Statute Review Workgroup
Minutes

Date: August 9, 2011	Time: Noon to 1 pm	Location: AOC – Conf. Rm 345A

Minute Taker: Kathy Sekardi, Julie Graber

Members Attending:

- ☒ Comm. Stephen Kupiszewski (Acting Chair) – *telephonic*
- ☒ Theresa Barrett
- ☒ Janet Sell
- ☒ Pat Griffin
- ☐ Brandon Maxwell
- ☐ Veronica Hart Ragland
- ☒ Bianca Varelas Miller - *telephonic*
- ☒ Donald Vert - *telephonic*

Staff/Admin. Support: Kathy Sekardi, Julie Graber

Guests: Mark Ciafullo

Matters Considered: Comm. Kupiszewski commenced the meeting at 12:06 p.m. with a quorum.

Members discussed:

1. <u>Proposed language for personal injury awards</u>

Assistant Attorney General, Janet Sell explained that Arizona is one of the lowest-ranking states in the country regarding collection of child support arrearages. She explained that collection of lump sum payments from personal injury awards have been successful in other states that use the Child Support Lien Network (CSLN), such as Oklahoma, Texas, New Jersey, Maryland and Rhode Island. The proposed language adds A.R.S. § 25-505.02, which allows for the capture of child support arrearages in IV-D cases through the implementation of a mandatory data exchange system between insurance companies and the Department of Economic Security (DES) that would ascertain whether personal injury claimants/obligors owe any arrearages, and then to collect on these arrearages from claimants/obligors' personal injury awards.

To implement this system, DES would develop an insurance industry data match reporting system that uses data exchanges to compare claimant information held by insurance companies with DES' database of obligors who owe arrearages. Insurance companies in turn would be required to exchange information with DES by data matching or by providing the necessary claimant/obligor information (as well as insurer and claims adjuster information) at least 10 business days prior to making payment to the claimant. Insurance companies could also comply by participating in an insurance industry database, which both contained all the necessary information and was accessible by DES, or by utilizing the services of the CSLN through a central reporting agency. If a data match was found the Division of Child Support Enforcement, (DCSE) would send the insurer an Income Withholding Order (IWO) or a Limited Income Withholding Order (LIWO), and the insurer would be directed to withhold the full amount of the arrearages and pay the support payment clearinghouse the amount specified in the order. Any payment to the claimant/obligor would be contingent on the order being first satisfied. Based on public policy concerns, the intent is to seize the amount that would be disbursed to the claimant obligor after payment of medical bills and attorney costs and fees.

The workgroup discussed maybe using CSLN as a one-stop shop to match arrearages in child support cases that are in the CSLN database with personal injury claims registered by insurers using ISO ClaimSearch. A few members requested specific information about collection data from a cost-benefit point of view. Ms. Sell indicated she would gather more data for another workgroup meeting. Additionally, members discussed the likely legislative opposition to this proposal and need for support. A question about the 10-day requirement as being sufficient was answered by guest, Mark Ciafullo, who advised that this is a requirement that could be subject to discussion.

> **Motion:** To support the proposed language for recommendation to the Child Support Committee. Motion was seconded. No further discussion, motion passed unanimously.

2. Review and update strategic plan

- Income Withholding Order

Ms. Sell reminded the workgroup that the federal deadline to implement the standardized federal IWO is May 31, 2012. It was mentioned that failure to use the federally-mandated form could result in employers rejecting the IWO and returning it to the sender. Ms. Sell highlighted the following additional issues:

i. With the implementation of electronic exchanges of IWOs (e-IWO), big employers such as Pepsi Bottling Group receive e-IWOs from the state in an electronic stream form rather than in the printed IWO form. Currently, the IWO is sent to employers, and then to obligors, in a printed form along with a separate hardcopy notice form explaining obligors' rights in Arizona. The e-IWO, however, limits the inclusion of state-specific language that is required by Arizona statute to be included.
ii. Employers have raised concerns about their obligation under the IWO to make allocation determinations between families in cases where the obligor cannot pay the full child support amount across multiple IWOs.
iii. The federal form does not use a presumptive termination date, which is mandated by state statute.

Other IWO issues:

- The workgroup concluded that in order to ensure due process in Arizona, the notice to obligors would need to be disseminated in other ways and suggested that the notice be included with child support orders instead of orders of assignment.
- Some terms on the form raised more questions than answers (e.g. "regular on its face") and the members discussed an educational component. There was a suggestion that the AG and the AOC collaborate to provide training videos.
- One member pointed out that there was also the need to make the implementation compatible with software languages and algorithms in the child support calculator and ATLAS.
- There were questions regarding the potential compatibility, reprogramming issues, and costs involved. A member noted that the federal form separates arrears payment between categories; one arrears amount for past-due child support, one for past-due cash medical support, and one for past-due spousal support. ATLAS' algorithm, on the other hand, makes only one arrears payment in ATLAS. Payments that exceed the current support amount are identified by ATLAS as one arrears payment and then any excess is applied to the debts pursuant to state statute.

3. Child Support Committee Meeting

Kathy Sekardi announced that the Child Support Committee has been scheduled for the following 2011 dates: September 9, 2011, October 7, 2011, and November 18, 2011, from 10:00 a.m. to 2:00 p.m. The

workgroup will be reporting to the Committee on September 9th in Conference Room 230.

There will be three proposed legislative changes that will be introduced at the Committee meeting:

- A.R.S. § 23-722.01 adds definitions for "payee" and "payor" and adds reporting requirements for the employer and the "payor." Payments not subject to income tax withholdings that are made to a payee and for whom the payor must complete an IRS 1099-Misc Form must be reported following a set of conditions and including specific information.
- A.R.S. § 25-505.01 adds requirements in the notice of income withholding order to the employer/payor that: 1) payments to the clearinghouse must be made by electronic funds transfer if one of the listed conditions is met; 2) lump sum payments of $500.00 or more must be first approved by DES to determine whether all or a portion of the payment should be applied to child support arrearages, and 3) disbursements must be performed in accordance with the listed conditions.
- A.R.S. § 25-505.02 adds a requirement to utilize insurance information exchanges in order to capture child support arrearages when a claimant/obligor receives a personal injury lump sum payment.

Ms. Sekardi will send the updated proposed legislation to the members of the workgroup.

4. Call to the Public
   No members of the general public were in attendance.

5. Next Meeting/Agenda
   Since the next SRWG meeting will take place after the Child Support Committee meeting, the workgroup will discuss the Committee's strategic plan and how it will impact the SRWG's 2011 work plan.

Meeting adjourned at 12:45pm.