What’s Next for the Guidelines Review Panel?

• The Panel’s report is due to the General Assembly in December 2017

• Report will include information about the Panel’s meetings and recommendations for action and/or legislation

• Staff will draft the report for the Panel’s approval

Attaching Worksheets to Orders

• The Panel agreed to recommend:
  ▫ A requirement that the final guidelines calculation worksheet used to determine a support obligation must be attached to all child support orders
  ▫ The following language should be added to Va. Code Ann. § 20-108.2(B):

          The guidelines relied upon by the court or agency to reach its computation shall be attached to the order.
Update on Guidance for Complex Cases

• In response to the Panel’s request, the Family Law Coalition is working with Division of Child Support Enforcement (DCSE) legal counsel and others to develop guidance for complicated family situations

• Update from Larry Diehl, Esq.
Right-Sizing Orders

- Consistent support payments help families achieve economic stability, which is especially important to low-income families.

- As far back as the late 1990s, child support professionals on the national level began to recognize that:
  - Establishing child support orders based on ability to pay results in higher compliance and increased parental communication.
  - Setting realistic orders improves the chances that parents will continue to pay over time.
  - Obligations based on imputed income are often not related to parents’ ability to pay and do not result in compliance.
Right-Sizing Orders

- Engaging parents early in the process of establishing obligations is more likely to:
  - Result in realistic orders
  - Prevent default orders
  - Keep arrears from accumulating
  - Increase parental communication and involvement
Right-Sizing Orders

• Nationally, an estimated 60% of parents who don’t pay support have a limited ability to pay based on factors such as:
  ▫ Income
  ▫ Education level
  ▫ High rate of institutionalization
  ▫ Intermittent employment history

• Enforcement tools may affect payment compliance of higher income obligors but are unlikely to generate payments from parents who do not have the ability to pay
Right-Sizing Orders

The majority of past-due child support is owed by a small percentage of obligors:

• 11% of obligors owe 54% of arrears

• ¾ of those obligors had no reported income or had income less than $10,000 per year
Right-Sizing Orders

- Research over the last 20 years consistently shows parents are more likely to pay reliably if their obligation is 20% of their income or lower.

- When obligations are set too high, parents:
  - Are unlikely to pay
  - Accrue arrears
  - Are likely to go into or remain in the underground economy
Right-Sizing Orders: Research

• 3 primary studies
  ▫ Washington State – 2003
  ▫ California – 2011
  ▫ Maryland – 2014

• Research has focused on:
  ▫ Maximizing collections for children
  ▫ Increasing payment compliance
  ▫ Preventing arrears accrual
  ▫ Addressing barriers to payment
Right-Sizing Orders: Washington Study

- Research on right-sizing orders began with Washington State’s study to address reasons for arrears growth

- Findings:
  - Parents with limited ability to pay DO pay when child support is a low percentage of their monthly income
  - Arrears grow when obligations exceed 20% of parents’ gross income
Right-Sizing Orders: Washington Study

• Findings:
  ▫ Barriers such as substance abuse, limited English, disability, being on public assistance, having multiple cases, etc., affect parents’ ability to pay
  ▫ Parents with high order amounts in relation to income (over 20%) often have multiple barriers
Right-Sizing Orders: California Study

• Largest study: analyzed over 102,000 cases

• Findings:
  ▫ Ratio of Order to Wage (ROTW – obligation amount as percentage of income) is the major predictor of payment compliance and consistency even when taking other barriers into consideration
  ▫ When ROTW is above 19-20%, compliance and payment reliability over time decrease
  ▫ Imputing income at full-time minimum wage when actual income is not available yields little or no future child support payments
Right-Sizing Orders: California Study

Compliance by ROTW in Cases with 1 Child
Right-Sizing Orders: Maryland Study

Findings:

• The large majority of parents (80%) made at least some effort to pay support during the study year

• Low-income parents are far more likely to pay support when they perceive the obligation amount as fair and just

• Orders exceeding 30% of a parent’s income resulted in large decline in collections
Right-Sizing Order: Maryland Study

Findings:

• Parents are significantly more likely to comply when obligation is consistent with actual ability to pay.

• Parents who paid nothing had obligations that represented a significantly higher proportion of their income:

<table>
<thead>
<tr>
<th>Payment Amount</th>
<th>ROTW (Obligation as % of Income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>68%</td>
</tr>
<tr>
<td>100%</td>
<td>18%</td>
</tr>
<tr>
<td>Any part of obligation</td>
<td>20-30%</td>
</tr>
</tbody>
</table>
Right-Sizing Orders: Maryland Study

Imputing Income:

• Basing obligations on imputed income most often creates obligations that are inconsistent with ability to pay

• Income is sometimes imputed—typically at full-time minimum wage—when a parent:
  ▫ Is unemployed or underemployed
  ▫ Fails to appear at court proceedings
  ▫ Does not provide proof of employment or earnings

• An assumption that all adults should be able to find full-time work at minimum wage is questionable in current economy
Right-Sizing Orders: Maryland Study

- Compliance is markedly lower in imputed income cases.
- Imputation is appropriate when parents willfully compromise their ability to pay or hide income, but in other cases....

