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**Child Support Guidelines Review**  
**Advisory Task Force Final Report**

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PREPARED FOR:  
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## **Introduction**

With the passage of the federal Family Support Act of 1988 (Pub. L. No. 100-484), every state has been required to establish presumptive numeric child support guidelines and to review those guidelines every four years. Minnesota statute at 518.551, Subd. 5c assigned the responsibility for these reviews to the state Department of Human Services (DHS). The third quadrennial review, begun in 1998, provided an opportunity for the State to respond to a long-standing legislative interest in devising an income-shares child support guidelines model. The Child Support Enforcement Division of the Minnesota Department of Human Services devoted over two years of research and consultation to the development of an income-shares guideline which came to be known as the "Shared Responsibility" model. To ensure both breadth and depth in the review, DHS established an external Task Force with the sole purpose of advising the Project Team in reviewing the current guidelines and developing a legislative proposal for reform. This report describes the role and principal recommendations of the Guidelines Review Advisory Task Force.

## **Task Force Recruitment and Membership**

The Guidelines Review Advisory Task Force was established in consultation with the Commissioner's Advisory Committee on Child Support Enforcement. At its September 1998 meeting, the Committee affirmed the advisability of establishing the Task Force and suggested which organizations and interests ought to be reflected in its membership. Based on their advice, the agency Project Team sought to build a Task Force that would reflect substantial demographic, occupational, and geographic diversity, and that would incorporate a variety of professional and personal experiences with the child support guidelines.

During October and November 1998 the Guidelines Review Project Consultant solicited specific recommendations from members of the Commissioner's Advisory Committee for individuals to serve on the Task Force. In some cases, Committee members themselves volunteered to serve; in other cases they suggested other individuals who were then invited to serve or asked for recommendations if they were unable to serve. Additional Task Force members were added in early 1999 upon recommendation of initial Task Force members and Commissioner's Advisory Committee members to help achieve the breadth of opinion and experience we were seeking. Several Task Force members designated alternates to attend meetings and speak on their behalf when they were unable to attend.

The Project Team made a special effort to recruit parents to serve on the Task Force. In addition to recruiting members of advocacy groups for both custodial and non-custodial parents, agency staff sought to recruit parents who were not necessarily part of any organized group, but whose lives had been affected by the child support guidelines and who could therefore offer their own perspectives and experiences over the course of the review. Staff worked with child support officers, parent education groups, and the Child Support Awareness Task Force, as well as with parent advocacy groups, to find both custodial and non-custodial parents who would be willing

and able to volunteer time to serve on the Task Force. The agency earmarked funds to reimburse Task Force members for transportation and other expenses resulting from Task Force meetings, knowing that reimbursements would be especially important for volunteer parents who could not treat Task Force work as part of their regular jobs.<sup>1</sup> We tried to vary meeting times and places to limit the amount of time and expense incurred by Task Force members from Greater Minnesota. In addition, upon request of the parent, we contacted employers to ask for their support for the parent taking time off from work in order to attend Task Force meetings.

These efforts to recruit parents were only partially successful. A total of five parents (two non-custodial and three custodial) agreed to serve on the Task Force, not as representatives of any organization or institution but simply as parents. All but one attended at least one meeting, and some attended several during the first six months of the Task Force's existence. However, although we continued to provide them with Task Force agendas and minutes, they did not maintain their active involvement past June 1999.

Although this limited the direct contributions of parents to the Guidelines Review Task Force, the Task Force membership and deliberations still reflected much of the diversity of experience and opinion we had hoped to tap. The official list of Task Force members included representatives from the state legislature, the bench (both district court and the Office of Administrative Hearings), the bar (private attorneys, legal aid attorneys, and county attorneys), counties (child support officers and supervisors), a children's advocacy group, and parent organizations. We also contracted with an economist to serve on the Task Force and provide additional research on the costs of raising children directly to the project team.

Task Force membership also changed over time as members changed jobs. In addition, the number of members in attendance at any given meeting varied. Nevertheless, every meeting reflected diverse (sometimes diametrically opposed) perspectives and opinions, and spoke explicitly to the often-conflicting interests of people whose lives are affected by the child support guidelines, whether personally or professionally. By the time its work was completed, the Task Force had thoroughly discussed every feature of the "Shared Responsibility" income-shares model ultimately submitted to the legislature. It provided indispensable advice to the agency Project Team conducting the guidelines review and developing the "Shared Responsibility" proposal.

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<sup>1</sup> Despite the availability of reimbursements for expenses, a number of Task Force members did not seek reimbursement, so as to avoid any appearance of conflict of interest.

## Task Force Role and Functioning

The initial goals of the guidelines review and the respective roles of DHS staff and the Advisory Task Force were as follows:

### 1. Guidelines review objectives:

- To prepare a **written report** that complies with federal and state statutes, reflecting economic data on the cost of raising children and case data on deviations from guidelines;
- To prepare **legislative recommendations** revising the guidelines (if warranted by the findings of the review and responses of stakeholders) for the 2000 legislative session.<sup>2</sup>

### 2. Role of the DHS Child Support Guidelines Review Project Team:

- Conduct research with advice from Task Force;
- Consider recommendations of Task Force and other stakeholders;
- Prepare one or more alternative guidelines models for Task Force consideration;
- Prepare written report to the Legislature;
- Prepare legislative proposal

### 2. Role of the Child Support Guidelines Review Advisory Task Force:

To assist agency staff by:

- Clarifying the values which the guidelines ought to reflect
- Identifying the strengths and weaknesses of our present guidelines;
- Suggesting research resources agency staff should consult;
- Reviewing and responding to the alternative guidelines model(s) developed by the Project Team;
- Identifying other key individuals and groups to provide feedback;
- Helping agency staff process feedback prior to preparation of final legislative proposal.

As the review progressed, a number of private individuals became interested in the project and asked to be kept informed about Task Force activities. In response to these requests, we added the following informal responsibility to the role of the Task Force:

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<sup>2</sup> The initial goal was to present a proposal to the 2000 legislative session, but the breadth and depth of the research effort resulted in a postponement to the 2001 session.

- Apprising interested individuals (“guests”) of Task Force meetings, agendas, and decisions upon request.

