CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES
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Reason for this Transmittal

[x] State Law or Regulation Change
[ ] Federal Law or Regulation Change
[ ] Court Order or Settlement Change
[ ] Clarification requested by One or More Counties
[ ] Initiated by DCSS

October 1, 2003

CSS LETTER: 03-18

ALL IV-D DIRECTORS
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL BOARDS OF SUPERVISORS

SUBJECT: ASSEMBLY BILL 1752

This letter is to inform you of the provisions of Assembly Bill (AB) 1752 (Chapter 225, Statutes of 2003) that affect the child support program and to provide local child support agencies (LCSAs) with instructions for implementing this legislation. AB 1752 was signed by Governor Davis on August 9, 2003 and chaptered on August 11, 2003. The child support provisions of this bill became effective on August 11, 2003.

Following are the provisions of AB 1752:

Section 4055, Family Code - Low-Income Adjustment

AB 1752 amended Family Code (FC) Section 4055 to provide a rebuttable presumption that a child support obligor is entitled to a low-income adjustment to the guideline in any case in which the obligor's net disposable income is less than $1,000 per month. This legislation also eliminated the requirement that the court state in writing or on the record its reasons supporting the adjustment. The obligor is now automatically entitled to receive a low-income adjustment, unless evidence is presented that shows the application of the adjustment is unjust and inappropriate. This applies in all cases, including cases decided by default.

Prior to the passage of this legislation, the low-income adjustment was discretionary and courts required facts to be presented to support the use of a low-income adjustment. The courts were also required to state, in writing or on the record, the reasons, underlying facts, and circumstances supporting the adjustment.

LCSAs shall immediately begin applying the low-income adjustment in judgments and modifications for every case where the obligor's net disposable income is below $1,000

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per month. Based on the guideline calculation, LCSAs should apply the maximum amount of adjustment available to the low-income obligor. If the LCSA has substantial reason to believe that application of all or some of the low-income adjustment would be unjust and inappropriate based on the principles set out in FC 4053 taking into account the impact of the adjustment on the income of the obligor and obligee, the LCSA must present evidence to the court to rebut the presumption that the obligor is entitled to the maximum adjustment.

Section 17400, Family Code - Presumed Income

AB 1752 amended FC 17400(d)(2) by changing the amount of presumed income to be used in support actions in which the obligor's income or income history is unknown. This legislation requires the presumed income amount to be calculated based on the minimum wage as established by the California Industrial Welfare Commission, at 40 hours per week.

The current applicable minimum wage of $6.75 per hour at 40 hours per week results in a weekly income amount of $270.00 and a monthly income of $1,170.00.

Prior to the passage of AB 1752, the law provided that in an action for support, if an obligor's income or income history was unknown, it was presumed to be an amount that resulted in a support order equal to the Minimum Basic Standard of Adequate Care (MBSAC). Changing the presumed income amount to minimum wage is expected to increase current support collection performance and reduce arrears.

LCSAs are instructed to begin using the new presumed income level immediately. As workload permits, LCSAs should review all orders based on presumed income set at MBSAC level to determine if a modification or set aside is warranted.

Section 17432, Family Code - Presumed Income Set Asides

AB 1752 revised the conditions for set aside of judgments or orders for support that are based on presumed income as specified in subdivision (d) of Section 17400.

AB 1752 made the following revisions to FC 17432:

Presumed income orders may be set aside when there is a "substantial difference" between the obligor's actual and presumed income. The definition of "substantial difference" has been amended from 20 percent to 10 percent and specifically applies to upward or downward differences. Prior law allowed the court to set aside child support orders based on presumed income if a recalculation of the order, based on actual income, resulted in a change in the order amount of 20 percent or more between the order based on presumed income and the recalculated order based on actual income.

