

# Child Support Enforcement

## Current Program

Over nearly three decades, the federal-state partnership in the child support program (Title IV-D of the Social Security Act) has produced the most effective program administration in history, helping welfare and non-welfare families receive critical financial support. The composition of child support caseloads has changed greatly over the past decade. Under federal law, states are required to serve any family that requests child support services, without respect to their income. In 2003, the child support enforcement program caseload reached 15.9 million. Of these, 17.3 percent (2.8 million) were current welfare cases, 46.3 percent (7.4 million) were former welfare cases, and 36.4 percent (5.8 million) were never-welfare cases.

The enforcement tools, granted to the states under federal law, have led to dramatic increases in collections in recent years. According to the U.S. Department of Health and Human Services (HHS), during the period from 1998 to 2003, child support collections increased 40 percent, reaching \$21.2 billion in fiscal year 2003. Greater investments in the administration of the program from \$1.8 billion in 1991 to \$3.6 billion in 1998 and \$5.1 billion in 2002 have also yielded a significant increase in collections. In 2003, for every dollar invested in administering the child support program, four dollars were generated in collections. However, no portion of the collection made on behalf of non-welfare families can be retained by the state or federal government. As state programs have increased in efficiency of collection, more families of all incomes have sought state services.

Distribution of these collections is also very complicated and is based on whether the family ever received state welfare benefits. States have spent considerable resources programming and maintaining computer systems to properly distribute child support. States use a variety of sources to pay for the considerable costs associated with the administration of their child support programs. The federal government provides a 66 percent match for basic administrative costs. States also retain a share of collections made on behalf of current welfare clients; in FY 2002 states retained \$1.2 billion of the nearly \$2.9 billion TANF collections. Finally, states can earn federal incentive funds based on performance.

There are several key pieces of legislation that have helped create this present child support enforcement program. Congress enacted the Child Support Enforcement and Paternity Establishment Program in 1975 to reduce public expenditures on welfare programs. This was to be achieved by

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obtaining support from non-custodial parents; helping families not receiving Aid to Families with Dependent Children (AFDC) stay off welfare; and establishing paternitys and support orders for children born outside of marriage so that support could be obtained for them.

The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) increased the prevalence of paternity establishment by requiring states to set up voluntary in-hospital paternity establishment programs without the need for court involvement. Paternity establishments rose to 1.5 million in FY 2003, in part as a result of these laws.

However, the law with the most far-reaching effects on the child support program was P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), also known as the welfare reform law. It included many provisions to increase the effectiveness of the child support program, such as the establishment of a New Hire Directory, a state disbursement unit, and new enforcement tools.

Employers are required to report information on new employees immediately to a state directory of new hires. States then report this information to a national database, allowing child support agencies to quickly locate noncustodial parents and send an income-withholding order to employers.

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Furthermore, to streamline payments, the law required states to establish a centralized location for the collection and disbursement of support payments. States must now distribute collections to custodial parents within two days of receipt from an employer. It also enhanced the state's ability to seize assets of noncustodial parents delinquent in making payments. Through the Financial Institution Data Match program, states obtain information on assets of noncustodial parents that can be used to pay past-due support.

The 1996 legislation also gave states administrative authority to obtain information from public and private entities. They may order genetic testing and make requests for information without having to obtain an order from a judicial or administrative tribunal, thus expediting the collection process. Furthermore, the paternity establishment process was streamlined by permitting mandatory genetic testing in contested cases.

Legislation enacted in 1984 and reinforced by congressional amendments in 1987, 1988, 1993, 1996, and 1998 required states to establish and enforce medical support. The Child Support Performance and Incentive Act (CSPIA) of 1998 required state IV-D agencies to ensure that health insurance is a part of every support order and to enforce the obligation through the issuance of a National Medical Support Notice. This document is used by all states to notify non-custodial parents' employers of the medical child support obligation of their employees.

The child support program is a complex program that operates at every level of government, and there is a strong level of interstate and international program coordination. Up to 30 percent of child support cases are interstate in nature (e.g., the custodial parent lives in New York and the noncustodial parent lives in New Jersey). Several legislative changes have been made in the past eight years to improve interstate case processing. The Full Faith and Credit for Child Support Orders Act (P.L. 103-383), in 1994, requires a state to enforce child support orders on the terms of another state that issued it. The 1996 welfare reform law required states to adopt uniform laws and forms for interstate cases with regard to withholding income, imposing liens, and issuing administrative subpoenas.

