HENRY MCMASTER
ATTORNEY GENERAL

November 23, 2010

The Honorable Luke A. Rankin
South Carolina Senate, District No. 33
PO Box 142
Columbia, SC 29202

Dear Senator Rankin:

We received your letter requesting an opinion of this Office regarding the application of child support statutes across the state. You asked our Office to discuss "the constitutionality of our state's child support statutes not being applied consistently across our state agencies (in particular, our Family Court System and the Dept. of Social Services)."

As a way of background, you explained that Ms. Lisa Williams of Horry County has requested your assistance in obtaining an opinion on this matter. In an attached letter, Ms. Williams explained that in 2009, the Family Court dismissed a motion to recognize the 2008 Final Order of Divorce as a Medical Child Support Order (MCSO) or a Qualified Medical Child Support Order (QMCSO). However, in 2010, South Carolina's Department of Social Services accepted Ms. William's application for enforcement of the QMCSO portion of the 2008 Final Order of Divorce.

This Office will not provide an opinion on an issue once litigation ensues. It is our understanding that Ms. Williams' case is in the appeal process. Therefore, we will not address whether or not the Qualified Medical Child Support Order should be enforced; however, we will opine on the issue of consistent application of state statutes across state agencies and courts.

Law/Analysis

South Carolina Code of Laws of 1976, Title 63, Chapter 17, Article 15 governs Medical Child Support. S.C. Code § 63-17-2110 states:

> To be enforced pursuant to this article, a court order which requires a parent to provide health coverage for a child must:
> (1) clearly specify:

(a) the name, social security number, and last known mailing address, if any, of the parent and the name, social security number, date of birth, and mailing address of each child covered by the order;
(b) a reasonable description of the type of coverage to be provided by the plan to each child or the manner in which the type of coverage is to be determined;
(c) the period to which the order applies;
(d) each plan to which the order applies; and

(2) not require a plan to provide a type or form of benefit or an option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of this article.

S.C. Code § 63-17-2110. This statute specifies the necessary content for orders requiring medical support. The statute incorporates the language of 29 U.S.C. § 1169 which is the federal statute that specifies the required content of a QMCSO.

The Family Court is given exclusive original jurisdiction over various areas. S.C. Code § 63-3-510 states as follows:

(A) Except as otherwise provided herein, the **court shall have exclusive original jurisdiction** and shall be the sole court for initiating action:
(1) **Concerning any child living or found within the geographical limits of its jurisdiction**:
(a) **who is neglected as to proper or necessary support** or education as required by law, **or as to medical**, psychiatric, psychological **or other care necessary to his well-being**, or who is abandoned by his parent or other custodian;
(b) whose occupation, behavior, condition, environment or associations are such as to injure or endanger his welfare or that of others;
(c) who is beyond the control of his parent or other custodian;
(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63-3-520;
(e) whose custody is the subject of controversy, except in those cases where the law now gives other courts concurrent jurisdiction. In the consideration of these cases, the court shall have concurrent jurisdiction to hear and determine the issue of custody and support.
(2) For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. Provided,

that nothing herein is intended to conflict with the authority of probate courts in dealing with mental cases.

(3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any State or local law or municipal ordinance prior to having become seventeen years of age and such person shall be dealt with under the provisions of this title relating to children.

(4) For the detention of a juvenile in a juvenile detention facility who is charged with committing a criminal offense when detention in a secure facility is found to be necessary pursuant to the standards set forth in Section 63-19-820 and when the facility exists in, or is otherwise available to, the county in which the crime occurred.

S.C. Code § 63-3-510 (emphasis added). It is well established that family court judges have "broad discretion in deciding questions of child support . . . ." 13 S.C. Jur. Divorce § 40 (citing Bailey v. Bailey, 269 S.C. 1, 235 S.E.2d 801 (1977); King v. Gardner, 274 S.C. 493, 265 S.E.2d 260 (1980); Frank v. Soulsby, 280 S.C. 200, 311 S.E.2d 740 (1984)).

This Office is not a fact-finding entity; "investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." Ops. S.C. Atty. Gen., April 6, 2006; September 14, 2006. However, it is the understanding of this Office that Ms. Williams submitted an application for "full services" to SC DSS Child Support Enforcement Division (CSED). By doing so she assigned her support rights to CSED and, as such, CSED obtained the legal authority to take necessary steps to enforce all aspects of the support owed. Under Title IV-D of the Social Security Act, CSED is considered a IV-D agency. Under 45 C.F.R. § 303.32(c), all IV-D agencies are required to enforce medical support orders, and all child support orders are required to provide for medical support. CSED must use the federally mandated National Medical Support Notice (NMSN) to notify employers of the requirement for health care coverage.

Conclusion

It is the opinion of this Office that a court would likely find that the South Carolina Department of Social Services Child Support Enforcement Division is bound to follow S.C. Code § 63-17-2110 et seq and the related federal regulations. As well established in caselaw and prior opinions of this Office, the construction of a statute by an agency charged with its administration should receive the most respectful consideration. Op. S.C. Atty. Gen., Oct. 12, 2004; Laurens Co. School Dist. 55 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992).

However, Family Court judges have exclusive original jurisdiction over matters "concerning any child living or found within the geographical limitations of its jurisdiction . . . who is neglected as

to proper or necessary support . . . or as to [medical care] necessary to his well-being." "Child support awards are addressed to the sound discretion of the family court . . . ." 16 S.C. Jur. Appeal and Error § 124 (citing Patel v. Patel, 359 S.C. 515, 599 S.E.2d 114 (2004)). The Family Court has jurisdiction to hear cases such as the one at hand and has discretion to determine whether child support orders should be issued and whether motions should be granted or denied. The appellate court will decide whether the Family Court abused its discretion.

Sincerely,

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REVIEWED AND APPROVED BY:

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