

Comprehensive Legal Vision (CLV) Legislative Issues List

Background

There are three subcommittees of the CLV comprised of attorneys, managers, supervisors, and child support workers all committed to resolving issues relating to legal issues affecting the child support program. The resolution of these issues can be accomplished through joint communications, training, clarified or new DHS policy, legislation, litigation, and appeals.

A. Court Issues Subcommittee - This subcommittee is working on issues relating to Paternity, Establishment, and Modification and has broken down into three subgroups to tackle all of the issues as both a smaller group and in the larger subcommittee. The Court Issues Subcommittee has several resolutions that have a legislative component:

1. Parenting Time Adjustment (PEA) – Requirement for Specific Parenting Time
 - There is some confusion and inconsistent interpretation of the law because (a) the PEA statute states that a percentage of parenting time is required before the PEA can be applied, (b) an unpublished Court of Appeals case (*Lonneman*) further explains that “reasonable” does not constitute a specific percentage of parenting time, and (c) there is a statutory presumption of 25% parenting time. The legislative proposal would clarify that generic terms like “reasonable” or “as agreed upon” qualifies for the PEA based on the statutory presumption of 25% parenting time. This issue may be brought up at the legislative work group that is addressing the PEA by January 2016. So, it may be premature to seek an author of a bill to fix this issue.

2. Filing Paternity Adjudication Orders with MDH – 2 Components
 - \$40 Filing Fee - Currently, there is a \$40 filing fee that presents a barrier for counties to file the Adjudication Orders with MDH. Pursue legislation to not require one state agency to pay another state agency a filing fee, similar to how counties do not pay filing fees to court administration.
 - Require the Filing – Together with the above fee issue, codify existing state policy that requires counties to file paternity adjudication orders with MDH when they initiate or are involved in paternity cases so that citizens in all counties are treated similarly and children have the final phase of the paternity adjudication process resolved to prevent later confusion and problems.

B. Enforcement Subcommittee – This subcommittee is working on issues relating to enforcement issues. With several issues associated to Income Withholding, Financial Institution Data Match (FIDM), and Judgments the larger group has broken down into subgroups associated with these topics to address many issues relating to these three topics. The Enforcement Subcommittee has one issue that has a legislative component at this time which was already resolved in the 2015 Legislative Session:

1. Clarify the 20% Issue

- The only legislative action discussed in the Enforcement Group was to clarify Minnesota Statute § 518A.53 regarding the 20% language and that clarification was passed this year.

C. **Guidelines Committee** – This subcommittee was presented with several issues relating to the calculation of child support according to statutory guidelines and works as a group to resolve the concerns about perceived inequities resulting from the guidelines, inconsistent practice, and differing legal interpretations. The Executive Committee has recommended legislative action to resolve the following issues.

1. Low-Income Obligor - Several issues relating to the effect of the Guidelines on low-income obligors were presented to the Guidelines Committee. These issues include: imputing income, not imputing income to TANF recipients, how the self-support reserve is calculated, and changes to the minimum wage. The Guidelines Committee concluded that these issues expressed different features of the same underlying concern – the statutory guidelines structure may result in unreasonable and difficult-to-enforce orders for low to middle income obligors (\$9-\$15/hour). The Committee recommended that the legislature review the Guidelines structure to resolve this issue and suggested some considerations when doing so. The Executive Committee agreed with the policy of seeking orders within the ability of the obligor to pay. It has been suggested that the issue of low-income obligors would be appropriate for consideration by a Guidelines Commission. (Note – the 2015 legislature passed a provision that reduces the imputed income standard to 100% of minimum wage.)
2. Credit for Prior Order – There is inconsistency among the counties as to whether an ordered obligation toward child support arrears on another case are to be included as a credit when calculating child support for another child. In Branch v. Branch (632 N.W. 2d 261 Minn. Ct. App. 2001) the court of appeals ruled that court-ordered child support payments should be deducted from gross income whether or not the order is for current support or arrears. Some counties are following this holding. However, other counties have concluded that this holding did not survive the 2007 changes to the Guidelines calculations. This has resulted in inconsistent practice around the state. The issue involves both legal interpretation and policy questions. The Executive Committee agreed with the Guidelines Committee’s recommendation that legislation is needed to resolve this issue.
3. NCP on Cash PA or SSI – The issue presented is whether there are any circumstances under which a child support order can be set for an NCP who has been found eligible for GA or SSI. No statute specifically address this question and county practice is inconsistent. The Executive Committee recommended a legislative solution.