The 8-12 agency staff members serving on the DHS Guidelines Review Project Team were well-informed about the work of the advisory Task Force. Task Force meetings were facilitated by the agency’s Guidelines Review Project Consultant, who also served as the subject-matter lead on the Project Team. Every member of the Project Team received copies of all Task Force agendas, memos, and minutes. Project Team members also attended Task Force meetings as their schedules permitted; every Task Force meeting included at least three agency staff members, and most included four or more.

To facilitate full and open discussion of the issues, the Task Force paid attention to group process and climate. Some of the specific steps taken included:

- Developing a written set of “ground rules” for Task Force proceedings, outlining behavioral expectations for Task Force members and the facilitator, and posting a summary of the ground rules at each meeting
- Varying meeting days and locations to accommodate differences in schedules and distances;
- Including background materials and policy research articles in Task Force mailings prior to meetings. This enabled the group to operate with a common core of information despite their differences in training and professional experience.
- Using small group discussion, written feedback, and other forms of communication to “level the playing field” for members who tended to be less vocal in large group settings;
- Providing an opportunity for each Task Force member to provide a written assessment of the procedural and substantive quality of individual Task Force meetings.

While not every member chose to complete a written assessment after every meeting, those who did so evaluated the process and content of Task Force meetings positively. There was near-unanimity on the feedback forms that Task Force meetings were “very useful” and “operated consistently with [Task Force] ground rules.”

### **Task Force Recommendations for Values that the Child Support Guidelines Should Reflect**

The major principles of the Shared Responsibility model were significantly influenced by the Values Statement developed by the Task Force in the first few months of its existence and approved at its March 1999 meeting. The statement listed the following as values that Minnesota’s child support guidelines should reflect:

1. **Child-centeredness:** The guidelines should give first priority to children’s [economic] well-being.

2. **Equity:** The guidelines should distribute the economic obligation to support their children fairly to both parents, while allowing both parents to meet their own basic needs.
3. **Responsibility:** The guidelines should require parents to provide the best standard of living they can for their children.
4. **Consistency:** The guidelines should ensure that families in similar situations are treated similarly.
5. **Flexibility:** The guidelines should allow families in different situations to be treated differently and in a manner appropriate to their circumstances.
6. **Efficiency:** The guidelines should sustain wise investment of public resources.
7. **Conformity:** The guidelines must comply with relevant federal statutes and regulations.

The Task Force reached consensus on the phrasing of all the above values with the exception of the first. While all members agreed that the guidelines should be child-centered, they did not agree as to whether the guidelines should give first priority to children's *economic* well-being, or simply to children's well-being in general. Subsequent to this discussion, the DHS Guidelines Review Project Team adopted identical language for its Values Statement, using "children's economic well-being" in its definition of "child-centeredness."

### **Task Force Recommendations for Guidelines Research**

The guidelines review project has involved several research "streams." Some are federally mandated; others result from DHS's commitment to informed policy development based on high-quality data analysis, lessons learned from other states, and careful consideration of related policies. Task Force recommendations played a major role in setting the Project Team's specific research agenda. The major areas of impact include:

1. **Impact on the case data analysis:** Federal statute requires that state guidelines reviews include an analysis of "case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines." The agency Project Team consulted extensively with the Task Force in developing both the methodology to be used in collecting a representative sample of cases, and the coding system to be used to collect specific information on each case. The recommendations of the Task Force affected the following decisions of the Project Team (dates indicate the Task Force meetings at which the recommendations were made):
  - The specific **counties** from which cases were selected (March 1999). In the 5<sup>th</sup> Judicial District, Nicollet County was dropped and Nobles County was added upon recommendation of the Task Force, while Crow Wing was dropped in favor of Polk County (9<sup>th</sup> Judicial District).
  - The **variables** included in the analysis of each case. Variables recommended by the Task Force and included in the Project Team's coding procedures include:

- age of the obligor and obligee;
  - sex of the obligor and obligee;
  - whether “reasonable pension deduction” is taken and how much is deducted;
  - whether and how income is imputed;
  - whether the case was decided in district court or administrative process;
  - whether the case was IV-D or non-IV-D at the time the order was issued;
  - order amounts for very low-income obligors;
  - whether either parent has multiple families;
  - whether the order resulted from a stipulation;
  - whether the order was an original order or a modification (February and March 1999).
- The **definition** of a guidelines deviation. In consultation with the Task Force, the Project Team decided to distinguish between *deviations* (cases in which the order explicitly departs from the guidelines and provides findings to justify the departure) and *discrepancies* (cases in which the amount ordered is not consistent with guidelines, but the order is not identified as a deviation and findings are not provided) (February 1999).
2. **Impact on the economic analysis:** The requirement to “consider economic data on the cost of raising children,” like the requirement to conduct a case data analysis, is federally mandated. The Task Force made three important contributions to this dimension of the guidelines review:
- **Defining “costs of raising children” in terms of what parents at different income levels spend on children.** One way to look at the cost of raising children is to ask, “What do children *need*, and how much should parents spend in order to meet those needs?” The February 1999 Task Force meeting included extensive discussion of how to define children’s “needs” in monetary terms and how the child support guidelines should reflect that definition. However (perhaps not surprisingly), the Task Force did not reach a consensus on either issue. The Project Team concluded that since there is probably no single universally-acceptable definition of *what children need*, we would have to do the next best thing, which is to define “the costs of raising children” as simply *what parents spend*. The team shared its conclusion with the Task Force, and the majority supported the decision to frame child support guidelines in terms of *parental spending on children*.
  - **Using USDA estimates of the cost of raising children as the basis of the basic support obligation.** The Project Team reviewed a number of alternative methods of estimating children’s share of household expenditures and concluded that the methodology used by the US Department of Agriculture in its annual reports on *Expenditures on Children by Families* resulted in the most accurate and reliable

estimates. The major features of each alternative, along with the Project Team's assessment of the merits of the USDA approach, were presented to the Task Force at its September 22, 2000 meeting. The majority of the members present agreed with the Project Team's recommendation that the USDA's estimates be used in establishing basic support under Shared Responsibility.