Due to the reduction in the substantial difference threshold from 20 percent to 10 percent and the reduction of the presumed income amount from MBSAC to minimum wage, the legislation also deleted language that allowed the court to set aside a child support order even if the threshold for a substantial difference was not satisfied but the obligor experienced an extreme financial hardship. Thus, under the new provisions, there must be at least a 10 percent difference between the order that was based on presumed income and the recalculated order based on actual income.

Since applications for relief of the presumed income order can now be filed by a party other than the obligor, AB 1752 deleted the requirement that the application for relief be accompanied by a copy of the answer or other pleading and tax returns. Applications for relief now must be filed together with either an income and expense declaration, a simplified financial statement, or a declaration containing other information concerning income.

FC 17432(e) was amended to place the burden of proving that the obligor's income deviates substantially from the presumed income on the "party seeking to set aside the order." This amendment, along with the above amendment, clarifies that either the obligor, obligee, or LCSA may make a motion to set aside the order.

FC 17432(f) was amended to specify that the time period for filing a motion for relief to be within one year of the date the first collection of money is received by either the LCSA or the obligee. Prior law required that the motion for relief to be filed within a 90-day time period extending from the date the LCSA received the first collection, or from the date that the defendant was served with notice of the collection, whichever date occurred first.

AB 1752 added FC 17432(g) to require the LCSA, within three months from the date the LCSA receives the first collection for any order established using presumed income, to check all appropriate income sources, and if income information exists, the LCSA shall determine if the order qualifies for set aside. If the order qualifies for set aside, the LCSA shall file a motion for relief within one year of the first collection of money.

For example, an LCSA obtains a support order based on presumed income. The LCSA later receives a payment from the obligor. Within three months of receipt of that first payment, the LCSA must check all appropriate income sources to determine if income information exists on the obligor. If income information exists, the LCSA must calculate the child support amount based on actual income in order to determine if the difference between the obligor's actual income and the presumed income would result in an order for support that deviates from the presumed income order by 10 percent, either upward or downward. If so, the LCSA must file a motion for relief to set aside the child support order that was based on presumed income, within one year of the first collection. If the court grants the relief and a new child support order is issued, the new order will have the same commencement date as the order that was set aside.

LCSAs shall immediately implement these new requirements. Department of Child Support Services (DCSS) staff are working with Consortia managers to develop an implementation plan for the new requirement to review presumed income orders within three months of receiving the first collection.

Section 17560, Family Code - Compromise of Arrears

AB 1752 added FC 17560, requiring DCSS to establish a program to compromise arrears owed to the government, if consistent with the best interest of the State. DCSS is now developing this program and will be piloting it in Amador, San Diego, Santa Cruz/San Benito, Solano, and Sonoma counties before statewide rollout scheduled for January 2004. LCSAs not participating in the pilot must not implement the compromise of arrears program prior to receiving further instructions from DCSS. If customers inquire about the program they should be informed that, pursuant to the statute, any parent who withholds payment of child support in anticipation of the compromise program will be ineligible for the program and may be subject to further legal consequences or enforcement actions. Provisions and instructions for implementation of this section will be addressed by separate policy letter.

Section 17522.5, Family Code – Securities Liquidation

AB 1752 simplifies the process for liquidating securities once they have been levied. Prior law required seizure of the original security certificate or stock certificate before the security could be liquidated. Under FC 17522.5, an LCSA or the Franchise Tax Board (FTB) may, after levy, now liquidate a security by asking the holder of the security to liquidate it in a commercially reasonable manner within 20 days of the issuance of the levy. The holder of the security must then transfer the proceeds of the liquidation, less any reasonable commissions or fees, to the LCSA or FTB within five days of liquidation. If the value of the asset exceeds the amount of the levy, the obligor may, within 10 days of the date of the levy, instruct the holder of the security as to which assets to sell in order to satisfy the levy.