4. State Funded MFIP and Imputed Income – Minn. Stat. §518A.32, subd. 4 states that if a parent is receiving a TANF-MFIP cash grant no potential income is to be imputed to that parent. The issue that was identified for the Guidelines Committee was whether the same rule applies to parents who receive state-funded MFIP. No statute specifically addresses the issue. The Executive Committee approved the Guidelines Committee's recommendation that legislation should be sought stating that parents who receive state-funded MFIP should be treated the same as parents who receive TANF-MFIP cash for purposes of imputing potential income.

Comprehensive Legal Vision - Compilation of Court Issues

Issue	Status	Implementation date/plan
<p><u>Basis for a Mod</u> Does the whole order need to meet the presumption or just one of the three obligations (CCH, CCC, CMS)? There is recent case law that suggests it is the whole order.</p>	<p>Modification Subgroup ranked this issue as: <u>High Priority/Difficult</u></p>	
<p><u>Competing Presumptions</u> For a child who is born in a marriage, but the CP says that the husband is not the father, is it the counties responsibility to assist with a ROP and a husband non-paternity statement? Regardless, if there are competing presumptions of a husband, GT and or ROP, how should the county proceed? The courts seem to be all over the board on this.</p>	<p>Paternity Subgroup ranked this issue as: <u>High Priority/Difficult</u></p>	
<p><u>Married but Separated</u></p> <p><u>A: Medical Only:</u> If medical is the only public assistance open, is this a medical reimbursement case only? This will be a bigger problem under the ACA.</p> <p><u>B: NPA Case</u> If it is an NPA case, is there jurisdiction to establish support when there is no court order for custody and there is nothing showing both parties consent to the CP having custody?</p> <p><u>C: Calculation:</u> What calculation should be used: presumed joint custody calculation or regular calculation?</p> <p><u>D: Application Fee:</u> Can the \$25 fee be reimbursed if the county determines it cannot pursue support?</p> <p><u>E: PA Reimbursement Only:</u></p>	<p>Establishment Subgroup ranked these issues as:</p> <p>A. <u>High Priority/Difficult</u></p> <p>B. <u>High Priority/Difficult</u></p> <p>C. <u>High Priority/Difficult</u></p> <p>D. <u>Low Priority/Easy</u></p> <p>E. <u>High Priority/Difficult</u></p>	

<p>If we must do a PA reimbursement, only monitoring the case to charge during PA months is time consuming and difficult.</p> <p><u>F: Maintaining County:</u> If the case needs to be transferred to a county with a differing opinion, this causes problems.</p>	<p>F. <u>High Priority/Difficult</u></p>	
<p><u>Parenting Expense Adjustment (PEA)</u></p> <p><u>A: PEA Basis:</u> MN Ct of Appls. issued an unpublished opinion (Lonneman) requiring a specific percentage of parenting time before the PEA can apply. Many orders say “reasonable” or “liberal” or “as agreed” and M.S. §518.175 Subd. 1(e) provides for 25% presumption of parenting time, so counties have been giving the PEA based on this language. Now counties can’t, yet court orders still contain that language and the court and the parties expect us to apply the PEA.</p> <p><u>B: Counties pursuing specific percentage of parenting time in new or modified orders:</u> When the county is involved in a case, the county should ensure that the percentage of parenting time is included.</p>	<p>Establishment Subgroup ranked these issues as:</p> <p>A. <u>High Priority/Difficult</u></p> <ul style="list-style-type: none"> · Recommendation submitted to Exec. Comm. 9/9/14 and again 1/15/15. Work plan approved 3/13/15. <p>B. <u>High Priority/Easy</u></p> <ul style="list-style-type: none"> · Recommendation submitted to Exec. Comm. 9/9/14 and again 1/15/15. Work plan approved 3/13/15. 	<p>A. <u>PEA Basis:</u> Workgroup to</p> <ul style="list-style-type: none"> · Write or ensure that there is a DHS-CSD policy for no application of 12% PEA when there is no court ordered parenting time. · Workgroup to write a best practice on what stipulation language to use when parties agree that parenting time is between 10-45% but they don’t want to specify a number or percentage in a court order, or the hearing is based on a ROP, where parenting time cannot be addressed. Workgroup to also make a recommendation whether in negotiations for the stipulation counties should seek an “out” provision. · Workgroup to make a recommendation on whether to follow the Lonneman case (no application of PEA when no court ordered parenting time, reasonable language doesn’t cut it) for existing court orders. <p>B. <u>Counties Pursuing Specific % of Parenting Time in New or Modified Orders:</u></p> <ul style="list-style-type: none"> · Hold off on suggestion for legislation about presumption of 12% PEA when parenting time is ordered as reasonable or as agreed due to HF 512, 2015.