- **Identifying the limitations of the USDA's methodology for estimating the costs of raising children.** The Task Force asked a number of questions about the methodology used by the USDA to estimate children's share of household expenses, all of which were submitted to Dr. Mark Lino, the USDA economist responsible for producing the annual estimates. The questions raised by Task Force members promoted a much clearer understanding of the methodology itself, as well as its strengths and limitations. This was especially evident in the Task Force meeting of December 15, 2000, at which the Task Force reviewed the proposed Shared Responsibility Schedule of Basic Support. The Schedule was based on customized estimates of urban Midwest two-parent expenditures on children, excluding child care and health care and varying by \$500 income increments. The Task Force made a number of recommendations for both the Shared Responsibility technical report and the draft statutory language, based on its concerns about the limitations of the USDA's estimates, all of which were incorporated into the research and recommendations of the DHS Guidelines Review Project Team.
3. ***Impact on the analysis of other states' guidelines:*** The guidelines review has included a substantial amount of research regarding the child support guidelines used in other states. Some of that research has involved nation-wide summaries of different guidelines features (e.g., whether they are based on gross or net income, whether they take both parents' incomes into account or only the income of the non-custodial parent, whether child care support is added on to basic support or is treated as a deviation, etc.). However, we also wanted to conduct a more intensive analysis of selected states to learn more about how their guidelines work and the rationale for specific features of their child support calculation process. The Task Force played a significant role in helping the Project Team decide which states to select for this more intensive examination. At the February 1999 Task Force meeting, the Project Team submitted a proposed "short list" of 9 states reflecting variation in several dimensions of the child support guidelines. The final list of states selected for analysis included Texas and Wisconsin (percent of obligor income states); Washington state, Colorado, and Maryland (simple income shares); and Delaware and Montana (Melson-formula income shares). This list of states reflected significant Task Force input; Texas, Wisconsin, and Washington state were added to the list originally proposed by the Project Team, while Connecticut, Iowa, Massachusetts, and Ohio were dropped. Task Force recommendations also affected the specific aspects of these states' guidelines that were examined, and Task Force members were provided with copies of each state's guidelines and worksheets as well as with comparative calculations of support in each state.

As the work of the Task Force progressed, they asked to see specific statutory language used in other states with respect to a number of specific guidelines issues. The Project Team legal analyst prepared several memos analyzing states' provisions on a variety of issues, such as the determination of support in high income cases, whether public assistance benefits are

counted as income, and factors to consider in deviations. The Task Force reviewed these memos in making recommendations on each of these provisions for Shared Responsibility

4. ***Impact on other guidelines-related research:*** Task Force members supplied the Project Director with other information pertinent to the child support guidelines. Examples include:

- The 1998 GAO report, “Welfare Reform: Child Support an Uncertain Income Supplement for Families Leaving Welfare”
- The results of a 1989 R-Kids survey of Minnesota County Social Service departments regarding divorce, visitation, and child support
- The results of a 1997 survey of Administrative Law Judges regarding application of, and departures from, child support guidelines

The recommendations of the Task Force with respect to each of these research resources had a major impact on the specific provisions of the final Shared Responsibility proposal.

### **Major Task Force Recommendations for Revisions to the Guidelines**

Recommendations for revisions to Minnesota’s child support guidelines were preceded by extensive discussion of the following issues:

- the strengths and weaknesses of Minnesota’s current child support guidelines (Dec 1998, Jan 1999)
- desirable characteristics of future Minnesota guidelines (Feb 1999)
- the strengths and weaknesses of income shares models that include a self-support reserve, as exemplified by the Delaware and Montana guidelines (March 1999)
- the strengths and weaknesses of income shares models without a self-support reserve, as exemplified by Maryland, Colorado and Washington state guidelines (April 1999)
- the strengths and weaknesses of models based only on the obligor’s income, as exemplified by Wisconsin, Texas, and Washington D.C. guidelines (May 1999)

Each of these discussions included consideration of a variety of issues that characterize *all* models for child support guidelines, including the income basis for calculating support (i.e. gross vs. net income); child care support; medical support; shared custody and extended visitation; and multiple families. The latter issue was given special attention, with a portion of one Task Force meeting devoted exclusively to a review of guidelines provisions for multiple families in each of the fifty states (June 1999).

There are several features of the Shared Responsibility model that are a direct result of unanimous or majority Task Force recommendations. Other features were extensively discussed

but the Task Force did not reach a consensus. In developing these provisions, the DHS Project Team considered all the points of view that were advanced in Task Force discussion and, where appropriate, sought input from other state staff and child support professionals. It is fair to say that *every provision in Shared Responsibility is informed by what the Project Team heard from Task Force members, both collectively and individually*. Below is a summary of Task Force recommendations and discussions on the major features of Shared Responsibility.

1. ***Keeping basic support, child care support, and medical support separate.*** The Task Force unanimously recommended that any revisions to the Minnesota guidelines keep basic, child care, and medical support *separate*, partly because child care and medical expenses are so family-specific and variable, and partly to facilitate assignment of support in public assistance cases (July 1999). DHS adopted this recommendation in developing Shared Responsibility. This feature of the Shared Responsibility model is consistent with the *flexibility* value in the Task Force Values Statement.
  
2. ***Using an income-shares approach for all three components of a child support order.*** Over the two-year period leading up to Shared Responsibility, the Project Team developed a total of four possible models for child support guidelines in Minnesota. One was a significantly simplified Percent-of-Obligor Income model (July 1999); one was a modified “Delaware-Melson” income shares model that included a self-support reserve (July 1999); one was Shared Responsibility (first introduced as the “Percent of Shared Income” model in August 1999, with numerous variations considered at subsequent meetings); and one was a revised version of Minnesota’s current guidelines incorporating selected provisions from Shared Responsibility (such as the presumptive minimum and the use of gross income – June 2000). At its meeting of June 29, 2000, all members present recommended that a guidelines proposal be brought to the legislature, and all but one recommended that the proposal be some version of the Shared Responsibility model. The members assumed that work on the model would continue but approved its general conceptual basis.
  
