NCSEA's Congressional Letter to Improve the Strengthening Families for Success Act

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Introduced last year in both the Senate (S. 4844) and House (H.R. 8704), the Strengthening Families for Success Act (SFSA 2020) proposed sweeping changes to the child support program. The most significant change would phase out Title IV-A cost recovery and require states to pass-through all collected current support and arrearage payments to families who currently and formerly received TANF. In addition, SFSA 2020 would have required states to disregard current support collected in determining a family's TANF eligibility and benefit levels. Other sections of SFSA 2020 proposed further impactful changes to the child support and foster care programs.

Work by the Policy & Government Relations Committee

Immediately after SFSA 2020 was introduced, NCSEA's Policy and Government Relations Committee (PGR) began its work to examine and understand all the key provisions and their impact. PGR divided the work, with one group focusing on the changes to TANF cost recovery and another studying the Title IV-E foster care provisions. The last group looked at SFSA 2020's ban on the recovery of Medicaid costs for births.

Each group developed a paper with key information that informed PGR's extensive discussions on recommendations. After months of work, PGR presented its preliminary recommendations to the NCSEA Board and the Directors provided their feedback. On August 1, 2021, the Board approved the letter to Congress on SFSA 2020 [found here]. While it voiced support for many of the provisions, NCSEA urged the sponsors of SFSA 2020 (Senators Wyden and Van Hollen and Representative Davis) to make key changes before reintroducing the legislation later this year.

Title IV-A Cost Recovery

SFSA 2020 proposed that, effective October 1, 2023, states would be required to pay all of the current support and arrearage payments collected by the state on behalf of a TANF family to the TANF family. In addition, states would be required to disregard the current support amount for purposes of determining Title IV-A eligibility and the amount and type of assistance. For former TANF families, states would be required effective October 1, 2025, to pay all of the current support and arrearage payments collected by the state to the former TANF family and to treat the amounts collected pursuant to an assignment as if the amounts had never been assigned. Recognizing that states will need to undergo significant system changes to effectuate these requirements, SFSA 2020 provided for 90% federal financial participation (FFP) for expenditures related to the planning, design, development, installation, or enhancement of a system for federal fiscal years 2022 and 2023.

In addressing these monumental proposed changes to the child support program, NCSEA first acknowledged the benefit of expanded state pass-through and disregard policies to families and programs. Passed-through support helps families become economically self-sufficient more quickly and permanently. State child support programs benefit from pass-through and distribution policies that are more closely aligned with the mission of promoting familial self-sufficiency, and eliminating cost recovery would vastly simplify program administration.

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However, states should have the option, as opposed to a mandate, to eliminate TANF cost recovery from their programs. NCSEA explained that a federal mandate would have widely varying impacts across states given the diversity of their child support program funding structures as well as TANF and child support policies. Because many states use retained collections as a source of state funding for their child support program and draw federal matching funds that triple the value of the recoveries, there is a significant fiscal impact at stake that could harm the child support program and the millions of families it serves.

NCSEA also pointed out that there is wide variation in the extent to which states have acted on existing pass-through and disregard options currently in federal law. As of May 2020, half of states, as well as the District of Columbia and Puerto Rico, pass through some or all child support without

reducing the family's cash assistance grant. And under the TANF block grant, states have wide latitude to set TANF income criteria and benefits levels. A state option allows states discretion to develop a pass-through and disregard policy that is congruent with its TANF program.

NCSEA urged additional funding to support those states choosing to pass through all collected current support and arrearage payments. Although SFSA did contain some fiscal relief to states, namely 1) forgoing the federal share of retained collections and 2) temporarily increasing to 90 percent FFP on states' costs to adapt their systems for the changes in distribution, more financial incentives will allow most states to move forward out of cost recovery. The incentives could include:

- Backfilling the loss of state IV-A recoveries to help states manage the negative revenue impact on state child support programs and state services
- Increasing federal child support performance incentive funding
- Allowing states to pilot expanded pass-through and disregard policies and to defray the loss of state-retained collections with Section 1115 waivers
- Expanding allowable IV-D program expenditures to include employment services for parents who owe support

Finally, NCSEA asked that states have the option to maintain distribution provided by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA distribution). In SFSA 2020, states were required to distribute support in accordance with the Deficit Reduction Act (DRA) of 2005, which would mean that 49 of the 54 states and territories that currently use PRWORA distribution would have had to implement a new distribution method. While DRA distribution is more advantageous to families because federal income tax refund intercepts go to the family instead of state assigned arrears, NCSEA urged that the method of distribution under PRWORA remain a state option due to the enormous impact the change would have on almost every state.