		<ul style="list-style-type: none"> Workgroup to write a draft DHS-CSD policy for counties to ensure the percentage of parenting time is addressed in new or modified order.
<p><u>Redirection</u> When the child support order is redirected, does the redirected order stop when the CP loses custody? Some counties have this interpretation and then require the party who has court ordered custody of the child and had the redirected order to apply for IV-D services and go through the establishment of a new order. TPR, Ramsey County gets permanent custody but no TPR.</p>	<p>Modification Subgroup ranked these issues as: <u>Low Priority/Difficult</u></p>	
<p><u>Role Reversal</u></p> <p><u>A: No Court Order:</u> Without a showing of consent of the CP for placement with the NCP, there is no basis to set support except for PA reimbursement only.</p> <p><u>B: Modification of the Existing Order:</u> When the child leaves the custodial household we need a mechanism to be able to stop the child support without having to do a full modification.</p> <p><u>C: Maintaining County:</u> Counties do not agree on how to handle these cases which presents a problem if a new legal action is need and no parties remain in the original county.</p>	<p>Establishment Subgroup ranked these issues as: <u>A. Low Priority/Difficult</u></p> <p><u>B. Low Priority/Difficult</u></p> <p><u>C. Low Priority/Difficult</u></p>	
<p><u>ROPS</u></p> <p><u>A: ROPS as a presumption unless GT's:</u> If GT's happen after a ROP but before the adjudication there are two presumptions: the ROP and the GT's, and not just an establishment based on the ROP.</p>	<p>Paternity Subgroup ranked these issues as: <u>A. High Priority/Easy</u></p> <ul style="list-style-type: none"> Recommendation submitted to Exec. Comm. 9/9/14 and again 1/15/15. Not discussed at Exec. Comm. level yet 	

<p><u>B: Facilitation ROPS</u> There may be some counties that will not facilitate ROP's and this creates a burden to their own staff and is a maintaining county issue if the case transfers before an adjudication is complete.</p> <p><u>C: Copies of ROP:</u> Are counties required to provide certified copies to the court of the ROP now that there is an MDH interface?</p> <p><u>D: Minor ROPs:</u> Should counties follow a ROP signed by one or two minors with a paternity adjudication or establishment?</p>	<p><u>B. Low Priority/Difficult</u></p> <p><u>C. Low Priority/Easy</u></p> <ul style="list-style-type: none"> · Recommendation submitted to Exec. Comm. 9/9/14 and again 1/15/15. Work plan approved 3/13/15. <p><u>D. High Priority/Difficult</u></p> <ul style="list-style-type: none"> · Since this was put on the list, Ramsey County pursued an appeal which resulted in a published Court of Appeals decision that strongly suggests doing a paternity, but there is room for interpretation 	<p><u>C. Copies of ROP:</u></p> <ul style="list-style-type: none"> · Workgroup to write a proposed letter for DHS-CSD and SCAO to send out to MCAA, County Programs, CSMs and Chief Judges · If an appeal should pop up, the workgroup will help with the brief.
<p><u>Subsequent Marriage</u> When there is a 256.87 order or a paternity order and then the parties subsequently marry, counties differ on what happens to the 256 order after the marriage, and then ultimately when the parties break up (can it be reinstated or is it dead?). What happens when they are divorced and then get married? There is no Minnesota law that addresses this.</p>	<p>Modification Subgroup ranked these issues as: <u>Low Priority/Easy</u></p> <ul style="list-style-type: none"> · Workgroup is close to making a recommendation to Exec. Comm. 	
<p><u>Reconciliation</u> Parties reconcile after an order is set and then later separate. How close and reopen cases, and how to handle PA and NPA arrears are the main issues.</p>	<p>Modification Subgroup ranked these issues as: <u>Low Priority/Easy</u></p> <ul style="list-style-type: none"> · Since this was put on the list, Washington County was able to get an enhancement through the DHS-CSD helpdesk. 5607 - 01/21/2015 - NCOL - DEFAULT CHANGED TO ACTIVE OBLIGATIONS 	

	<ul style="list-style-type: none"> · As the result of a county enhancement request, on January 20, 2015, the NCOL (NCP Obligation List) was reprogrammed to default to active obligations (Status = 'A' Active). The user will need to change the status to 'I' to view inactive obligations, or will need to change the status to blank ' ' to view both active and inactive obligations. · DHS is updating User Documentation to reflect this change. 	
<p><u>Filing orders with MDH</u></p> <p>A. <u>Filing Minnesota Paternity Adjudication Orders with MDH</u></p> <p>B. <u>Filing Minnesota Paternity Adjudication Orders with MDH when there is an Out-of-State Birth</u></p>	<p>Paternity Subgroup ranked these issues as:</p> <p>A. <u>High Priority/Difficult</u></p> <ul style="list-style-type: none"> · Recommendation submitted to Exec. Comm. 9/9/14 and again 1/15/15. Work plan approved 3/13/15. <p>B. <u>Low Priority/Difficult</u></p>	<p>A. <u>Filing Minnesota Paternity Adjudication Orders with MDH:</u></p> <ul style="list-style-type: none"> · Workgroup to put memo together to bring back to the Exec. Comm. · Put issue on legislative list, DHS to take the lead.

