it even if it meets the statutory QMSCO requirements. In those cases, either the agency gives up (because it doesn't have the individual information needed) or spends significant time tailoring the QMSCO to the individual employer's needs. As IVD systems become more automated and rely on mass processing, this need for individualized attention becomes more and more problematic.

Another issue is that, since there is no incentive payment related to medical support enforcement, when resources are devoted to these activities, the state agency sees no financial pay-off. In the face of this reality, they focus on activities (e.g. paternity establishment) which yield financial rewards, leaving children unable to access private health care coverage.

The New Legislation: The new law addresses all of these issues. It begins with a clearer definition of the responsibility of IVD agencies in regard to medical support. As of October 1, 2001, IVD agencies are required to include medical support in any orders they obtain and to enforce health insurance orders whenever such insurance is available to the non-custodial parent at reasonable cost.[20] To be codified at 42 USC Section 652(f). In any case where the order requires the non-custodial parent to provide health care coverage and the IVD agency knows *who* the non-custodial parent' employer is, the agency must notify the employer using the Notice form discussed below.[21] To be codified at 42 USC Section 666(a)(19)(B)(I).The employer will then have 20 business days to notify the entity providing the health care coverage to enroll the child. To be codified at 42 USC Section 666(a)(19)(B)(ii). In an ERISA situation, the plan administrator then has 40 days from the date of the Notice to inform the IVD agency that the child has been covered and what the coverage is or what additional steps need to be taken to effectuate coverage. The plan administrator must also provide the custodial parent with a description of coverage and any necessary forms or documents. To be codified at 29 USC Section 1169(a)(5)(C)(ii). If the entity providing coverage is a state or local government group health plan or a church health plan,

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[20] If state law changes are required to implement these provisions, states have until the first day of the first calendar quarter beginning after the close of the first regular session of the state legislature which begins after July 16, 1998. In the interim, the requirement that states *seek* and enforce medical support orders presumably remains in effect. 42 USC Section 666(a)(19).

[21] If the employer is identified through state new hire reporting, the Notice must be sent to the employer (along with the income withholding notice for cash support) within 2 days after the date on which the employee information is entered in the state directory. To be codified at 42 USC Section 666(a)(19)(B)(iii). In other cases, no time frame is specified.

the same 40 day rule applies.[22] If the non-custodial parent later leaves employment, the employer must notify the IVD agency. To be codified at 42 USC Section 666(a)(19)(B)(iv).

To facilitate enforcement of orders (regardless of who the employer is), the new law calls for the creation of a National Medical Support Notice (Notice). The Notice is to be jointly developed by the secretaries of HHS and the Department of Labor (DOL) and issued as a federal regulation.[23] The Notice must conform to all existing IVD requirements as well as the requirements for a QMSCO. It must also include a separate and easily detached employer withholding notice informing the employer:

- the legal basis for withholding premiums to pay for the coverage;[24]
- the duration of the withholding requirement;
- any limits under the Consumer Credit Protection Act (CCPA) on the amount which can be withheld;
- how to allocate payments toward cash support and medical insurance premiums if the CCPA limits are reached or there is insufficient money to pay both; and
- the name and phone number of someone at the IVD agency who can respond to any questions.

Effective October 1, 2001, state IVD agencies will be required to use the Notice in *all* cases in which they are enforcing a medical child support order. To be codified at 42 USC Section 666(a)(19)(A). Further employers covered by ERISA will have to accept and honor any Notice they receive. They will no longer be able to insist on individually tailored notices. To be codified at 29 USC Section 1169(a)(5)(C). Similarly, state and local governmental group health plans and church plans[25] will have to accept and honor Notices.

The new legislation also sets up a broad-based Medical Child Support Working Group to identify the barriers to better medical support enforcement by IVD agencies. Among the issues this group is to

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[22] The provision relating to church plans and group health plans offered by state or local governments are found in Sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. There is no indication in the text of where they will be codified.

[23] The law calls for an interim regulation to be issued no later than May 16, 1999 with a final regulation issued within one year thereafter. In addition to the substance of the Notice, the regulation is to address procedures for IVD agencies to use in transmitting the Notice to employers.

[24] The statute mentions, but does not describe the mechanics of, a possible mistake of fact challenge by the noncustodial parent to withholding. To be codified at 42 USC Section 666(a)(19)(C).

[25] The new law contains a myriad of provisions which bring church group health plans under the same rules applicable to other providers of health care services. These provisions will not be discussed in detail in this memo.

address are the efficacy of the new Notice system described above; better coordination between IVD medical support activities and Medicaid and the new Children's Health Insurance Program; and cost sharing, deductibles and other methods of spreading the cost of medical care when private insurance is not available or doesn't cover a particular service the child needs. This Group will by jointly established by HHS and the Department of Labor and, within 18 months, will make a report to the secretaries of those agencies The secretaries will then submit a report to Congress and make any needed recommendations for change.

On the issue of incentive pavements, the new law requires the Secretary of HHS, in conjunction with state IVD directors and representatives of children eligible for medical support, to develop a recommendation for adding a medical support enforcement performance factor to the five factors contained in the new incentive payment system described above. The recommendation is to be contained in a report to Congress and submitted by October 1, 1999. It is anticipated that Congress will act on the recommendation and include medical support enforcement as one of the activities which will generate an incentive payment. This should encourage more state attention to medical support enforcement.

