

# CLASP

CENTER FOR LAW AND SOCIAL POLICY

## MEMORANDUM

**TO:** Interested people

**FROM:** Paula Roberts

**DATE:** November 19, 2004

**RE:** Preliminary Analysis of Child Support Cooperation as a Condition of Eligibility for Subsidized Child Care

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States offer families access to subsidized child care funded through the Child Care Development Fund (CCDF). These funds are not sufficient to provide child care to all families wishing to receive it. Therefore, states have developed a variety of methods to ration these scarce resources. One method is to establish strict income eligibility guidelines. Families with income above a very minimal level are not eligible for a subsidy. Another method is to impose co-payments on some participating families. These co-payments are based on a sliding scale, with higher income families paying a greater share of the cost of care.

A third method of rationing is to impose a child support cooperation requirement on single parents seeking subsidized child care. Usually, this means that the custodial parent who is currently receiving or applying to receive subsidized child care is required to apply to the state's child support enforcement (IV-D) program if he/she is not already receiving services from that program. The custodial parent must then cooperate with the child support program to establish paternity (if that is an unresolved issue) and pursue cash support. Among the services offered by the state child support agency are:

- Location of non-custodial parents. This includes home and work addresses as well as the location of other income and assets.
- Paternity establishment through either voluntary acknowledgment or a court or administrative hearing. This includes providing genetic tests, with the state bearing the cost up front.
- Establishment of an order. States have income-based, numeric guidelines for determining how much the non-custodial parent should pay. Most states also require the non-custodial parent to contribute toward the custodial parent's work-related child care costs. If private health care coverage is available, the order

might also direct that the child be enrolled in that coverage and provision for any related costs will be apportioned between the parents.

- Periodic modification of the order as circumstances change. An order can go up or down if the parents' income or circumstances change over time.
- Enforcement of the order. This can be done through withholding from the non-custodial parent's paycheck or unemployment compensation, intercept of state and federal tax refunds, seizure of bank accounts, and a variety of other methods.

If the effort is successful, the family's income may increase enough to make it ineligible for subsidized care, freeing up the dollars for another family. Alternatively, the family may be able to make a larger co-payment due to increased income. This gives the state the ability to stretch its dollars further. Because of these fiscal benefits, more states are imposing such a requirement.

From a family's point of view, there are pros and cons to this approach. Some custodial parents are happy to receive help from the state child support agency, especially if fees and costs associated with the program are waived. These families are grateful for the additional child support income, especially if the non-custodial parent is a wage earner whose salary can be subject to income withholding, assuring regular payments.<sup>1</sup> Custodial parents might also welcome help from non-custodial parents in meeting any co-payment associated with the child care.

However, some custodial parents already have informal agreements and they wish to keep those agreements rather than entering the formal state system. Others face domestic violence issues and have avoided the formal system in order to minimize risk. These custodial parents may be hiding from an abusive spouse or partner or simply fear that pursuing support would engender more violence.

Many means-tested programs have experience in dealing with these issues. Since 1976, recipients of cash assistance (AFDC or TANF) have been required to assign their child support rights to the state and cooperate with the state child support agency in pursuing those rights. There is a similar requirement in regard to medical support rights in the Medicaid program. Some states also impose a child support cooperation requirement on single-parent families receiving food stamps. In each of these programs, there is a "good cause" exemption from cooperation for certain families, particularly those with domestic violence issues. Moreover, those *required* to use the services of the state child support enforcement program cannot be required to pay an application fee, although they may be charged other fees and costs.<sup>2</sup>

As revealed in the accompanying chart, some states have adapted the experience with these other programs to their child care/child support cooperation requirement.

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<sup>1</sup> The average child support payment received by families with an order is \$358 per month. Low-income families receive somewhat less, but even they receive an average payment of \$250 per month.

<sup>2</sup> See 42 USC § 654(6) and 45 CFR § 302.33. TANF families are exempt from all fees and costs.