Comprehensive Legal Vision - Compilation of Enforcement Issues

Issue	Status	Implementation date/plan
<p><u>Deceased Persons</u> What happens to an order when someone dies (CP, NCP, or child)? Does the case remain open, and if so, how do we enforce?</p>	<p>Was given a low priority by the team and is currently in the parking lot.</p> <p>In the summer/fall of 2015 the team will be reprioritizing outstanding items. The team is waiting for implementation of high priority items before taking on additional work.</p>	
<p><u>FIDM</u></p> <p><u>A: Exemptions:</u> What types of funds and accounts are exempt from the FIDM levy? We have to string so many statutes and rules together to figure this out why can't there be one clear law?</p> <p><u>B: JOL's and FIDM</u> Can a FIDM be pursued on a JOL or must the arrears be entered and docketed before pursuing a FIDM?</p> <p><u>C: Account Balances:</u> Financial institutions need to be mandated to provide us with account balances.</p> <p><u>D: Expand use of FIDM:</u> FIDM is a useful tool and should be expanded to be used even when there is a payment agreement in place and when tax intercept is not pursued.</p>	<p>Was given a high priority by the team. A FIDM subgroup was created and is currently reviewing policy and procedure.</p> <p>05/2015 – FIDM subgroup has made the following recommendation pending review of executive committee:</p> <p>Adopt the use of Notice of Levy and Exemption Notice and the Exemption Claim Form. Expansion of the notice to explain and identify the exemptions. The counties should take more of an active role to identify exemptions and if found not take action.</p> <p>TBD – Review and approval of team recommendation to use the newly developed Notice of Levy and the Exemption Claim Form. Expansion of the notice to explain and identify the exemptions.</p>	<p>03/13/15 - FIDM checklist was approved by the executive committee.</p> <p>05/2015 – FIDM checklist formatted to go out on DHS SIR – Job Aid area.</p> <p>06/2015 – FIDMS checklist to be officially published in DHS SIR.</p>
<p><u>Garnishment of Veterans Benefits</u> It is impossible to do income withholding</p>	<p>Was given a low priority by the team and is currently in the</p>	

<p>or any form of garnishment from veterans' benefits even with a court order. The VA won't cooperate. It is income, so the CSM's order support based on it, then we can't get at it.</p>	<p>parking lot.</p> <p>In the summer/fall of 2015 the team will be reprioritizing outstanding items. Team is waiting for implementation of high priority items before taking on additional work.</p>	
<p><u>Income Withholding (IW)</u></p> <p><u>A: Reconciliation of Parties:</u> Since the state policy says IW for arrears automatically reduce to 20% rather than 120% if the couple reconciles but there are arrears that remain, can the 200% IW be automatic? Also, this is applied inconsistently.</p> <p><u>B: Emancipation or a TPR:</u> Does IW for arrears stay at 120% automatically if the obligation ends for emancipation or a TPR?</p> <p><u>C: IW Variance:</u> IW increases to 120% when payments are behind, how does this apply with the IW variance?</p> <p><u>D: Eliminate 20% when Court Ordered Payback:</u> We need clarification on whether the court ordered payback can be collected without the additional 20% that is automatically tacked on when income withholding is in place.</p>	<p>Was given a high priority by the team. An IW subgroup was created.</p> <p>Reconciliation of Parties: The subgroup agreed to recommend the work around to ensure that the collection of 20% matches the court order. An example of the math to accomplish this will be provided.</p> <p>Emancipation or TPR: The sub-group agreed to recommend that the worker will move the monthly accrual to a monthly non-accrual and then the system will add the additional 20%, however, asked that more narrative be provided to define when the recommendation applies.</p> <p>AIW Variance: The group agreed with the finding that with true AIW Variance cases, the arrears should never be greater than one (1) month's obligation and therefore, the additional 20% should not be added to AIW order. The group also recommended reviewing User Documentation on AIW Variance.</p> <p>Eliminate 20% when Court Ordered Payback: 1) Update policy and user documentation to allow counties to modify IW in PRISM in situations where a court order</p>	<p>01/12/15 – All 4 recommendations were approved by the executive committee.</p> <p>Decision was made to implement changes with Federal e-IWO project. Federal e-IWO project has an anticipated implementation date of 10/1/15. In addition, we are tracking the below legislation related to IW.</p> <p>Anoka County has introduced legislation (HF497 and SF500) that would amend the IW statute to bring clarity and consistency in how the court order language should be written and implemented in this situation.</p> <p>05/2015 – The above IW legislation has passed and has been signed by the Governor with an effective date of 07/01/2016. PRISM, policy and user documentation will be updated accordingly.</p>

