

Oregon Child Support Program
2011-12 Child Support Guidelines Review

Director's Response
to
Guidelines Advisory Committee
Report and Recommendations

May 24, 2012

I would like extend my profound gratitude, and that of the Oregon Child Support Program and the Oregon Department of Justice, to the members of the Guidelines Advisory Committee. Each of you gave generously of your time, effort, and insight over the last year. Your thoughtful discussions and critical analysis have given us a better understanding of the support guidelines. While each member was selected to represent a particular constituency, I was struck by the members' consideration of a broad range of interests. Your recommendations promise to improve the fairness and adequacy of Oregon child support awards while making the guidelines and calculators more accessible to the practitioners and parents who rely on them. Your efforts have set a new standard for future quadrennial guideline reviews.

I asked the Committee to develop its recommendations in light of four guiding principles:

1. The guidelines produce fair awards.
2. The rules are understandable to families and practitioners.
3. The calculation required to implement the rule is not complex.
4. The outcomes are enforceable.

Some compromises result inevitably from multiple priorities. For example, the calculation needed to develop the new parenting time curve is a complex statistical formula. It results, however, in substantial improvements in fairness and enforceability. It also can be implemented simply, by providing a table rather than incorporating the full formula. Ultimately, this solution, like the majority of the Committee's recommendations, satisfies all of these principles.

In the following sections, I respond to the Committee's recommendations in each subject area, and I accept the Committee's recommendations nearly in full. In the few instances in which I do not accept a recommendation, it is because, in my judgment, a different approach would better meet the four principles, or because the impact, including the expense, of implementing the recommendation is prohibitive at this point.

The next step towards implementation is to incorporate these decisions into the draft worksheet, which we will use to develop thousands of case scenarios. This will permit us to test the assumptions and assess the impacts of the proposals on a wide variety of actual case scenarios. If we find unintended consequences, we may have to revise these decisions. Similarly, the recommendations represent significant implementation impact. After updating the worksheets and calculator, the

recommendations require that we update dozens of forms the Program uses to issue and enforce child support orders, and the software we use to generate those forms. If we find the cost or impact of implementing a particular recommendation is prohibitive—a decision we will make in light of its anticipated benefit—we may delay that recommendation for the next quadrennial guidelines review.

That said, with only a few exceptions, I intend to implement the Committee’s recommendations. Once again, the members of the Committee and the firms, organizations, and agencies they represent have my deepest thanks.

My decisions follow.

Medical Support

I accept the Committee’s medical support recommendations subject to the following comments.

Apportioning Health Insurance Cost Between Parents (page 5)

I accept the Committee’s recommendation. However, the draft rule language needs correction: The formula cannot divide the cost between the parents based solely on four percent of each parent’s adjusted income. Under ORS 25.323(7), a medical support clause may not order a parent whose income is at or below full-time work at the Oregon minimum wage to pay for health insurance; therefore, such a parent’s share will be zero percent, while the other parent’s share will be 100 percent. The draft support worksheet already reflects this distinction. The rule must also.

Actual Cost vs. Reasonable-Cost Cap (page 6)

I accept the minority recommendation because it supports the important public policy of ensuring continuing health care coverage for children and best serves the goals of ensuring fair and enforceable orders. A child support order should include health insurance up to the full reasonable-in-cost amount, whether available at the time the order is entered or in the future. As long as health insurance remains within the reasonable-in-cost cap, a cost increase should not make a parent’s health insurance obligation unenforceable.

The majority’s points are well taken. The guideline rule, the judgment, and the worksheet must clearly express the obligation. Those documents must clearly base the

requirement for future coverage on the parents' combined obligation for health insurance, which may exceed one parent's presumptive contribution. The medical support rule will need to be revised to clarify that health insurance will be considered affordable whenever the cost is less than the parents' combined reasonable-in-cost caps, even if the amount paid by one parent exceeds that parent's individual reasonable-in-cost cap.

This decision extends only to the requirement to provide future health insurance coverage, not to the cost apportioned between the parents in the guidelines calculation. I fully accept the Committee's recommendation to divide the actual cost of coverage between the parents when the support obligation is determined. A parent who later pays too much (or receives too little) support because the cost of medical insurance increases or decreases may seek a modification of the order.

Double Insurance Coverage (page 7)

I accept the Committee's recommendation, with one addition. The recommendation does not offer a method for determining which insurance to order when both parents have coverage available at a reasonable cost and the parents share parenting time equally (50/50). In these cases, if the parents do not agree on the preferred policy, the court, administrator, or administrative law judge will select by default the coverage that covers the children at the least cost.

Is Four Percent of Adjusted Income Adequate? (page 8)

I accept the Committee's recommendation, subject to test results indicating this approach will result in a positive impact on children's coverage without imposing an excessive burden on parents. While the presumptive amount imposes a cost burden on parents similar to the current guidelines, it better supports the important public policy of increasing coverage for children than the approach used under the current guidelines.