In addition, the Social Security Act (42 U.S.C. 659A) authorizes foreign countries or their political subdivisions to be reciprocating countries for the enforcement of support obligations following agreements by the U.S. Department of State. Most states reciprocate with other countries. California, for example, has reciprocal relationships with every Canadian province, every Mexican state, Australia; Austria, the Czech and Slovak Republics, England; Dublin, Ireland; Finland; France; Germany; Hungary; New Zealand; Norway; Sweden; and certain former U.K. protectorates, including Bermuda, Fiji, and South Africa.

Changes to the child support program were considered during the welfare reform reauthorization debates in the 108<sup>th</sup> Congress. Key legislation incorporated several child support distribution and pass-through recommendations that APHSA set forth in the first edition of *Crossroads*. Specifically, provisions were included in both House and Senate legislation that provided federal financial support for state efforts to simplify distribution rules. Proposals were considered to provide federal matching funds for the cost of the child support pass-through for families that receive TANF benefits. In addition, state options were considered to provide families that have left TANF with the full amount of the child support collected on their behalf, with the federal government sharing in the cost. Proposals were also put forward to allow states to count increased state spending stemming from new distribution policies toward their maintenance-of-effort (MOE) requirement under TANF. What follows are APHSA's recommendations for child support reform.

## Challenges

### SHIFTING PROGRAM MISSION FROM COST-RECOVERY TO INCOME SUPPORT

Over the years, passing on child support collections and providing other services to families have been seen as increasingly important. Today, the program straddles two missions: retaining collections from and giving collections to families. In fact, the FY 2005–2009

National Child Support Enforcement Strategic Plan of the HHS Office of Child Support Enforcement (OCSE) specifies that “Child support is no longer primarily a welfare reimbursement, revenue-producing device for the federal and state governments; it is a family-first program, intended to ensure families’ self-sufficiency by making child support a more reliable source of income.” These two missions also differ in philosophy as well as the underlying structure of how the system is funded. Cost-recovery is based on automated responses while family support is grounded in client contact, collections directly to the family, and the provision of support services. Also, the fundamental funding source for the administration of the federal program was designed to be the state and federal share of collections made on behalf of current and former welfare families; the newer family support model means that the family receives the collections.

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Although the child support program is in the process of shifting its mission toward one of supporting families, almost \$2.9 billion in TANF collections were made by states in FY 2002 with over \$1.2 billion maintained by state and localities. Child support collections made on behalf of TANF families are still split between state and the federal government at the reverse of the Federal Medical Assistance Percentage (FMAP). (Under the AFDC program, the federal government matched state welfare spending at the FMAP rate.)

## RISING PROGRAM DEMANDS AND CONSTRAINING FUNDING SOURCES

The demands on state child support programs are higher than ever before. Welfare reform legislation contained numerous mandates on states (as outlined above) that are expensive and time-consuming. With these new tools, expectations on states to improve child support collections have risen.

Furthermore, families leaving TANF rolls continue to need IV-D services, particularly with regard to families reaching their lifetime limit on cash assistance. In 1995, 41 percent of the IV-D caseload represented AFDC families, while in 2003, only 17 percent represented TANF or foster care families. Also, although former TANF recipients make up 46 percent of the caseload and 40 percent of collections, states receive no share of current collections made on behalf of those families. New performance measures have also placed increased responsibility on the child support system to establish and enforce medical support obligations.

## COMPLEX AND COSTLY SYSTEM OF DISTRIBUTION

The current system for distributing child support arrears collected on behalf of families that have left welfare is complicated and confusing. The assignment and distribution of arrears depends on what year the arrears accrued, whether the family was on welfare, and by what method the arrears were collected. If a family never received TANF, AFDC, or Medicaid, all of the child support collected by the state child support agency, including arrearages, goes to the family. While a family is receiving TANF benefits, the state can keep any child support it collects, regardless of how it is collected, to reimburse itself for the family's benefits.

For families that formerly received public assistance, the rules are more complex. For former recipients of public assistance, welfare reform legislation created a more "family-friendly" distribution policy. In general, once a family leaves TANF, if the state collects child support for the family, the state must give the family any current child support as well as arrearages that have built up after the family left TANF and any arrearages that built up before the family received TANF before it reimburses itself for assistance costs. These rules do not apply, however, if the child support is collected through the federal tax refund offset program. If that is the method by which the funds are collected, the state can reimburse itself before it gives the family any payment for arrearages.