3. ***Basing child support on gross income.*** The Task Force moved from being almost equally divided on this issue (March 2000) to taking a majority position in favor of the use of gross income, with a minority of members dissenting from this view (September 2000). The rationale for the majority position in favor of a gross income basis is as follows:
  - *All the research and related public policy components supporting Shared Responsibility are based on gross income.* These include:
    - ✓ The USDA estimates of the costs of raising children incorporated in the Schedule of Basic Support;
    - ✓ The use of 120% of the federal poverty guideline as a “basic needs” standard for both parents and children (reflected in the presumptive minimum, the deduction for other residential dependents, and the modified substantial unfairness test)
    - ✓ The Basic Sliding Fee child care co-payment schedule adapted for purposes of child care support;

- ✓ The MinnesotaCare premium schedule adapted for purposes of medical support.
- *Gross income is simpler.* It will make child support easier to calculate and will save administrative costs and attorney fees. It will also remove some incentives to litigate over deductions from income.
- *Gross income is at least as equitable as net income, and sometimes more so.* This is because the process of determining net income can introduce its own set of inequities. One example is the standard use of “single – one exemption” status in calculating the amount of tax to subtract from an obligor’s gross income. This standard is typically applied irrespective of the obligor’s actual tax status, and unless the obligor is actually filing as a single individual with only one exemption, the result is an inaccurate picture of the obligor’s “true” net income. Another example is the fact that mandatory union dues can be deducted, but not voluntary dues.
- *Gross income does not assume that all of a parent’s gross income is available to spend on the child.* Tax differences between parents at different income levels are accounted for in the variable percentage basis of the Schedule of Basic Support, in which higher income parents spend a smaller proportion of their income on their children. Since reasonable and necessary business expenses continue to be deducted from the gross income of self-employed parents, and since those business expenses will include the employer’s share of FICA under Shared Responsibility, the use of gross income will not penalize self-employed parents.

The rationale for the minority position in favor of a net income basis is as follows:

- *People’s gross income can increase without increasing the amount of their “expendable” money.* Gross income could thus overstate the amount of money available to pay for child support.
- *Using gross income will make it hard to show that there is enough money left to pay the bills.* Net income is perceived as a better indicator of a parent’s ability to pay. The fairness of basing child support on gross income is harder to explain.
- *Using gross income will discourage people from putting money away for retirement.* The current guidelines allow for a deduction for reasonable pension contributions; this deduction is eliminated under Shared Responsibility.
- *The USDA’s estimates of the costs of raising children (based on gross income) do not specifically address tax differences between parents at different income levels.* The USDA’s estimates do not directly address tax differentials between parents; they show what parents at different income levels spend on children, but not what those same parents spend on taxes.

Task Force members who supported a net income basis for Shared Responsibility requested that the model be reviewed by an independent accounting firm. A list of specific questions

concerning tax implications and equity was submitted to DHS on December 22, 2000 and is attached to this report in Appendix A. These questions, along with a detailed explanation of the Shared Responsibility model, were submitted for review to the following individuals:

- *Ms. Laura Wish Morgan*, Senior Attorney for Family Law at the National Legal Research Group in Charlottesville, VA and Chair of the Child Support Committee of the Family Law Section of the American Bar Association. Ms. Morgan is the leading national legal expert on child support guidelines in all fifty states.
- *Dr. Mark Lino*, senior economist with the Food, Nutrition, and Consumer Services' Center for Nutrition Policy and Promotion at the U.S. Department of Agriculture. Dr. Lino has overseen the production of the USDA's annual estimates of expenditures on children for the past thirteen years, and coordinated the production of the "customized" estimates used in Shared Responsibility.
- *Dr. Dan Salomone*, Executive Director of the Minnesota Taxpayers Association, a non-profit organization whose mission is "to educate and inform Minnesotans about sound fiscal policy; to provide state and local policy makers with objective, non-partisan research about the impacts of tax and spending policies; and to advocate for the adoption of rational public fiscal policy."

Ms. Morgan's analysis of the tax equity issues is still forthcoming. The other reviewers offered the following responses:

- *Dr. Lino, USDA*: "As requested, I reviewed the list of questions dated December 22, 2000, regarding the tax and net income implications of the Shared Responsibility model. The questions imply that using gross income estimates of household expenditures on children results in inequities because of the higher marginal tax rates applied to higher income households. However, in my opinion, the Shared Responsibility model avoids these potential inequities by maintaining the inverse relationship between parental income and percentage of income spent on children, as reflected in the USDA estimates." (Letter of January 29, 2001, distributed to Task Force members with agenda for meeting of February 9, 2001.)
- *Dr. Salomone, Minnesota Taxpayers Association*: "By basing child support on adjusted gross income, rather than net income, the proposal adds fairness. It enhances 'horizontal equity' (that is, treating equals equally) by making implicit adjustments for taxes and other expenses in the proposed Schedule of Basic Support. This is done using USDA data on spending on children as a percentage of gross income. This avoids the inequities that would result from using benefit schedules based on net income derived by presuming that all obligors are single-filers with one exemption and allowing only certain narrowly-defined deductions, as apparently is done in other states. It's also simpler and more cost-effective, since it avoids the need to verify actual deductions, conduct audits, or litigate disputes over tax return amounts. Using adjusted gross income also facilitates better coordination and integration of data from related concepts and programs like federal poverty guidelines, the Minnesota Family Investment Program, MinnesotaCare, and the Minnesota Child Care Sliding Fee

program.” (Letter of March 3, 2001, distributed to Task Force members with agenda for meeting of March 24, 2001 rescheduled for April 11, 2001.)

In short, these reviewers confirmed the majority perspective of the Task Force in favor of a gross income basis for Shared Responsibility.