However, not all have done so and this leads to some concern. It is one thing to enact a requirement that provides child support services at little or no cost; recognizes the existence of functioning, informal arrangements; and makes room for good cause exemptions, it is another to develop a system that does not take these issues into account. States developing policy in this area—as well as children’s advocates in those states—might want to pay particular attention to the following:

1. *Are families required to assign their child support rights to the state in order to obtain subsidized child care?* Assignment is completely unnecessary if the only service the family is receiving is subsidized child care. Other families using the state child support system who do not receive public assistance (TANF, Medicaid, or food stamps) are not required to make an assignment of their rights because it is not necessary for the state to have an assignment in order to act on the family’s behalf. Assignment is necessary only if the state intends to keep the support collected to reimburse itself for the public assistance provided. It is worth noting that only one state that now imposes a child support cooperation requirement on those receiving child care subsidies has included assignment language in its program.
2. *Must families use the IV-D system or are there alternatives?* As noted above, some families have informal arrangements, which they find to be satisfactory. Others are using the services of the court or a private attorney. Those with such arrangements should be exempt from the cooperation requirement as they are already actively pursuing or receiving support.
3. *Who must cooperate?* It seems reasonable to require cooperation from a custodial parent. However, some children seeking or receiving a subsidy may be in the custody of someone other than a parent and that person may not have the legal right to pursue support on their behalf. The requirement should be limited to those who have the right to seek support under state law.
4. *Are there exceptions for domestic violence victims?* As noted above, there is a long history of exempting abused parents and children from child support cooperation requirements. Not all victims of domestic violence will want an exemption. However, those with a genuine concern about the possibility of abuse should be exempt and the claim should be processed by the agency most familiar with the family’s circumstances (i.e., the child care agency).<sup>3</sup>
5. *Who pays fees and costs?* Some families do not use the state child support system because the associated fees and costs are beyond their means. To require such families to pay fees and costs in order to obtain subsidized care is to deny those families a child care subsidy. The state should waive any application fee and process the case. If it generally seeks other fees and costs in child support

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<sup>3</sup> For a more complete discussion of this issue, see Susan Notar and Vicki Turetsky, Models for Safe Child Support Enforcement, *American University Journal of Gender, Social Policy & the Law*, vol. 8, No.3 pp. 657-716 (2001).

cases, it should seek them from the non-custodial parent and develop a system so that they can be paid over time. Fees and costs should not come from the child support owed to the child.

Below is a chart providing information about some of the policies states have adopted so far. It is by no means detailed or comprehensive, but it does provide a starting place for determining how states are approaching the issues.<sup>4</sup>

It is also worth noting that one state (Pennsylvania) had a child support cooperation requirement for those seeking subsidized child care and has recently decided to abandon this policy. (Proposed regulations eliminating the requirement were issued in September 2004.) One impetus for this change was a study by an organization called Child Care Matters. The organization surveyed 92 southeastern Pennsylvania child care program directors who accept children receiving state subsidies. They found that 28 percent of enrolled children dropped out of regional early education programs when the cooperation requirement went into effect. The directors reported that many families had difficulty meeting the requirements because the legal system was so complex and parents had to take time off from work to go to court. They also found that a high percentage of families had informal, voluntary support agreements. The report concluded: “We believe a more sensitive approach that helps parents through the child support process voluntarily, coupled with full acceptance of parents’ privately-negotiated agreements, would achieve the results we all want—greater financial and emotional contributions from absent parents without limiting parents’ child care choices.”<sup>5</sup>

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<sup>4</sup> In addition to the states listed in the chart, the District of Columbia, Florida, Maryland, and Utah appear to impose a child support cooperation requirement on subsidized child care applicants/recipients. However, details of their requirements were not found.

<sup>5</sup> See press release from the Delaware Valley Child Care Council, Child Care Matters, “Keep Working Families Working” August 10, 2004. See, also, Gina Adams, Kathleen Snyder, and Jodi Sandfort, *Getting and Retaining Child Care Assistance: How Policy and Practice Influence Parent’s Experiences* (Urban Institute 2002) available at [www.urban.org/UploadedPDF/310451.pdf](http://www.urban.org/UploadedPDF/310451.pdf).