States were required to implement the new family-first distribution systems by October 1, 2000. The new system reflects compromises made during the debate surrounding welfare reform. States were concerned that giving all collections on arrearages to families would drain state budgets. The agreed-upon compromise helped states financially, but resulted in an extremely complicated system for distributing arrears. States have spent many resources programming computers to keep track of the many "buckets" of support, determining whether an arrearage accrued before assistance, during assistance, or after assistance; whether it is permanently assigned, never assigned, temporarily assigned, conditionally assigned, unassigned during assistance, or unassigned before assistance; and whether it was collected by the tax refund intercept program, by levy of a bank account, or by other methods. Many state personnel believe that the complexity of the system contributes to more errors and creates more difficulty in explaining payments to clients.

The complicated distribution system is a burden on state child support programs. Staff has spent considerable resources programming computer systems to properly distribute child support. Maintaining these systems requires continued staff resources. In addition, families find the current distribution system hard to understand. The fact that an arrearage payment goes to the state rather than the family

just because it was collected through the tax intercept program does not make intuitive sense, and states must devote staff to answer questions related to the current distribution rules. Such complexity adds to the sense of arbitrariness of the program and reduces public support for it. Similarly, a state TANF agency can use Internal Revenue Service (IRS) data obtained directly from the IRS for eligibility determinations but can not use IRS data for the very same purpose if it was obtained through the IV-D agency. Also, there has been a lack of unified guidance across federal departments with oversight of the child support program on what personnel and departments within a state are allowed access to IRS tax data. Additional challenges in the distribution system will likely occur with the recent promulgation of final tribal child support regulations. These regulations highlight the need for coordination between state and tribal child support and TANF agencies with respect to information systems, distribution requirements, paternity establishment, and enforcement procedures.

## INCENTIVES AND PENALTY STRUCTURE

The penalty structure in child support is inherently flawed, since it creates a situation where once a state is penalized it becomes increasingly more difficult to come back into compliance. The present penalty structure formula with denominators based on past failures creates an inherently unfair calculation. Once a state performs poorly in a particular measure, it is held at a disadvantage in future year calculations even after improvement. In addition, penalties are assessed as a percentage of the federal share of administrative costs. If a state increases systems spending to come into compliance with automation requirements, the base upon which penalties are assessed is increased, discouraging such investment. Implementing statewide child support systems is expensive; increasing spending on systems increases the size of the penalty.

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In addition, the present incentive program may be weakened as the administration begins implementation of new medical support measures and requirements within a capped incentive fund system. In 1998, federal law placed a cap on the child support incentive fund and added new outcome-based performance measures. The incentive fund is flawed for a number of reasons. First, a new measure on medical child support is presently being added to the incentive fund with no additional resources. The capped fund structure sets up a “zero-sum game” that may result in fluctuations in the amount of incentive funding a state receives from year to year, which complicates states’ budgeting processes. Second, states that have already peaked on the performance measures will likely receive lower incentives over time as other states improve. Finally, states can receive an incentive payment for high performance yet receive a penalty for performance improvement at the same time.

## Recommendations

### PROPOSAL

**The federal government should continue its strong support of the program by continuing to match state administrative spending at the 66 percent match rate.**

**EXPLANATION**

Child support programs are facing increasing demands on their programs while at the same time experiencing a constraint in funding. While the federal matching rate has remained constant in recent years, the changes with respect to the incentive fund, for example, have resulted in less predictable funding for program administration. In addition, declining welfare rolls in many states have reduced the amount of TANF collections states may retain. States need consistent federal funding at a time when the mission of their programs is shifting away from a cost-recovery model toward support for low-income families.

**PROPOSAL**

**Families and children should directly benefit from the payment of child support. Payments should support the economic self-sufficiency of families and connect the responsibility of both parents to their children. States should have an option to pass along child support payments directly to families; if they take this option, the following should apply:**

1. States should not be required to repay the federal share. The federal government should share in the costs of directing more child support to families as it did before the elimination of federal support of the \$50 pass-through under PRWORA.
2. States should be allowed to count support passed through toward their TANF MOE requirements, even if the support is not disregarded in calculating TANF benefits.
3. States will need federal financial support to assist them with the systems costs associated with reprogramming computers for a new distribution policy.
4. States should be given flexibility in determining how child support payments given to families affect other state-administered programs and funding for pass-through and distribution policies should not come at the expense of other human service programs.
5. States should be given adequate time to implement pass-through and distribution policies.