4. ***Deducting reasonable and necessary business expenses from the gross income of self-employed parents prior to the determination of support.*** The Task Force unanimously supported this provision. An early objective of the Task Force had been to add clarity and specificity to the definition of “reasonable and necessary business expenses,” to simplify and make more consistent the process of calculating the income available for child support of a self-employed parent. As the Shared Responsibility model developed, however, the Task Force decided not to recommend major changes to this provision, not because it does not need to be improved, but because Shared Responsibility involves so many other changes to statute. Improvements to the provisions for self-employed parents can be made at a later legislative session (October 2000). The Task Force did recommend one change to the provision for deductions from income for self-employed persons: the employer’s share of FICA should be explicitly identified as one of the “reasonable and necessary business expenses” that a self-employed parent can deduct (December 2000). This recommendation was incorporated in the proposed statutory language for Shared Responsibility.
5. ***Deducting from a parent’s gross income other child support or maintenance orders that are currently being paid.*** This provision was the subject of vigorous debate, not on the principle of deducting other support and maintenance orders from income, but on the proviso that the deduction should only be made if the orders are “currently being paid.” (The Project Team was divided on this issue as well.) On the one hand, retaining the “currently being paid” language ensures that obligors’ subsequent orders are not lowered when they are not complying with a prior order. On the other hand, the current language may result in orders that obligors can’t afford; if they cannot pay the prior order, they will certainly be unable to pay a subsequent order that does not factor in the prior order. Furthermore, the “currently being paid” proviso mixes guidelines objectives with enforcement objectives, contrary to the decision of the Task Force to keep the issues separate. In its meeting of October 2000, the Task Force ultimately recommended (but only by a slim majority) that the current language (requiring that an order be “currently being paid”) be retained in the Shared Responsibility proposal, but that the question be addressed again in a subsequent guidelines review. The rationale for this recommendation is that the “being paid” issue is not integral to the Shared Responsibility model and can easily be addressed later, irrespective of whether Shared Responsibility is passed at the legislature. Retaining the current language also eliminates yet another potential statutory change introduced by Shared Responsibility. Nevertheless, some Task Force members remained vigorously opposed to the retention of the “being paid” proviso.
6. ***Maintaining present methods of imputing income.*** The Task Force did not recommend any changes to the current statutory provisions regarding *methods* of imputing income in Section 518.551, Subd. 5b. (d) and (e). The discussions with respect to imputation focused on the

circumstances under which imputation is warranted, not the methods by which income would be imputed.

7. ***Adding to the guidelines statute a list of factors the court should consider in determining whether to impute income to a parent who stays home to care for the child/ren of the action.*** The income-shares premise of Shared Responsibility means that an obligee's income would be taken into account for all three parts of a child support order. Because obligees are more likely than obligors to have no income by virtue of staying home to care for the child/ren for whom support is being determined, Shared Responsibility raises the following question: Should income be imputed to a parent who is staying home to care for a child? This question was extensively discussed at the November and December 2000 Task Force meetings. The Project Team legal analyst provided a memo describing other states' provisions with respect to stay-at-home parents and sample statutory language from several states. The Task Force saw particular merit in the provisions incorporated in Vermont's statute, which provides a list of factors the court should consider in determining whether imputation is appropriate in a given case, and asked the Project Team to prepare draft language for incorporation into Shared Responsibility. The Project Team did so, and at its December 2000 meeting the Task Force reviewed the proposed language and reached consensus on several suggestions for revision. Its final recommendations on imputation were incorporated in the draft statutory language submitted to the legislature. The recommended language reads as follows:

"The court must consider the following factors when determining whether a parent is voluntarily unemployed or underemployed when the parent stays at home to care for a child who is a subject of the order for child support:

- (1) the parties' parenting and child care arrangement prior to the action for child support;
  - (2) the stay-at-home parent's employment history, including recency of employment and earnings, as well as the availability of jobs within the community for an individual with the parent's qualifications;
  - (3) the relationship between the employment-related expenses, including child care, cost for transportation, suitable clothing, and other items required for the parent to be employed, and the income that the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;
  - (4) the age and health of the child, including whether the child is physically or mentally disabled; and
  - (5) the availability of appropriate child care providers."
8. ***Retaining current statutory provisions excluding public assistance benefits from the definition of income and presuming that parents receiving public assistance are not voluntarily unemployed or underemployed.*** The role of public assistance benefits in an

income-shares model was vigorously debated in numerous Task Force meetings, and the Task Force remained divided on the issue. Some members advocated retaining the current statutory provisions with respect to public assistance; some argued that income should be imputed to MFIP recipients; and some wanted to have MFIP benefits included (although not necessarily defined as “income”) as resources available for child support. The Task Force reviewed a great deal of research prepared by the Project Team legal analyst on federal law, current state statute, and other states’ provisions for public assistance cases at its August 2000 meeting. In response to these discussions, the Project Team developed two alternative versions of Shared Responsibility. One imputed income to an MFIP recipient and the other included the value of the cash portion of an MFIP grant in the calculation of child support. After discussing all possible options at its November 2000 meeting, the Task Force remained almost evenly split on the question of whether a parent on MFIP should be considered “not voluntarily unemployed or underemployed.” In view of this division of opinion, the Project Team sought additional feedback from other county-level administrators and from the state MFIP staff, and ultimately concluded that maintaining current statute with respect to MFIP recipients was the best option.<sup>3</sup>

9. ***Maintaining an income “cap,” but revising it to reflect the gross income and income-shares basis of Shared Responsibility.*** At its August 2000 meeting, the Task Force reviewed a variety of provisions for high-income cases in other income-shares states. The members present unanimously recommended that an income “cap” provision be retained in Shared Responsibility, with the following additional specifications:

- *The cap should be established for the parents’ combined income (unanimous recommendation).*
- *The order that results from the application of the cap should serve as a “floor” rather than a ceiling (majority recommendation).*
- *It may be helpful to include in statute an enumerated list of factors to consider in awarding additional support above the amount ordered after the application of the cap.*

Discussion continued at the September 2000 meeting, during which Task Force members reviewed additional research on income cap provisions in other gross income states. The final recommendation of the Task Force was that the income limit under Shared Responsibility should be \$15,000, applied to the parents’ combined income available for child support. The Task Force offered the following reasons for this provision:

- *It represents continuity with the income limit provision in the current Minnesota guidelines.* The current statutory limit is approximately \$6,200 in net income. The gross income equivalent is approximately \$10,000. That limit is currently applicable only to the income of one parent (the obligor). Since the limit would have to apply to the combined income of two parents under Shared Responsibility, the Task Force multiplied

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<sup>3</sup> For a more extensive discussion of the Project Team’s rationale for this decision, see “The Shared Responsibility Child Support Guidelines: Rationale and Research Support,” March 2001, p. 8 and Appendix C.

\$10,000 by 1.5 to determine what the two-parent, gross-income equivalent of the current income cap would be.

- *It is consistent with the income limit in the gross income shares state whose median income is closest to Minnesota's.* Income limits in most of the 15 other gross income shares states ranged from approximately \$10,000 in combined gross monthly income to \$15,000. The annual median income in nearly all of these states is well below Minnesota's (Minnesota has the sixth highest median income in the nation). The exception is Rhode Island, whose median income approximates Minnesota's and whose income limit is \$15,000.
- *It reduces the need for deviations without compromising a judge's authority to exercise discretion.* The higher the income limit, the fewer the number of families whose incomes are actually above the limit and who might therefore be subject to upward deviation.

