# Summary of Public Hearing Comments and Department Response

## Child Support Percentage of Income Standard

## DCF 150/CR 16-075

A public hearing was held on December 20, 2016, in Madison. Comments were received from the following:

1. Senator LaTonya Johnson (D-Milwaukee)

2. Wisconsin Child Support Enforcement Association (WCSEA)
   Janet Nelson, President. Milwaukee County
   Maureen Atwell, Legislative Committee Member. Waukesha County

3. Milwaukee County Child Support Services
   Jim Sullivan, Director

4. ABC for Health
   Richard Lavigne, Managing Attorney
   Madison

5. Ben Kain
   Involved Fathers of Wisconsin (President) and National Parents Organization-Wisconsin, (Executive Committee Chair)

The following observed for information only:

- Michael Blumenfeld, Public Affairs Counselor for WCSEA
- Lynne Davis, lobbyist for the State Bar of Wisconsin
- Tiffany Highstone, attorney and member of State Bar of Wisconsin Family Law Section
- Susan Stanton, Center for Family Policy and Practice
- Tony Bickel, Wisconsin Fathers for Children and Families
- Steve Blake, Dads of Wisconsin
- Polo Rocha, WisPolitics.com
- Jim Rader, WISC
- Greg Neumann and Matt Behrens, WKOW

**Comment 1**: The department received numerous comments objecting to changes in the rule on determining child support in cases involving high-income payers. One commenter supported the proposed changes. (commenters 1, 2, and 3 opposed; commenter 5 supported)

> *Response:* The department has removed the proposed changes to the high-income formula from the rule.

**Comment 2:** The proposal relating to imputation of income is a positive change. (commenter 2)

> *Response:* The department has removed the proposed changes related to the imputation of income in light of recently enacted federal regulations that require the department conduct a more extensive analysis of the low-income guidelines.

**Comment 3**: A commenter expressed concern about the proposed changes requiring parents to provide courts with detailed lists of variable costs at the time support is ordered. Parents are generally unable to identify realistic future variable costs at the time a support order is entered. (commenter 2)

> *Response*: Currently, variable costs are shared by the parents in proportion to the amount of time that each parent has placement of the children. Although variable costs are defined, there is nothing that prevents a parent from incurring significant costs on an activity and then expecting the other parent to assume their proportionate share of the cost. The proposed changes are an attempt to ensure that both parents have some involvement in the determination of variable costs that are to be shared between them. Wisconsin law also provides that the passage of 33 months creates a rebuttable presumption of a substantial change in circumstances. There is, therefore, a definite and limited period of time for which the parents need to determine future variable costs.

**Comment 4**: One commenter expressed concern about the proposed change that a change in variable costs is not, in and of itself, a substantial change in circumstances justifying a modification of the underlying support order. (commenter 2)

> *Response*: As noted above, there is nothing that currently prevents one parent from making a unilateral decision to incur a variable cost and then expecting the other parent to contribute their proportionate share. Substantial change of circumstances refers to a change in the circumstances of one of the parties, not a desire of one party to enroll the child in an additional activity and incur additional variable costs.

**Comment 5**: One commenter expressed concern that the requirement to create lists of variable costs would add a considerable labor burden to individual child support agencies when entering into stipulated agreements. (commenter 2)

> *Response*: Many calls to child support agencies and requests for review are based on disagreements over variable costs, often related to unilateral decisions made by one parent. The Child Support Guidelines Advisory Committee recommended the inclusion of a requirement for a list of variable costs to be shared between the parents as a means of establishing a common understanding between the parents. The department believes this approach will reduce the number of phone calls and requests for review.

**Comment 6**: One commenter expressed concern that the provisions in s. DCF 150.04 (6) (c) that address serial parents who have shared placement of a subsequent child do not address serial family parents who have a non-intact original family. (commenter 2)

*Response*: The department has amended s. DCF 150.04 (6) (c) 1. to read:

1. Determine the first child support obligation by either of the following:
   a. The court-ordered amount of the first child support obligation.
   b. If no court-ordered support obligation exists, multiplying the appropriate percentage under DCF 150.03 (1) by the parent's monthly income available for child support.