**EXPLANATION**

A central consideration of any discussions of pass-through policy will necessarily be the financial impact of such a change. Although TANF collections have decreased as TANF caseloads have declined, states are still estimated to utilize about \$1.2 billion a year in TANF collections. These TANF collections serve important funding purposes and are used to fund child support operations, meet TANF MOE requirements, and pay for other human service programs.

Twenty-two states also pass through retained TANF collections to families as part of optional pass-through programs. Some states conclude that the advantages of distributing all child support to families, rather than retaining a share, make the financial lift worthwhile. First, distribution may be simplified because all funds would go directly to families. Second, giving all funds to families may promote self-sufficiency. Also under this approach, noncustodial parents may feel more connected to their children and may have greater incentives to make payments on a regular basis. Reorienting the child support program so that all collections go to families may also serve to elevate the program's status. Rather than focusing on recouping state spending, the program would be about providing income support to low-income families.

In other states, though, the child support program may enjoy higher status as a program that brings in revenues to the state than it would if it directed all collections to families. Distributing all support

to families may not make sense for other reasons. A state may determine that it is best to use its limited resources for another state priority. For example, a state may determine that increasing the TANF grant amount would benefit more families than passing through child support, since not all families receive child support.

APHSA believes that the child support program should be focused on providing economic support for children rather than recovering state welfare expenditures. APHSA looks forward to continued discussions of pass-through policy and the fiscal and programmatic implications for states.

### **PROPOSAL**

**Continue to provide incentives to states for high performance and remove the cap on the child support incentive fund.**

### **EXPLANATION**

Under prior law, the incentive system was an open-ended program. Under the new system, one state's incentive payment depends on how all other states perform. As a result, states have difficulty predicting what their performance will be each year, making state budgeting more uncertain. If lifting the cap on the federal child support incentive fund is not financially feasible then at the very least—if additional goals are added to the incentive fund criteria—then additional federal funding should be added to support that goal.

### **PROPOSAL**

**Consolidate authority to disclose and use tax data into a single comprehensive provision of the tax code representing the intent of the law. Furthermore, access to state and local government agencies should be provided while maintaining the present federal prohibition to state and federal information systems and enforcement tools by private-sector agencies.**

### **EXPLANATION**

Authority for states to disclose tax data for Title IV-D program purposes is found in three separate, but overlapping, provisions (Section 6103) of the tax code. These provisions contain few definitions leaving much room for interpretation and have contributed to a lack of consensus between IRS and HHS on fundamental legal and operational issues with respect to who is authorized to receive tax data and the uses that may be made of that data. Without strong federal guidance on this issue, state child support agencies have been forced to make their own interpretation of the law. It is understandable that state child support agencies share information with a range of entities outside their immediate state department as current IRS statute specifies that a state may disclose information, upon request, to any agency under contract with the state child support agency.

Linking IV-D with nongovernmental agencies such as credit bureaus and financial institutions would require significant computer programming and expensive security safeguards. Staff and the recovery of assets would be diverted from serving IV-D clients and undermine the financing structure of the program. States would be given the extremely difficult and costly job of regulating these agencies to ensure they conform to the same data security, privacy protection, and due process requirements as an IV-D entity.

Private entity access to IV-D information and remedies would make very personal information on employment and social security numbers available too broadly. Allowing private attorneys access to this information could jeopardize its use for IV-D purposes. States would be unable to control the use of this information, violations of privacy would occur, and support for the use of child support enforcement tools would be undermined.

## **PROPOSAL**

**Create programs for low-income noncustodial mothers and fathers that promote effective parenting, improve the ability of parents to provide material support for their children, promote strong families, teach financial affairs management, and provide employment-related services.**

1. APHSA supports the creation of new programs that promote the responsibility of noncustodial mothers and fathers in the life of their children.
2. Any newly created programs should be coordinated with related state and federal programs such as child support, the TANF block grant, the Workforce Investment Act, and child welfare.
3. New programs should also address the specific needs of incarcerated parents as they re-enter the community and the lives of their children.
4. Adequate funding is needed for the Access and Visitation program to promote family stability.