The Task Force further recommended that, rather than listing factors for upward deviation in high-income cases separately from general factors for deviation, the former should be incorporated into the latter. The Task Force reviewed draft statutory language for deviation factors, including those that might result in upward deviation, at its December 2000 meeting, and made a number of suggestions for revision. The suggested revisions were incorporated in the final statutory language submitted to the legislature.

10. ***Including a rebuttably-presumptive minimum obligation for obligors with incomes below 150% of the federal poverty guideline.*** This substance of this provision was developed at the September 1999 Task Force meeting. The Task Force recommended that obligors with incomes of less than 120% of the federal poverty guideline would have child care and medical support reserved. Basic support would be established at 10% of the obligor's gross income or \$50/ month, whichever is greater, for orders for 1-2 children; and 12% of the obligor's gross income or \$75/month, whichever is greater, for orders for 3 or more children. The Task Force reviewed a summary of all states' provisions for low-income obligors in arriving at this approach. The recommended provision combined the provisions of Iowa, Maine, and Michigan. The group was unanimous in its recommendation regarding both the income level at which the minimum order provision would apply and the specific method by which the amount would be established.

This provision is consistent with the Task Force Values Statement in several respects: it is *child-centered* (in assuring that some children who currently do not receive support would now receive support); it promotes *responsibility* (custodial parents do not have the option of simply not spending money on their children, so there ought to be a minimum expectation for non-custodial parent spending as well); it promotes *equity* between the parents (the definition of "equity" includes allowing both parents to meet their own basic needs, and the minimum obligation for some low-income obligors under the Shared Responsibility model is actually lower than the current child support guidelines toward the bottom of the "grid," leaving them more income with which to meet their own needs); and it promotes *consistency* in child support orders by limiting the judicial discretion reflected in the current guidelines for obligors below the income "grid" in current statute.

The only modification to this recommendation made by the Project Team in preparing Shared Responsibility for legislative consideration was to increase the threshold for the application of the presumptive minimum to 150% of the federal poverty guideline. The reason for this change was to ensure that most obligors with incomes above 120% of the federal poverty guideline would have at least 120% of the federal poverty guideline left *after* paying support. This approach implicitly establishes a “basic needs” threshold for obligors of 120% of the federal poverty guideline, consistent with the exit standard for MFIP.

11. ***Including an income deduction for parents who are legally obligated to provide for other dependents residing with them.*** From the beginning, an important objective of the Task Force was to develop a provision accounting for other legally dependent children in the determination of child support. The question of whether and how to adjust a child support order to acknowledge the expenses of other children living with a parent is often popularly referred to as the “subsequent children” issue. However, many members of the Task Force noted that this term is a misnomer, since a legally dependent child residing with a parent may be an older child from a prior relationship. Almost every Task Force meeting included discussion of what came to be known as the “other residential dependents” issue. Ultimately, a large majority (though not the entirety) of the Task Force favored the development of a clear formula adjusting support when a parent is legally obligated to provide for other children residing with him or her (as distinct from “other children for whom a parent is paying court-ordered support”).

The specific methodology incorporated in Shared Responsibility – deducting one-half of what it costs to support a child at 120% of the federal poverty guideline – was introduced at the August 1999 Task Force meeting. At its March 2000 meeting, nearly all Task Force members in attendance expressed support for the general principle of including a specific income deduction for the needs of other residential dependents, but they gave mixed reviews to the methodology. Some members thought the methodology was confusing; some thought the resulting dollar amounts were too low; some were concerned that this provision would limit judicial discretion; some believed it would not allow the court to consider any extraordinary needs of the other residential dependents. However, the Task Force did not propose an alternative, so the provision was incorporated into Shared Responsibility.

At its June 2000 meeting, the Task Force recommended that the income deduction for other residential children be taken *after* the determination of whether an obligor’s income warranted the application of the presumptive minimum. Otherwise, the amount of support for the children of the action could be considerably less than the amount deducted for the basic needs of the other children in the home, which seemed inequitable. The Project Team incorporated this recommendation in its final proposal.

At its September 2000 meeting, the Task Force reviewed a Project Team recommendation that the deduction for other residential dependents be adjusted upward through the use of a per capita methodology for estimating children’s share of household income at 120% of the federal poverty guideline. This approach made the deduction for other residential dependents methodologically consistent with the USDA’s methods for estimating the costs of raising children incorporated in the Schedule of Basic Support. Task

Force members also noted that the income deduction was not meant to represent the full extent of the spending a parent would do on behalf of his or her other residential dependents; it simply shelters a minimum amount to meet *at least* their basic needs. At the conclusion of this discussion, all but one member present voted to support both the general principle of including an income deduction for other residential dependents in Shared Responsibility, and the specific methodology of basing the amount to be deducted on one-half of the children's per capita share of a household income of 120% of the federal poverty guideline.

12. ***Using USDA estimates of family expenditures on children as the basis of the Schedule of Basic Support.*** As noted above, the Project Team worked in close consultation with the Task Force at every phase of its examination of the economic literature on the costs of raising children and the use of a specific source – the USDA – in Shared Responsibility. The Task Force raised a number of questions about the validity of the USDA's estimates. Two of the most frequently-mentioned concerns were (1) the use of a per-capita methodology to estimate children's share of commingled expenditures (especially housing), and (2) the gross income basis of the estimates, which some members thought obscured tax differences between parents with different incomes. Despite these potential limitations in the USDA's estimates, most Task Force members saw even less merit in the "marginal cost" alternatives.<sup>4</sup> The Task Force approved the general principle of basing basic support on the USDA's estimates at its September 2000 meeting. It approved a Project Team proposal to develop a dollar schedule of basic support reflecting the inverse relationship between parental income and percentage of income spent on children at its October 2000 meeting. Finally, at its February 2001 meeting, the Task Force reviewed a draft of Appendix F to the "The Shared Responsibility Child Support Guidelines: Rationale and Research Support," detailing the specific methodology for converting the USDA's "customized" estimates of spending on children by urban midwest parents, exclusive of child care and health care, into the dollar schedule of basic support. Members present advised DHS to monitor the impact of Shared Responsibility on the children of low-income parents in the event that the bill is enacted into law.
13. ***Including a "separate household discount" in the Schedule of Basic Support.*** The "separate household discount" represents a way to reconcile two different concerns expressed by different members of the Task Force. Most members wanted the child support guidelines to reflect the fact that many obligors spend money on their children during parenting time in addition to paying child support (April 1999). Other members argued that the child support guidelines should not invite additional litigation. Building in provisions which tie the child support order to the amount of time children spend in each household will almost certainly prompt litigation over parenting time schedules (August 1999). The "separate household discount" is a compromise provision which acknowledges that, irrespective of the specific visitation arrangements, both parents must maintain their own households which costs more than living together and leaves less money to spend on the children. Put differently, it is a way to operationalize the dual expectation that child support orders must take into