Section 19271.6, Revenue and Taxation Code - Financial Institution Data Match System

AB 1752 amended Revenue and Taxation Code (RTC) 19271.6 to require that all cases, including cases with functioning wage assignments and cases that have been open with the LCSA for less than 90 days, be submitted to the FTB for performing the Financial Institution Data Match (FIDM). Through the FIDM process, delinquent support obligors are matched with account holders in financial institutions for purposes of collecting delinquent support. Under prior law, FTB could not use the FIDM process for obligors who were in compliance with a wage assignment, had at least 50 percent of their wages withheld by wage assignment, or had their cases open with the LCSA for less than 90 days, unless the LCSA specifically requested such action.

RTC 19271.6(j) now requires that all cases, except cases where a jurisdiction other than California is enforcing the support order, be submitted to FTB for the FIDM process. However, pursuant to subdivision (l), if (1) an obligor is in compliance with a court order to make scheduled payments on a child support arrears obligation, (2) an earnings assignment order or an order/notice to withhold that includes an amount for past-due support is in place and earnings are being withheld pursuant to that order, or (3) at least 50 percent of the obligor's earnings are currently being withheld for support, the first $3,500 of an obligor's assets in a financial institution are exempt from collection without a claim of exemption being filed.

In addition to the $3,500 exemption, an obligor in the three situations set out in subdivision (l) may apply for a claim of exemption for up to the total amount of funds levied. The only basis for a claim of exemption is the financial hardship of the obligor and the obligor's dependents. To make the claim of exemption, the obligor must file a claim of exemption with the LCSA as set forth in the Code of Civil Procedure Sections 703.510 and following. The LCSA must notify FTB within two days of receipt of the claim of exemption. FTB will then direct the financial institution to hold the funds pending resolution of the claim. If the LCSA agrees that granting the exemption is appropriate, it must notify FTB to release the funds. If the LCSA opposes the claim, the LCSA must calendar the matter with the court within 10 days after receipt of the claim of exemption. The court will then determine whether to allow the claim of exemption and, if so, in what amount. This may be done by stipulation of the parties. Within two days of a court order resolving the claim, the LCSA will provide FTB with a copy of the order; and FTB will instruct the financial institution to remit or release the obligor's assets in accordance with the order.

While the changes to RTC 19271.6 are effective immediately, FTB will need approximately six months to update its system to accommodate the exemptions in subdivision (l). DCSS will provide more detailed instructions to the LCSAs regarding the requirements of subdivision (l) before those cases will be submitted to FTB for the FIDM process. DCSS will work with the Consortia managers to make the necessary changes for the interface with FTB. Until such time that the detailed instructions are available, the Consortia are requested to make no changes to their respective systems.

Section 10088, Welfare and Institutions Code - Federal Automation Penalties

AB 1752 authorizes the Department of Finance (DOF) in 2003-04 to allocate to counties up to 25 percent of the federal penalty. DOF shall determine the share of the penalty to be allocated to each county based upon the LCSA's proportionate share of the total of all counties' LCSA administrative costs. Counties will be notified if DOF determines that a portion of the federal penalty is to be paid by the counties.

Local Child Support Agency Allocation Methodology

Section 39 of AB 1752 requires DCSS to convene a workgroup to evaluate the child support program allocation methodology and report to the budget committees of the Legislature by March 31, 2004. The bill also requires DCSS to work with stakeholders to make changes to DCSS's existing budgeting display and the information provided to the Legislature pertaining to the child support program.

LCSA Staff Reduction

Section 40 of AB 1752 requires that reductions to LCSA allocations made in the 2003-04 fiscal year be implemented in a manner that does not negatively impact child support collections. The bill also requires LCSAs that plan to implement allocation reductions through staff reductions to develop a plan that minimizes any negative effect on child support collections and other performance measurements.

If you have any questions about the policy provisions of AB 1752, please contact Shar Schroepfer, Chief, Policy Branch at (916) 464-5478. Any questions pertaining to the Consortia modifications should be directed to Steve Grogan at (916) 464-5270.

Sincerely,

/s/Donna Hershkowitz

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Child Support Services Division