**Comment 7**: One commenter expressed concern about the change to s. DCF 150.05 (2) (a), which states that the recovery of birth costs is inappropriate in cases where the father is a member of an intact family with the mother and child "at the time paternity or support is established, and the father's income, if any, contributes to the support of the child." The commenter suggested that the proposed additional language is unnecessary in that it only protects fathers who have an actual ability to contribute to the cost incurred by the State for birth expenses. (commenter 2)

*Response*: When a mother applies for public assistance and indicates that the father of her child does not live with her and the child, a referral is sent to the child support agency for the establishment of paternity and child support. The child support agency will commence a paternity action, seeking the establishment of paternity, orders for child support, custody and placement and the recovery of birth costs. If the mother had indicated that the father was living with the family and his income was taken into consideration in determining the family's eligibility for assistance, department policy would have precluded the agency from seeking the recovery of birth costs. The Guidelines Advisory Committee reviewed current policy and recommended that in situations where the father is contributing to the support of the child in an intact family, the recovery of birth costs is inappropriate.

**Comment 8**: Two commenters opposed the recovery of birth costs paid on behalf of MA eligible mothers. (commenters 4 and 5)

*Response*: Section 767.89 (3) (e) 1., Stats., and s. DCF 150.05 (2) already limit the recovery of birth expenses when the father has low or no income. The Guidelines Advisory Committee discussed the issue of birth cost recovery extensively and those members who supported the continuation of birth cost recovery noted that fathers who have the ability to pay should be required to contribute when either the mother or the state has paid the cost of the birth.

**Comment 9:** One commenter indicated they did not support the proposed change clarifying that veteran's disability benefits are to be considered income available for child support. (commenter 5)

*Response*: Current provisions in DCF 150 already provide for the consideration of veteran's benefits as income when calculating child support. However, given the wide variety and complexity of veteran's benefits, the department proposed a clarification to the definition that limited the portion of veteran's benefits that could be considered income for the purpose of setting child support to disability compensation benefits intended to replace income.

**Comment 10**: One commenter indicated that while they supported the consideration of equivalent care when determining eligibility for application of the shared-placement formula, they did not support the requirement that a meal be provided in order to be considered equivalent care. (commenter 5)

*Response*: Periods of placement are determined under s. DCF 150.02 by calculating the number of overnights or their equivalent ordered to be provided by the parents. "Equivalent care" is defined in s. DCF 15002 (10) as a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight. Those costs include the provision of meals.

**Comment 11**: One commenter indicated they did not support the proposed rule changing the measure of reasonable cost for health insurance from 5% of each parent's gross monthly income to 10% of the gross monthly income of each parent and applying it to the full cost of the policy as opposed to the incremental cost of adding the child(ren). (commenter 5)

*Response*: Based on a review of literature on health care costs, the Guidelines Advisory Committee determined that the affordability standard of 5% is low given today's health insurance costs. The use of a 5% standard, therefore, had the effect of exempting most noncustodial parents from liability for medical support. The 10% standard is a more realistic representation of reasonable cost. The department also recognized that the cost to add a child or children to a parent's policy was often significantly less than the cost to obtain single coverage. Measuring the reasonableness of cost against the full cost of the health care coverage rather than just the incremental cost of adding the child/ren more accurately reflects the reasonableness of the total cost.

**Comment 12**: The same commenter indicated they also did not support the proposed change providing that a contribution toward the cost of insurance for the children from the custodial parent should not exceed the incremental cost to add the children to the policy. (commenter 5)

*Response*: The provision is drafted to ensure that custodial parents are responsible only for contributing to the cost of the child/ren's health care coverage and not the cost of the noncustodial parent's health care coverage.