## **EXPLANATION**

With such proposals as the Responsible Fatherhood Act of 1999 and the Welfare to Work program (now expired), a theme of “responsible parenting” has gained great currency among national policy-makers. The initiatives are broadly designed to encourage parents without custody of their children to assume greater financial responsibility and parental presence in the lives of their children, and to provide work supports and services so they can better provide for their children. Such measures are consistent with the objectives of welfare and child support reforms since they encourage self-sufficiency and responsibility and provide important resources for children and families.

## **PROPOSAL**

**Medical support indicators should be gradually phased in and not tied to the incentive fund.**

1. Recommendations to improve medical support enforcement through new performance indicators should be phased in, adjusted for by the insurance realities in a state, and not incorporated into the performance measure system nor tied to funding at this time.
2. There should be an enhanced 90 percent federal financial participation (FFP) targeted to IV-D, Medicaid, and State Children’s Health Insurance Program (SCHIP) implementation of medical support requirements for a limited five-year period; this will ensure timely and consistent implementation of any directive that requires state child support agencies to assume new responsibilities.
3. Proposals that would require states child support programs to assess differences between custodial and noncustodial health coverage should be rejected.
4. States should be given the flexibility to adjust the federal Medical Support Notice to meet the needs of their Medicaid and child support data entry systems.

**EXPLANATION**

The OCSE, following recommendations put forward by a federally convened Medical Child Support Working Group (MCSWG), presented a series of recommendations to support the goal of increasing the number of children with health care coverage. They highlighted the need for better coordination between social service and health programs, including child support, Medicaid, and SCHIP. In OCSE's Strategic Plan for FY 2005–FY 2009, securing medical coverage for children is raised from a subset of other goals to a stand-alone goal. OCSE states that medical support efforts should aim not only at gaining coverage, but also holding the family responsible for paying for the coverage whenever possible. Although states support the goal of securing medical child support orders, it requires great coordination between two very separate state systems; child support and Medicaid. Therefore, implementation must take into account issues of coordination between data systems, as well as the cost to both.

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Further, the complex computer systems states have recently set up for their child support programs and operate in the Medicaid program may not easily support new medical support indicators. Enhanced federal funding may be needed to Medicaid and child support enforcement agencies to come into full compliance.

**PROPOSAL**

**Allow state child support enforcement programs the ability to enter into a corrective compliance plan, to apply for a reasonable cause exemption from penalty, to have a full year to come into compliance before any penalty is levied, and to reinvest child support penalties in their programs.**

1. Similar to TANF programs, child support enforcement programs should be afforded the opportunity to come into compliance before a penalty is levied against the state. They should also have the ability to apply for a reasonable cause exemption from a penalty and the penalty relief should be applied retroactively.
2. Any penalty assessed in a fiscal year should be held in abeyance if the HHS secretary determines a state to be in compliance with the approved corrective action plan.
3. The penalty would not be imposed if a state continues to make a good-faith effort to achieve compliance and meet the terms of the corrective action plan.
4. The law should be changed to allow a state a full year after notification of noncompliance to take corrective action.
5. States should be allowed to reinvest the amount of the penalty to be paid to the federal government into their child support program based on a mutually agreed upon plan between the state and HHS.

**EXPLANATION**

The TANF statutes provide the HHS secretary with an option to waive a penalty if reasonable cause is found on the part of the state. The statute also provides the state with an opportunity to enter into a corrective compliance plan before a penalty is imposed. However, the statute excludes the state child support enforcement program from this opportunity under 42 U.S.C. 609(c) and excludes child support from a reasonable cause exemption.

Beginning with FY 2001, states and territories were required to meet the 95 percent data reliability standard for five different performance measures under the child support program. States that fail to meet a measure are penalized up to 1 percent in TANF funding, and will also have to expend an equivalent amount of state funds to replace any reductions. States have not been provided adequate notice or opportunity for reasonable cause, or opportunity to come into compliance, before a penalty is levied. The requirement that the federal government give clear notice to the states is particularly important in this case, since a state risks losing TANF funding because of the activities of an entirely separate program in the 13 states administered by a separate agency. Formal notice and an opportunity for the two agencies to work together to address identified program deficiencies are of the utmost importance.