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<sup>4</sup> For further discussion of the USDA's methodology and its advantages in comparison to other approaches to estimating the costs of raising children, see "The Shared Responsibility Child Support Guidelines: Rationale and Research Support," March 2001, pp. 24-27.

consideration the standard of living a child would enjoy if the parents lived together, yet which recognizes that the parents are maintaining separate households.

Several different approaches to the “separate household discount” were developed by the Project Team and presented to the Task Force. The approach ultimately incorporated in the Schedule of Basic Support was reviewed at the Task Force meeting of December 15, 2000.<sup>5</sup> This approach uses spending on children by a median-income Minnesota family as the basis of the discount, and provides the largest percentage discounts to the lowest-income obligors. (A detailed description of the methodology of the “separate household discount” is included in *The Shared Responsibility Child Support Guidelines: Rationale and Research Support*, pp. 27- 30 and Appendix F.) Like the use of the USDA’s data and the methodology for the income deduction for other residential dependents, the methodology for the “separate household discount” received mixed reviews. The Task Force remained generally favorable to the concept of acknowledging obligor parenting time expenses and building a discount into the schedule of basic support rather than subtracting a specific amount from the order for basic support. However, some Task Force members thought the discounts in Shared Responsibility were too high, while others maintained that they were not high enough. In spite of these reservations about the proposed methodology accounting for obligors’ parenting time expenses, the Task Force did not recommend an alternative method.

14. ***Including in the statutory language for Shared Responsibility an explicit statement that the Schedule of Basic Support presumes that the obligee will receive applicable tax benefits and credits.*** This recommendation emerged in the context of the December 15, 2000 consideration of the “separate household discount” methodology incorporated in the Schedule of Basic Support. While the “separate household discount” reserves some income for obligors to spend on their children during parenting time, it does so by artificially lowering the estimates of what both parents spend on children. Task Force members observed that obligees can use tax benefits and credits to make up the difference between the discounted estimates of spending on children in the Schedule of Basic Support and the USDA’s estimates of actual spending. The Task Force believed that the statutory language for Shared Responsibility should indicate that the structure of the Schedule of Basic Support presumes that the obligee has tax benefits and credits available to compensate for the reductions in support created by the “separate household discount.”
  
15. ***Eliminating the transfer of basic support money from the obligor to the obligee prior to the calculation of each parent’s share of income for child care support.*** Under the current guidelines for child care support, each parent’s proportionate responsibility for the cost of work- and education-related child care is based on his or her percentage of their combined net income. That percentage is determined *after* the basic support amount ordered is subtracted from the obligor’s income and added to the obligee’s income. Shared Responsibility eliminates the need for this step in the determination of each parent’s proportionate responsibility for the cost of child care, because child care expenses are

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<sup>5</sup> For a detailed description of the “separate household discount” methodology, see “The Shared Responsibility Child Support Guidelines: Rationale and Research Support,” March 2001, pp. 27-32 and Appendix F.

excluded from the estimates of child-rearing expenses upon which the Schedule of Basic Support is based. The Task Force supported this change in the current guidelines for two reasons: (1) It maintains the separation between basic support, child care support, and medical support advocated from the beginning by the Task Force; and (2) it creates consistency in the calculation of each parent's share of responsibility for all three parts of a child support order. Once a parent's percentage of combined income available for child support has been determined, that same percentage is then used to apportion responsibility for basic support, child care support, and medical support alike. Both reasons were articulated (although not voted upon) at the Task Force meeting of August 1999, when the basic concepts of the Shared Responsibility model were first presented.

16. ***Eliminating the 25 percent reduction in work- and education-related child care costs prior to the calculation of child care support.*** Under the current guidelines, the child care costs apportioned between the parents include only "75 percent of the actual cost paid for child care, to reflect the approximate value of state and federal tax credits available to the custodial parent" (518.551, Subd. 5. (b), emphasis added). Shared Responsibility eliminates this 25 percent reduction in child care costs prior to apportionment between the parents. The merits of this change were debated at several Task Force meetings, especially in light of the accompanying shift from a net income basis to a gross income basis. However, at its meeting of October 2000, the Task Force ultimately concurred with the recommendation of the DHS Project Team that the child care cost reduction provision should be eliminated. Members cited the following reasons:

- The current 25% reduction greatly overestimates the value of child care tax credits.
- The child care tax credit, like other tax credits and benefits, helps to compensate for the artificially low estimates of the cost of raising children once the "separate household discount" is incorporated into the schedule for basic support.
- The use of the child care sliding fee fund schedule (see below) provides child care support relief to low-income obligors. To the extent that the 25 percent cost reduction served as a means of making child care support more affordable, it would no longer be necessary in view of this alternative provision.

17. ***Using an adapted version of the Basic Sliding Fee co-payment schedule to determine child care support obligations for low-income obligors.*** One of the most challenging issues faced by the Task Force was how to establish "affordable" orders for child care support for lower-income obligors. In principle, many low-income obligees have access to child care assistance, but obligors with similar incomes do not. A group of Anoka County child support officers, working with Task Force member Ruth Munding (Anoka County child support supervisor) proposed an innovative solution to this dilemma: use the Basic Sliding Fee co-payment schedule to evaluate an obligor's ability to pay child care support, and establish support amounts commensurate to the co-payment an obligor would make if he or she were applying for child care assistance. Ms. Munding first shared the proposal with the Commissioner's Advisory Committee at its meeting of June 22, 2000. When it was

favorably received by the Committee, the DHS Project Team incorporated the provision into the Shared Responsibility model (extending the principle to the determination of medical support – see below) and presented it to the Task Force for review at its meeting of June 29, 2000. The Task Force response was generally favorable, although no formal vote was taken. The appeal of this provision is that it uses comparable standards already established in state child care policy to evaluate the ability of both an obligor and an obligee to pay for child care. While the Shared Responsibility model continued to evolve, the use of the Basic Sliding Fee schedule to determine child care support orders for low income obligors remained a key provision in every version subsequently considered by the Task Force.