Cash Medical Support When No Health Insurance is Available (page 8)

I accept the Committee's recommendation to order cash medical support consistent with ORS 25.323 in an amount equal to the parent's individual reasonable cost amount. However, the text of the report goes too far in requiring cash medical or findings. First, cash medical support is only required where neither parent provides

appropriate private health insurance. There is no requirement for cash medical or alternative findings where a parent provides private insurance. Second, the court, administrator, or administrative law judge may enter findings in lieu of cash medical regardless of whether the child receives Medicaid benefits.

The support worksheet and calculator should reflect this scheme by offering cash medical only where appropriate: in place of health insurance where insurance is unavailable. The worksheet and calculator should also continue to allow a user (typically Program staff) to seek cash medical support provisions as a contingency when health insurance is unavailable. This decision follows the principle of reducing the calculation's complexity.

Effect of ORS 107.106 Clause in Dissolution Decree (page 13)

I accept the Committee's recommendation. The language to appear in program orders, however, should be more definite.

***This action does not modify a** provision in an underlying court order that requires parents to share the cost of uninsured medical expenses. ~~is not changed by this modification.~~ Amounts a parent pays as paid for cash medical support under this order may ~~can be used to~~ offset any obligation for uninsured expenses imposed by the underlying ~~court order~~ judgment unless otherwise noted in that judgment. Credit for an offset must be sought in court.*

\$250 of Medical Expenses Included in Obligation Scale (page 14)

I accept the Committee's recommendation to include commentary clarifying that the "ordinary medical expenses" covered in the first \$250 per child per year include the incidental out-of-pocket expenses such as "band-aids, co-pays for doctor's well visits and over the counter medication." These expenses are different from the unreimbursed medical expenses typically contemplated by ORS 107.106. This approach is consistent with the information provided by Policy Studies Inc. in the 2006 Economic Study that formed the basis of the current guideline scale and formula. By eliminating the requirement for parents to document ordinary medical expenses, this decision reduces the calculation's complexity.

Parenting Time Credit

I accept the Committee's recommendations regarding the parenting time credit.

Child Attending School

I agree with the Committee's analysis and accept recommendations 1, 2, 6, and 7 (page 23). However, as a practical matter, we are unable to implement recommendations 3, 4, and 5 at this point because they would make the calculation and resulting judgment significantly more complex and more difficult to enforce. Those recommendations would produce separate and different child support amounts for minor children and Children Attending School, applying credits only to the minor children and, where the self-support reserve limits the support amount, prioritizing support for minor children above support for Children Attending School.

The Committee's analysis and approach represent sound public policy. Neither parenting time nor daycare expense is relevant to a child away at college. However, the proposed approach would incur significant implementation costs. While the resulting *process* would be objectively fairer, there is little evidence that it would actually result in substantially more just and appropriate support awards. The recommended system would require a fundamental redesign and rebuild of the child support calculator, the Program's document generation system, the child support worksheet, and the support summary (as demonstrated by the draft worksheet included with the Report and Recommendations).

On average, the results expected under the proposed system actually would be similar to results under the current system. By removing Children Attending School from the parenting time credit, the system increases their support. To address this problem, the Committee recommended prioritizing support for minor children and making Children Attending School responsible for a third of their own support. The net result looks much like a household where all children have approximately one-third parenting time, but requires a much more complex process.

At this point, the incremental increase in fairness that would result in some cases from implementing this portion of the recommendation cannot justify the Program's use of the time, money, and resources to implement the full recommendation or the increase in complexity that would result for staff, practitioners, and parents. We will preserve, however, the sound principles in the report for consideration in the next guidelines review.

For now, we will begin testing a system like that in place between 2007 and 2009. The calculation will apply parenting time and child care adjustments to the minor children only, but will recombine support for minor children and Children Attending School to provide a single guideline amount for all children. In some individual cases, this may mean that the guideline result could be found to be unjust or inappropriate. As in any case, an unjust or inappropriate result would be subject to rebuttal.

Income

I accept the Committee's income recommendations with the exception of recommendation 4 (page 27). A parent's cost for his or her own health insurance premium is necessarily part of the parent's self-support. Just as a parent must retain enough income to meet basic material needs, a parent must be healthy in order to earn income and provide support. The current approach fails to address the parent's basic needs and the consequent implementation is confusing to parents and practitioners and technically problematic. Therefore, the parent's cost for his or her own health insurance premium should be deducted from income, whether or not it is necessary to insure the child. This decision will serve all four goals: it will result in fairer orders, less confusion for parties and practitioners, a much simpler calculation, and more easily enforced support judgments.

Miscellaneous Issues

I accept the Committee's recommendations in this category, with one minor clarification (page 31). There may be times when the Program finds it necessary to update guidelines commentary between guidelines reviews. In these circumstances, we will *inform* practitioners and the public of the changes, but will not institute a formal *notice* process.

Design

I accept the Committee's recommendations in this category.