NATIONAL DIRECTORY OF NEW HIRES

Background: PRWORA authorized the creation of a system of New Hire reporting. Pursuant to this law, employers are now providing states with basic information about their recently hired employees. States, in turn, are providing this information to a newly created National Directory of New Hires ("National Directory"). In addition, states are providing the National Directory with wage and unemployment compensation information. This data is matched against the state and national case registries and if there is a match, the state can use the employment-related information to establish and enforce support obligations. The creation of these data bases has raised some privacy concerns. Key questions include what is the purpose of gathering the information? how secure is the data? how long should information be retained? who should have access to it? and what should happen if it is misused?

The New Legislation: The new law addresses all of these issues in some way. *First,* it requires that in the next 90 days, the Secretary of HHS must report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereafter "appropriate Congressional committees") the specific *purposes* for which information in the National Directory is to be used. If, in the future, the Secretary wishes to expand those purposes, then the appropriate Congressional committees must receive 30 days advance notice of the expansion. Section 402(c) of the CSPIA.

Second, the new law requires both HHS and the General Accounting Office (GAO) to report to the appropriate Congressional committees on data security. The GAO report is due by December 31,

1998 and must address implementation of all the new data bases created by PRWORA (including the expanded Federal Parent Locate Service, the Federal Case Registry and the National Directory of New Hires), discuss the purposes for which the information is maintained and used, and consider whether there are adequate safeguards to protect the privacy of individuals with respect to whom data is reported and maintained. Section 405 of the CSPIA. The HHS report is due by July 16, 2001 and must address the accuracy of the data in the National Directory and the effectiveness of its data security procedures. Section 402(d) of the CSPIA.

Third, a specific limit is now provided for how long data can be kept. Effective October 1, 2000, new hire information and wage and unemployment information received by the National Directory must be entered within 2 days of receipt from a state and deleted 24 months after the date of entry.[26] To be codified at 42 USC Section 653(l)(2)(A). While the new hire information will be available for the full 24 months, unless there is a match, the wage and unemployment information will only be accessible for 12 months. To be codified at 42 USC Section 653(l)(2)(B).

Fourth, the law now provides a specific administrative penalty for officers and employees of the United States who knowingly and willfully 1) access information in the National Directory without authorization; 2) inappropriately disclose such information; or 3) misuse the information in the National Directory. The penalty can include dismissal from employment and a $1,000 fine for each transgression. To be codified at 42 USC Section 653(l)(2).

ADMINISTRATIVE ENFORCEMENT

Background: PRWORA required states to use "high volume, automated administrative enforcement" techniques in interstate cases. The original statute did not, however, define the term "high volume automated administrative enforcement". To address this, a definition was added by the Balanced Budget Act of 1997. That definition required a search of *state data bases* (e.g. license records, employment service data, the state New Hire Registry) to find *any information available* in regard to a parent who owes child support. The amended statute also specified how a request for the use of this technique was to be made and the records each state must keep on the use of this technique.

PRWORA also required states to implement a system for matching child support cases with data maintained by financial institutions like banks. The idea was to have these institutions provide information which would help IVD agencies locate and seize the assets of delinquent parents. This has proven somewhat difficult to implement in regard to financial institutions that do business in more than one state ("multi state financial institutions"). Just as multi-state employers wanted to report new hires to a single place, multi state financial institutions want to deal with a single entity, not field inquires from

[26] The Secretary is allowed to retain data samples for a longer period of time if they are necessary for research purposes, however. To be codified at 42 USC Section 653(I)(2)(C).

hundreds of state or local IVD offices.

The New Legislation: The new law deletes the Balanced Budget Act definition of "high volume automated enforcement" and more narrowly defines the term weakening the automation requirements. The term now covers searches of *private* data bases (financial institutions and other entities) in regard to *assets.* Moreover, the specification about how a request is to be made and what records are to be kept is deleted. To be codified at 42 USC Section 666(a)(14)(B).

In regard to data matches with financial institutions, the new law allows the Secretary to use the Federal Parent Locator Service (FPLS) to facilitate reporting by multi state employers. To be codified at 42 USC Section 652(l). A parallel change is also made in 42 USC Section 666(a)(17)(A)(I). In addition, legal protection is provided for financial institutions which provide information to the FPLS. To be codified at 42 USC Section 669a(a)

DATA COLLECTION

Background: The law has long required the Secretary of HHS to make an annual report to Congress which provides basic information and data about the operation of the IVD program. 42 USC section 652(a)(10). To make this report, the Secretary must collect information from the states.

The IVD statute also requires the Secretary to collect information about what basic IVD child support services are needed and whether they are actually provided.[27] 42 USC Section 669

The New Legislation: The new law eliminates the requirement that the Secretary of HHS 's annual report to Congress include a breakdown of state expenditures by functional category. That is, there will no longer be a report on what was spent for providing locate services, paternity establishment, obtaining orders, enforcement, or distribution of collections. This data has been helpful in assessing state use of child support program resources.

The data the Secretary is required to keep in regard to the actual provision of services is also reduced. Under the new law, the Secretary will only be required to keep data on 1) the number of IVD cases needing to have paternity or a child support order established; and 2) the number of cases actually receiving such services.[28] As reported by the states, this data has been widely regarded as inaccurate

[27] These four services are: paternity establishment, locate in order to establish a child support order, establishment of a support obligation, and locate for purposes of modifying or enforcing a support order. The data must also be indicate how many of the families needing/receiving the service receive assistance funded by Title IVA and how many do not.

[28] As in the past, the data will have to differentiate between cases receiving IVA funded assistance and those not receiving such assistance. However, the former category will now also include families receiving

because of inconsistent data definitions and miscounts.

assistance under Title IVE.