	<p>specifically rejects the language requiring an additional 20% payback on arrears. In all other situations do not modify the IW.</p> <p>2) Seek new legislation to bring clarity and consistency in how the court order language should be written in this situation.</p>	
<p><u>Interest</u></p> <p><u>A: Administrative Suspension:</u> To administratively suspend interest, the statute requires that the obligor contact the county to request suspension. Why can't the county identify when a case has paid for 12 months and notice the parties for administrative suspension without a request? If anyone objects, they can ask for a hearing.</p> <p><u>B: Future Interest:</u> When AAMP strategies are in place, is there a way to forgive future interest rather than having to forgive the interest after each month?</p> <p><u>C: Do not charge interest</u> Charging interest has been shown not to be effective and makes our financial system complex and difficult to manage. Why don't we enact legislation to eliminate interest?</p> <p><u>D: IW Variance</u> Can interest be stopped when there is an IW variance?</p>	<p>Was given a medium priority by the team and is currently in the parking lot.</p> <p>In the summer/fall of 2015 the team will be reprioritizing outstanding items. Team is waiting for implementation of high priority items before taking on additional work.</p>	
<p><u>Judgments/Old Arrears</u> Are arrears over 10 years old enforceable if arrears are not entered and docketed as a judgment? Do JOL's ever expire if they are not entered and docketed as a judgment? It is difficult to distinguish between old arrears that are over 10 years old and new arrears that are less than 10 years old.</p>	<p>Was given a high priority by the team. A Judgements subgroup has been created. The group is currently rewriting the policy manual and has invited outside experts to go over issues.</p> <p>Discussion of definitions: lacking in current manual – provide clarification Completed at least ¾ of the manual: Satisfaction and SOL</p>	

	<p>left – only a few more meetings to address issues and ensure everything is correct.</p> <p>The subgroup is hoping to have a recommendation ready for full team review by July 2015.</p>	
<p><u>Passport</u> Does the state court have jurisdiction to reinstate a passport? This comes into play when (a) a case is not paid in full and the case closes so all enforcement remedies must terminate and (b) when the obligor files a motion to reinstate without paying in full.</p>	<p>Was given a medium priority by the team and is currently in the parking lot.</p> <p>In the summer/fall of 2015 the team will be reprioritizing outstanding items. Team is waiting for implementation of high priority items before taking on additional work.</p>	
<p><u>Recreational Licenses</u></p> <p><u>A: Court Process:</u> The process to suspend a rec. license is time consuming because it requires a motion and court order after a hearing when it could be administrative like DLS and OLS.</p> <p><u>B: Reinstatement:</u> The statute is not clear on a process to reinstate the rec. license particularly when the case closes but arrears are still owed, different courts are handling this differently.</p> <p><u>C: Threshold for Suspension:</u> Make the threshold for suspension 3 months rather than 6 months to be consistent with the DLS and OLS.</p>	<p>Was given a medium priority by the team and is currently in the parking lot.</p> <p>In the summer/fall of 2015 the team will be reprioritizing outstanding items. Team is waiting for implementation of high priority items before taking on additional work.</p>	
<p><u>Satisfaction of Obligation</u> A: Under M.S. §518A.34, Subd. 3, the court can deem that the obligor has satisfied the support obligation by</p>	<p>Was given a low priority by the team and is currently in the parking lot.</p>	

<p>providing care for the child, the county should have the administrative ability to do the same.</p> <p>The courts application of satisfaction is inconsistently applied because it is discretionary.</p> <p>It is costly to the parties, the court, and the counties to require a modification every time the children move homes. This could be part of Appendix A.</p>	<p>In the summer/fall of 2015 the team will be reprioritizing outstanding items. Team is waiting for implementation of high priority items before taking on additional work.</p>	
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Comprehensive Legal Vision - Compilation of Guidelines Issues