**STATE CHILD SUPPORT COOPERATION PROVISIONS FOR PARENTS  
SEEKING CHILD CARE FUNDED BY THE CHILD CARE DEVELOPMENT  
FUND (CCDF)**

<b>STATE</b>	<b>BASIC IV-D PROVISION</b>	<b>ALTERNATIVE PROVIDED</b>	<b>TIME FRAME PROVIDED</b>	<b>APPLICATION FEE WAIVED</b>	<b>GOOD CAUSE EXCEPTION</b>
<b>Arkansas</b>	Parents who are separated, divorced, or have never married must apply for IV-D services if not currently receiving child support. Relatives with physical custody must pursue support from all absent parents living in a separate household.	Yes. Case head must furnish proof that child support is being pursued through a private attorney or that there is an existing case/order pursuant to which payments are being made.	Immediately. Facts must be documented in case file.	Not addressed.	Yes. In cases of documented domestic violence, where there is joint custody, the absent parent is deceased or is incarcerated and expected to remain so throughout the certification period.
<b>Connecticut</b>	Custodial parent or person acting <i>in loco parentis</i> must agree to apply for IV-D services for child receiving child care subsidy.	Yes. If support is being actively pursued through private legal means <i>or</i> the family is already meeting a TANF/Medicaid child support cooperation requirement.	Not later than the first re-determination after the initial date of eligibility.	Yes.	Yes. TANF standard applies.

<b>Maryland</b>	Applicants (parents and those with physical custody) must agree to pursue establishment and enforcement of child support.	Applicants may provide documentation that they are already pursuing or receiving support. If they do not, the local case manager will refer them to the child support enforcement (CSE) agency.	If the applicant does not provide proof at the time of application, then he/she must provide documentation of CSE services within 60 days of application.	Not addressed.	Yes. Standards similar to those for TANF.
<b>Michigan</b>	Some families are eligible for services regardless of income. These families are not required to pursue child support in order to obtain subsidized child care. All other families <i>may</i> be required to pursue child support.	Not addressed.	Not addressed.	Not addressed.	Not addressed.
<b>Minnesota</b>	Applicants and participants must 1) assign the child care portion of their support order to the state; and 2) cooperate in establishing paternity and enforcing support for all minor children in the household with an absent parent.	Must use state system.	Not addressed.	Not addressed.	Yes. TANF good cause standards.

<b>Mississippi</b>	Parents must apply for IV-D services in order to receive a child care certificate.	No.	A form, signed by the IV-D agency, verifying that the parent has applied for or is already receiving IV-D services must be included in the child care certificate application package.	No. There is a \$25 fee for each absent parent.	No.
<b>Montana</b>	Non-TANF families with absent parents must apply for services from the state child support agency.	Yes. If the absent parent is paying support pursuant to an order recognized by a Montana district court.	Not specified.	Not addressed.	Yes. A household may claim good cause using the state's TANF definition.
<b>Nevada</b>	Child's caretaker must apply for services from the local child support enforcement agency.	No.	An application form is sent to any caretaker who does not already have an open case with the child support agency. The caretaker must return the form within 10 calendar days to the child care agency, which will then file it with the child support office.	Not addressed.	Yes. Similar to TANF standards.
<b>New York</b>	Caretaker must demonstrate that child support is being actively pursued through the local child support enforcement agency.	Yes. If support is being actively pursued through other legal means.	Documentation must be provided by applicants/recipients.	Not addressed.	Yes. Exemption is provided for those who can demonstrate that pursuing child support would adversely affect the health, safety, or welfare of the child or other persons in the child's household.

<b>Oklahoma</b>	Client must pursue child support through a referral to the state child support agency.	No.	Agree at time of application. Referral made at time of certification.	Application fee waived.	Yes. TANF-like standards.
<b>South Dakota</b>	Recipients of child care assistance must cooperate with the child support agency in identifying and locating the absent parents(s), obtaining support payments, establishing paternity, or obtaining other payments or resources legally due.	No.	A recipient must contact the IV-D agency within 6 months of applying for child care services.	Not addressed.	Yes. TANF standards apply.
<b>Texas</b>	The parent or caretaker of a child receiving subsidized child care must cooperate with the child support agency by providing information about the absent parent, helping to locate the absent parent, helping establish paternity, and appearing at court hearings or other meetings to establish support.	No.	At enrollment.	Not addressed.	Yes. Cooperation is not required if paternity is not established after reasonable efforts to do so, the child is the product of incest, or the parent of the child is a victim of domestic violence.