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April 9, 2007

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: Senate Bill 154 and House Bill 263

Dear Governor O'Malley:

We have reviewed and hereby approve Senate Bill 154 and House Bill 263, identical bills entitled "Child Support Enforcement - Child Support Payment Incentive Program." In our review of the bill we have considered whether the bills violate 42 U.S.C. § 666(a)(9) and have concluded that they do not.

Senate Bill 154 and House Bill 263 require the Child Support Enforcement Administration ("CSEA" or "the agency") to develop a Child Support Payment Incentive Program to encourage payment of child support in cases in which an assignment has been made by entering into agreements with child support obligors in exchange for reductions in the amount of arrearages. Only obligors whose income is less than 225% of the federal poverty level qualify for the program. The bill sets out factors that the CSEA shall apply in determining whether to allow an obligor to participate in the program, including whether the obligor has a current ability to pay, whether the reduction of arrearages will encourage the obligor's economic stability and whether the agreement serves the best interest of the children whom the obligor is required to support. If any of these factors are present there is a presumption that it is in the best interests of the State to authorize the obligor to participate.
A refusal to permit an obligor to participate can be appealed to the Office of Administrative Hearings.

If an obligor is permitted to participate in the program, the arrearages are to be

reduced by 50% if the obligor makes twelve months of uninterrupted court-ordered payments, and are to be reduced to zero if the obligor makes 24 months of uninterrupted court-ordered payments. Child support enforcement actions are to be suspended during the agreement unless the suspension would violate federal law. The agreement, and reductions of arrearages thereunder are to be filed with the court. The agreement is to be terminated if the obligor fails to make payments equal to two times the monthly payment amounts. An obligor who is terminated from a program more than twice is not eligible for future participation.

Federal law requires, at 42 U.S.C. § 666(a)(9):

> (9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2) [concerning procedures for establishing paternity and for establishing, modifying, and enforcing support obligations], is (on and after the date it is due) –
>
> (A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,
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> (B) entitled as a judgment to full faith and credit in such State and in any other State, and
>
> (C) not subject to retroactive modification by such State or by any other State; except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

There are as yet no decisions on whether this provision would permit modification by a child support enforcement agency by agreement with the obligor where the right to child support payments has been assigned to the agency. In such a case, the agency acts as a party to the judgment, rather as "the State." Maryland law already provides for such agreements, and it is our view that they cannot be said to be clearly in violation of the law.

Senate Bill 263 and House Bill 263, like current law, provide for agreements in

cases where the right to child support payments has been assigned to the agency. However, the bills provide more guidance for the agency in making the decisions, and provide a presumption that could require the agency to act where no factors act to rebut that presumption. Nevertheless, significant authority is left to the agency to weigh the factors and to determine when the presumption set up by the bill has effectively been rebutted and the agreement would not be in the best interests of the State. For these reasons, it is our view that the changes do not bring the law into conflict with the federal law.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG./KMR/kmr
cc: Joseph Bryce
Secretary of State
Karl Aro