Issue	Status	Implementation date/plan
<p><u>Credit for Prior Order</u></p> <p>Does the <u>Branch v. Branch</u> 632 N.W.2d 261 Minn. App., 2001 case survive the new guidelines? State policy is that the NCP's payments towards arrears on another case are not to be included as a credit for prior order based on how PRISM and the web calculator are programmed. However, many counties and CSM's believe the case survives and manual calculations are necessary. When calculating support for non-joint children, should the payback on arrears payment be included?</p>	<p>This issue was given a medium priority by Committee.</p> <p>3/9/15 – Guidelines Committee made recommendations to Executive Committee:</p> <ul style="list-style-type: none"> - The Guidelines Committee concluded that best reading of relevant law is that is that the Branch analysis applies (court ordered child support payments should be deducted from gross income whether or not the order is for current support or arrearages. - Because counties are interpreting the law differently, families are being treated and impacted differently around the state when child support orders are set. - Recommended legislation clarifying whether and NCP's payments towards arrears on another case are included as a credit in calculating child support under the guidelines in a new case. - Recommended that DHS change current DHS policy and re-program PRISM and the web calculator to include such payments automatically; consider an appeal to the appellate courts in an appropriate case. 	<p>Decision: Clarifying legislation is the best course because differing legal interpretations may not be resolved by any change in DHS policy. Possible Guidelines Commission issue or may be appropriate for another interest group. Pursue an appeal if an appropriate case is found.</p> <ul style="list-style-type: none"> - Seek a legislative vehicle. - Watch for an appropriate case to appeal.
<p><u>Low-Income Obligor</u> <u>(4 combined issues):</u> <u>Guidelines Chart</u></p> <p>The child support guidelines do not work for the lower middle wage earners (\$9-\$15) or cases where that level of income is imputed. This results in unenforceable orders where counties have difficulty modifying and end up having to do arrears management. Too</p>	<p>The Guidelines Committee combined four issues because we concluded that each issue expressed a different feature of the same basic concern - that the statutory guidelines may result in unfair or difficult to enforce orders for low to middle income noncustodial parents (NCPs). The issues were given a high priority by the Committee.</p> <p>2/10/15 – Guidelines Committee made recommendations to Executive Committee:</p>	

many deviations are necessary. The guidelines were based on USDA statistics from 2006/2007. The tables need to be updated periodically.

TANF Recipient

M.S. § 518A.32 Subd. 4 provides that potential income shall not be imputed to a TANF cash recipient. This is not equitable because TANF recipients have a requirement to find a job and once that happens the obligation will change and modifications are not generally pursued when the TANF recipient starts working. Also some TANF recipients are on and off of grants frequently so we may have a situation where the case is plead with TANF in place and by the time of the default or hearing TANF is not in place but then two months later TANF is in place again.

Self-Support Reserve

A: NCP's Portion of Insurance Under SSR:

The self-support reserve does not take into consideration the NCP's portion of the medical and dental insurance. If the self-support reserve is supposed to accurately reflect what the obligor can reasonably pay without putting him or her into poverty, it should be included.

B: Non-joint child credit not considered:

PRISM and the web calculator are programmed to not include the non-joint child credit when applying the self-support reserve. If the self-support reserve is supposed to accurately

Legislative:

1. DHS should review the guidelines structure with a goal of proposing legislation that results in guideline child support orders that are more realistic and enforceable particularly for low-middle income obligors (obligors who earn \$8-\$15 an hour).

2. Some more limited legislative changes could be proposed to the guidelines that would achieve more realistic and enforceable orders, such as:

a. Increase the SSR to 140% of the Federal Poverty Guidelines (FPG).

b. Adjust the guideline calculation so that the percentage of gross income for wage earners up to \$15 per hour does not exceed 20% for one child, 25% for two children or 30% for three or more children. Or, in the alternative set those percentages as grounds for deviating from the guidelines.

c. Insert statutory language directing agencies to "impute" income conservatively and no more than 100% of minimum wage unless there is strong evidence to suggest that the NCP has the actual ability to earn at a higher rate.

d. When the NCP is a low-middle income obligor and the custodial parent (CP) is receiving TANF, change the guidelines calculation formula to take into account either an imputed minimum wage amount or the amount of TANF that the custodial parent (CP) is receiving plus any earned income.

Policy/Best Practice:

1. Recognizing that state policy directives must not contravene the law, there may be some ways to address the

Decision: The Executive

<p>reflect what the obligor can reasonably pay without putting him or her into poverty, it should be included.</p> <p><u>Effect of the change in minimum wage</u></p> <p>The minimum wage changed from \$7.25 to \$8.00 on 8/1/14. It is scheduled to change to \$9.00 on 8/1/15, then \$9.50 on 8/1/16. There is a CPI index in subsequent years. The child support obligation in a typical minimum wage case in July, 2014 (1 child, no other obligation) was \$89.00 per month because of the SSR. As of 8/1/14, the child support owed with the same facts is \$212.00. The noncustodial parent's (NCP) raise from \$7.25 to \$8.00 per hour will result in \$130 in additional gross income. Under the Guidelines formula all of that amount would be paid in additional child support. What implications does this have for imputing income and deviating from the guidelines?</p>	<p>issues identified for consideration by the CLV-Guidelines WG, such as:</p> <p>a. Emphasize and encourage the setting of realistic and enforceable orders particularly for low-middle wage earners.</p> <p>b. Encourage use of the provisions of Minn. Stat. §518A.43, subd. 1(1) (“consider earnings, income, circumstances and resources of each parent”) and subd. 4 (“deviate downward if the guidelines amount would impose an extreme hardship on the obligor”), to support deviations when the guidelines order for basic support would exceed 20% of a low-income NCP’s gross income for one child, 25% for two children or 30% for three or more joint children.</p> <p>c. Encourage counties to “impute” income conservatively and no more than 100% of minimum wage unless there is strong evidence to suggest that the NCP has the actual ability to earn at a higher rate.</p>	<p>Committee agrees with the policy of seeking orders within the ability of the obligor to pay. This is an issue that may be appropriate for a Guidelines Commission.</p> <ul style="list-style-type: none"> - The legislature passed a provision in the 2015 that calls for imputing income to 100% of minimum wage. - Setting realistic orders is part of SHLIF policy. - The recommendations relating to deviations align with the Quadrennial Guidelines review. - The Committee is directed to proposed wording for a guidance and/or best practice pointer encouraging county agencies to recommend deviation when the current statutory factors are present. - More training for child support officers and magistrates on reasonable orders should be done. - Work toward placing the issue before the Guidelines Commission for consideration. - Develop proposed language for a DHS guidance with examples. In process. - Develop training.
<p><u>Lump Sum Payment Towards Arrears</u></p> <p>Under the <u>County of Grant v. Koser</u> 809 N.W.2d 237 Minn. Appl., 2012 case, how should counties deal with lump sum prospective payments if the obligor is on RSDI? PRISM is not programmed to do this requiring extensive manual intervention.</p>	<p>This issue was given a low priority by the Guidelines Committee because the issue is on appeal to the Minnesota Supreme Court in <i>Floding v. Gillespie</i>.</p> <p>.</p> <p>Waiting for decision by Minnesota Supreme Court.</p>	
<p><u>Medical (4 issues)</u></p>	<p>The Medical issues were given a low</p>	

	<p>priority by the Guidelines Committee because some were the subject of bill proposals and others were being considered by other groups. However, the Guidelines Committee has discussed all of them and is developing recommendations.</p>	
<p><u>A: Affordable Medical Insurance:</u> The state law is silent and the federal medical support regulation says no more than 5% of the obligated party's gross income; but now the ACA defines affordable as between 8% to 10%. Additionally, some counties aren't even using the 5% definition and still get orders for a parent to provide insurance if it's available without regard to cost.</p>	<p>The Guidelines Committee has discussed this issue and is formulating a recommendation to the Executive Committee.</p> <p>Recommendation in process.</p>	
<p><u>B: Equity:</u> M.S. §518A.41 Subd. 16 provides an offset for when an obligor carries the coverage and the obligee reimburses, the offset can be removed if the obligor stops carrying the coverage. When the obligee carries coverage and the obligor reimburses, there is no method to stop the obligors reimbursement when the obligee stops carrying the coverage. The only option in this situation is to do a time consuming and costly modification.</p>	<p>The Guidelines Committee has discussed this issue and is formulating a recommendation to the Executive Committee.</p> <p>Recommendation in process.</p>	
<p><u>C: NCP on MA or MinnesotaCare:</u> It is not in the family's best interest to charge an NCP for medical support when they themselves are on MA or</p>	<p>The Guidelines Committee has discussed this issue and is formulating a recommendation to the Executive Committee.</p> <p>- The legislature passed a provision in the 2015 legislature that eliminates the</p>	

<p>MinnesotaCare. However, there may be a difference between whether or not the CP is on MA or MinnesotaCare or providing private medical coverage.</p> <hr/> <p><u>D: Catastrophic or high deductible medical insurance appropriate health care coverage:</u> Is catastrophic or a high deductible (\$2,000) medical insurances appropriate healthcare coverage that should be ordered?</p>	<p>obligation of non-custodial parents who qualify for Medical assistance to contribute to the cost of coverage.</p> <p>Recommendation in process.</p> <hr/> <p>The Guidelines Committee has discussed this issue and is formulating a recommendation to the Executive Committee.</p> <p>- Language was added by the 2015 legislature to the definition of “comprehensive medical coverage” in the child support statute to include health plans meeting the definition of “minimum essential coverage” under the Affordable Care Act.</p> <p>Recommendation in process.</p>	
<p><u>NCP’s on Cash PA</u> When an NCP is on GA or SSI, the support order should be \$0.00 or reserved with a review hearing set, rather than minimum support orders or imputed income orders. NCP’s have been SMRT’d by financial workers. How do CSM’s have the authority to question the financial worker’s determination of the NCP’s ability to work?</p>	<p>This issue was given a medium priority by the Guidelines Committee.</p> <p>3/9/15 - Guidelines Committee made recommendations to the Executive Committee:</p> <p><u>Legislation:</u> Clarify the law by, for example, adding a subpart to Minn. Stat. 518A.32 (potential income) that states:</p> <p>- A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that a governmental agency authorized to determine eligibility for general assistance or supplemental social security income, has determined that the individual is eligible to receive general assistance or supplemental social security income. However, actual income earned by the parent may be considered for the purpose of calculating child support.</p> <p><u>Policy Action:</u> Issue a policy guidance consistent with the legislative</p>	