Foster Care Referrals

SFSA 2020 also contained proposed changes to cost recovery for foster care. Instead of using current support collected to reimburse the cost of foster care, the support would either be paid to the foster parent or kinship caregiver, or deposited into a savings account to be used for the child's future needs in the event of reunification with the family, including reunification services. Collections on arrears would be deposited into a savings account for the child's future needs.

NCSEA expressed support for the inclusion of foster care provisions and asked that they be expanded to align with NCSEA's recent resolution on foster care referrals. That resolution recognized that some studies have found that child support orders may actually prolong the period of time a child spends in a foster care placement and add to, rather than recoup, program costs. NCSEA also explained that many foster care referrals are not cost effective, particularly against a struggling intact family or a former custodial parent ("removal parent") with whom reunification is planned. Eliminating referrals from removal parents seeking reunification helps to keep financial resources in the home and is consistent with the draft legislation's aim to reduce the recovery mission of the child support program.

NCSEA urged the bill sponsors to provide in the reintroduced legislation that foster care referrals from the Title IV-E program to the Title IV-D child support program be guided by the best interests of the child. Under that standard, there will be fewer referrals or closure of cases against removal parents or in cases where both parents reside together.

Although the authority to make referrals selectively already exists at the state level, it would benefit programs and families to include this authority in the new legislation. If reunification stops becoming a realistic goal for the family, the child welfare agency can consider referring the case to the child support program.

NCSEA also weighed in on SFSA 2020's proposal for a foster care study and report by the Government Accountability Office (GAO), and suggested that the study would be more productive if conducted by a joint federal-state workgroup of representatives from the IV-E and IV-D programs. This joint federal-state workgroup of subject matter experts could develop badly needed recommendations on referral criteria (in more depth than addressed here), the desirability and feasibility of child savings accounts, data sharing, and other issues concerning the most effective means of coordinating between the IV-D and IV-E programs. Such an approach would still yield an informative and much-needed policy- and procedurally-oriented report, but would also leverage the existing expertise of program professionals at the federal and state levels. After recommendations are implemented, it may be desirable at that point to have a GAO study to assess the implementation status and effectiveness of the recommended changes.

Finally, NCSEA also suggests that consideration of child saving accounts be assigned to the workgroup for further analysis. As with TANF cost recovery, NCSEA strongly supports states examining retained collections in foster care cases. However, while depositing collected child support into a savings account for a child in foster care could benefit the child long-term, it also creates several challenges. These include ownership of the account, accrual of interest, income tax responsibilities for the account holder or child, and potential implications of turning over potentially large sums of money to a child at the age of 18. If the workgroup looks at and addresses those issues and recommends child savings accounts for collected support, the creation and management of these savings accounts for children receiving services should be placed with the IV-E program and not the IV-D program.

Medicaid Birth Costs

Current law allows states to recover birth expenses paid by Medicaid through child support obligations, which reduces the support provided to children and families. SFSA 2020 would ban Medicaid-cost recovery for births beginning in federal fiscal year 2026 and would provide an option for states to implement earlier.

Although NCSEA typically does not support mandates on state child support programs, it supported SFSA 2020's ban on the recovery of Medicaid costs for births. Forty-eight states have shifted away from and no longer recover Medicaid birth costs through the IV-D program, while the two that still do have seen a 35%-38% decline in the amount of recovery since 2011. In these two states, eliminating the practice will have negative budget impacts to both the Medicaid program ($12-$14M annually) and the child support program. However, the amount recovered by the child support program is a small fraction of the millions paid out by Medicaid in birth costs each year.

NCSEA recognizes that recovery of Medicaid costs associated with the birth of a child disproportionally affects low-income families and takes money away from the children in those families. Instead of recouping government costs, the primary purpose of the child support program should be to work towards reliable, consistent financial support for children.

Conclusion

The bill's sponsors have indicated that a bill similar to SFSA 2020 will be reintroduced in 2021. NCSEA is hopeful that its advocacy efforts will result in better legislation for the child support program and families. Many thanks to the 2020-2021 PGR Committee for their work on the letter and PGR: Tish Keahna Kruzan, Lara Webb Fors, Paul Gehm, Michele Ahern, Elizabeth Morgan, Jane Venohr, Jolie Sheppick, Kate Cooper Richardson, Amy Roehrenbeck, Connie Chesnik, Jim Fleming, Mary Johnson, Lisa Skenandore, Margot Bean, Nicholas Palos, Kay Farley, Erin Frisch, Robbie Endris, and Lori Bengston.

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