- There is increasing evidence that imputing income at full-time minimum wage is counterproductive:
  - Custodial parent may have an unrealistic expectation of how much support they will receive.
  - Paying parent may perceive order as unfair because it is based on what the court thinks the parent could earn rather than actual income.
Right-Sizing Orders & the Federal Final Rule


Federal Final Rule: Overview

- *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*
  - Issued December 2016
  - Multiple compliance dates for various sections
  - Revises existing federal regulations governing the child support enforcement program
  - The next Guidelines Review Panel will need to address several new requirements
Final Rule: Purpose

• Set accurate obligations based on parents’ actual ability to pay
• Increase consistent, on-time payments
• Move non-paying cases to paying status
• Increase number of parents supporting their children
• Improve collection rates
• Reduce accumulation of unpaid and uncollectible arrears
• Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices
Final Rule: Goals

- Increase program flexibility to better serve families
- Improve program effectiveness, efficiency, and innovation
- Improve customer service
- Remove barriers identified by employers, states, and families that impede efficient and timely payments
FINAL RULE:
GUIDELINES ISSUES
45 CFR § 302.56(a) – (g)
Guidelines for setting child support awards

Changes to guidelines requirements

<table>
<thead>
<tr>
<th>COMPLIANCE DATE for 302.56(a) - (g)</th>
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</thead>
<tbody>
<tr>
<td>12/2022</td>
</tr>
</tbody>
</table>
45 CFR § 302.56(a) – (g)
Guidelines for setting child support awards

States must:

302.56(a): Establish one set of guidelines for setting and modifying obligations that meets new requirements within certain timeframe

302.56(b): Have procedures to make guidelines available to all persons in the state [prior version limited the availability requirement to people “whose duty it is to set child support awards amounts”].
45 CFR § 302.56(a) – (g)
Guidelines for setting child support awards

Guidelines must:

302.56(c)(1): Provide that obligations are based on the noncustodial parent’s (NCP) earnings, income, and other evidence of ability to pay

i. Consider all earnings and income of NCP*

ii. Consider NCP’s basic subsistence needs* and incorporate low-income adjustment into guidelines

*And, at the state’s discretion, the custodial parent’s (CP) earnings and income and/or basic subsistence needs of the CP and children
iii. If imputation is authorized, must consider NCP’s specific circumstances* including:

<table>
<thead>
<tr>
<th>Age</th>
<th>Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability of employers willing to hire parent</td>
<td>Criminal record &amp; other employment barriers</td>
</tr>
<tr>
<td>Educational attainment</td>
<td>Employment &amp; earnings history</td>
</tr>
<tr>
<td>Health</td>
<td>Job skills</td>
</tr>
<tr>
<td>Literacy</td>
<td>Local job market</td>
</tr>
<tr>
<td>Prevailing community earnings level</td>
<td>Record of seeking work</td>
</tr>
<tr>
<td>Residence</td>
<td>Other relevant background factors</td>
</tr>
</tbody>
</table>

*And, at the state’s discretion, the CP’s specific circumstances

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45 CFR § 302.56(a) – (g)
Guidelines for setting child support awards
302.56(c)(2): Address how parents will provide for health care through private or public coverage and/or cash medical support [replaced health care coverage with private or public coverage]

302.56(c)(3): Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying obligations

45 CFR § 302.56(a) – (g)
Guidelines for setting child support awards
45 CFR § 302.56(a) – (g)
Guidelines for setting child support awards

302.56(e): States must publish on the internet and make accessible to the public the Guidelines Review Panel’s reports and membership, effective date of guidelines, and date of next quadrennial review.

302.56(f): Rebuttable presumption in establishing or modifying order that guidelines calculation is correct amount.

302.56(g): minor language changes (changes will to shall and adds child support before guidelines)
45 CFR § 302.56(h)
Guidelines for setting child support awards

Changes to requirements for quadrennial guidelines review panels

COMPLIANCE DATE for 302.56(h)
2026
Guidelines Review Panel must:

(1) Consider economic data to include

- Labor market data (unemployment rates, hours worked, etc.) by occupation and skill level for state and local job markets
- Impact of guidelines policies and amounts on CPs and NCPs with family income <200% of the federal poverty level
- Factors that influence employment rates among NCPs and compliance with current support orders
45 CFR § 302.56(h)
Guidelines for setting child support awards

(2) Analyze case data on:

• Rates of default and imputed orders and orders determined using low-income adjustment

• Comparison of payments on orders by case characteristics, including whether order was
  ▫ Entered by default
  ▫ Based on imputed income
  ▫ Set using low-income adjustment

(3) Provide a meaningful opportunity for public input, including input from low-income NCPs and CPs and their representatives
Sources for Right-Sizing Orders