	<p>recommendation stated above.</p> <ul style="list-style-type: none"> - Provide “best practice” guidance related to cases in which an NCP states or other evidence is presented that the NCP has the ability to work. The child support officer should be advised to gather evidence or information provided at the hearing, send it to the NCP's financial worker and schedule a review hearing. <p><u>Training</u>: Include this topic in a list of issues on which there is inconsistency among magistrates and provide training to magistrates around the state on those issues.</p>	<p>Decision: Approved – should go in a legislative bucket.</p> <ul style="list-style-type: none"> - Workgroup to develop best practice language - Develop proposed language for a DHS guidance with examples. <p>In process.</p>
<p><u>Relative Caretaker Calculation</u></p> <p>The income shares guidelines use both parents’ incomes when calculating child support. When child support is calculated for a relative caretaker, two cases need to be pursued one for the CP v RC and one for the NCP v RC. In relative caretaker calculations zero income is included for the relative caretaker and the picks are 100% for the parent. This can result in an onerous obligation for the parents since there are two separate obligations. Not all relative caretaker situations involve parents who are living in two separate households.</p>	<p>This issue was given a medium priority by the Guidelines Committee.</p> <p>3/11/15 - Guidelines Committee made recommendations to the Executive Committee:</p> <p>The method for calculating child support is set by Minn. Stat. §518A.35, subd. 1(c) and requires that a parent’s individual income be used and not the combined income of both parents.</p> <ul style="list-style-type: none"> - The Guidelines Committee recommended a legislative change that would allow the incomes of both parents to be considered as part of a guidelines calculation. 	<p>Decision: Approved – should go in a legislative bucket.</p>
<p><u>State Funded MFIP</u></p> <p>A: Establishment when CP is on</p>	<p>The Guidelines Committee gave these issues a medium priority.</p>	

<p><u>State Funded MFIP:</u> When the CP is on state funded MFIP, the counties need to do a lot of manual intervention to determine what arrears are owed to the state and what arrears are owed to the CP. One county, maybe more, is asking for PA reimbursement for this kind of case to avoid this manual intervention, but that means the family is not getting the opportunity to become self-sufficient and remains reliant on state programs. PRISM could be reprogrammed to send the arrears to the proper place or legislation could be pursued to assign state funded MFIP.</p>	<p>3/10/15: A. The Guidelines Committee recommended to the Executive Committee:</p> <p><u>Legislation:</u> Amend Minnesota Statutes §518A.32, subd. 4 to clarify that parents who receive state-funded MFIP should be treated the same as parents who receive TANF-MFIP for purposes of imputing potential income.</p> <p><u>Policy:</u> DHS should issue a policy guidance clarifying that parents who receive state-funded MFIP should be treated the same as parents who receive TANF-MFIP for purposes of imputing potential income.</p>	<p>Decision: Approved – should go in a legislative bucket. - Guidelines Committee to work on policy guidance language. - Develop proposed language for a DHS guidance with examples. In process.</p>
<p>B: <u>State Funded MFIP:</u></p> <p>Is state funded MFIP different from TANF based MFIP as it relates to imputing potential income?</p>	<p>B. The Guidelines Committee recommended to the Executive committee:</p> <p>DHS should issue a policy guidance stating that receipt of state-funded MFIP is not an assignment of support and arrears are owed to the CP. It would also be helpful if PRISM were reprogrammed to properly assign arrears in these situations.</p>	<p>Decision: More information is needed to determine if the issue can be resolved without reprogramming PRISM. Committee is directed to determine how many cases are affected and provide an alternative recommendation.</p> <p>Guidelines Committee met on 5/19/15 and discussed alternative approaches.</p>
<p><u>Tribes</u></p> <p><u>A:Per Capita Tribal Income:</u> Counties are inconsistently dealing with per capita tribal income. Some are imputing income in addition to per capita and some are not. Some tribal statutes allow for the garnishment of up to one half of the monthly amount.</p> <p><u>B: Establishment of Support in Native American Relative caretakers cases:</u></p>	<p>The Guidelines Committee gave these issues a low priority.</p> <p>3/11/15 – The Guidelines Committee has submitted a proposal to the Executive Committee. It will be considered in June 2015.</p>	

<p>Establishment of support in relative caretaker cases is not culturally appropriate for Native American families. It is culturally expected for Native American children to be raised by their extended family when their parents can no longer do so, and there is not an expectation for the parents to pay their families to take care of their children.</p>		
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