Although the Task Force generally supported this provision, they raised two important questions: (1) What impact would this provision have on the revenues supporting the Basic Sliding Fee Fund? When child care support is assigned, the support dollars collected are directed to the Basic Sliding Fee Fund. Reductions in the support ordered could therefore mean reductions in Basic Sliding Fee revenues. (2) What if both an obligor and an obligee have incomes which would qualify them for child care assistance, but the obligee is put on a waiting list? This would mean the obligee not only has to pay his or her proportionate share of the full cost of the care (which by definition he or she cannot afford to do, since he or she qualifies for assistance) but also has to make up the difference between the obligor's proportionate share and the amount the obligor would pay under the Basic Sliding Fee co-payment schedule. Both questions were considered carefully by the DHS Project Team. First, the team examined the collection rate on assigned child care support and noted that only about 48% of assigned child care support is collected. This suggests that reducing *orders* will not necessarily reduce *collections*. If anything, collections might even increase, because the amounts ordered are more likely to fall within an obligor's ability to pay (assuming that the Basic Sliding Fee co-payment schedule appropriately reflects a parent's ability to pay for child care). The second question was resolved in the context of factors for deviation as discussed in #18 below. Both the provision itself and the ways Shared Responsibility was adapted to incorporate it represent a major Task Force contribution.

18. ***Permitting an upward deviation in orders for child care support when an obligee qualifies for child care assistance but is not receiving it.*** As noted above, the use of the Basic Sliding Fee co-payment schedule to determine child care support for obligors with qualifying incomes potentially resolves one inequity (a low-income obligee receives child care assistance while a low-income obligor with the same income pays his or her proportionate share of the full cost of the care) but runs the risk of creating another (a low-income obligor pays reduced child care support through the application of the Basic Sliding Fee co-payment schedule, while an obligee with the same income might qualify for child care assistance but not receive it). The Project Team recommended that the draft statutory language for deviations include an explicit statement permitting the court to deviate upward in cases where an obligee qualifies for public assistance but is not receiving it. The Task Force reviewed the proposed language at its meeting of February 16, 2001 and concurred with this solution.

19. ***Affirming the recommendations of the Minnesota Medical Support Work Group.*** The Minnesota Medical Support Work Group, a separate advisory organization on medical support, was established in response to a directive from the 2000 Legislature. There was some overlap between the membership of the Guidelines Review Task Force and the Minnesota Medical Support Work Group, and some members of the DHS Guidelines Review Project Team also served on the Medical Support Work Group. Most of the recommendations of the Medical Support Work Group concerned the *qualitative* aspects of an order for medical support (determining whether the parents have access to private health insurance coverage, which parent should provide the coverage, which plan is better in the event that both parents have access to insurance, etc.), whereas most of the recommendations of the Guidelines Review Task Force concerned the *quantitative* aspects (how the children's insurance premiums should be apportioned, how their uninsured and unreimbursed medical expenses should be apportioned, how medical support orders should be determined for low-income obligors, etc.). The recommendations of each advisory group were shared with the other periodically, and the final report of the Minnesota Medical Support Work Group was shared in draft form with the Guidelines Review Task Force at the Task Force meeting of December 15, 2000. Each group generally supported the recommendations of the other, although the Guidelines Review Task Force did not formally vote to approve the report of the Minnesota Medical Support Work Group. In addition, several members of the Guidelines Review Task Force reviewed the proposed statutory language that emerged from the recommendations of each group (eventually consolidated into a single bill), and this review process helped ensure consistency between the two major reform efforts (i.e., the qualitative dimensions of medical support and the quantitative calculations of Shared Responsibility).
20. ***Allocating the children's medical insurance premiums between the parents in proportion to each parent's share of income available for child support.*** This feature was incorporated in the first version of Shared Responsibility presented at the August 1999 Task Force meeting and in every subsequent variation on the model. The Task Force never objected to this feature of Shared Responsibility or suggested an alternative method of apportioning the cost of medical insurance. The Shared Responsibility approach to the cost of medical insurance is generally consistent with current statute (except that the income basis is "income available for child support" rather than "net income") and is also consistent with the way basic support and child care support are determined under Shared Responsibility. The only question the Task Force raised was what to do when the cost of the children's medical insurance is unknown at the time an order is being issued, and the DHS Guidelines Review Project Team ultimately referred this question to the Medical Support Work Group. The Final Report of the Work Group (reviewed at the December 2000 Guidelines Review Task Force meeting) recommended that, when this information is not available at the time of establishment, a judge or magistrate may leave the record open and order the parents to provide the information. The Guidelines Review Task Force did not comment specifically on this recommendation, but the DHS Guidelines Review Project Team saw no conflict between this recommendation and the above provision allocating insurance costs between the parents, and therefore incorporated it in its proposed statutory language.

21. ***Allocating the children's uninsured and unreimbursed medical expenses between the parents in proportion to each parent's share of income available for child support, with after-the-fact reimbursement as presently practiced.*** The role of uninsured and unreimbursed medical expenses in medical support orders was a subject of some debate on the Task Force. There has been virtually no disagreement over the general principle that these expenses, like insurance premiums, child care costs, and basic support, should be shared between the parents in proportion to each parent's percentage of their combined income available for child support. This principle has been incorporated into Shared Responsibility since the model was introduced at the August 1999 Task Force meeting.

However, the way in which these expenses would be calculated and collected has been controversial. At the June 2000 Task Force meeting, the DHS Project Team proposed a new approach to uninsured and unreimbursed medical expenses. Rather than ordering after-the-fact reimbursement for actual expenses, as presently practiced, the court would order the two parents to contribute a modest percentage of their combined income available for child support toward the cost of the children's uninsured and unreimbursed expenses. This amount would then be apportioned between the parents in proportion to each parent's percentage of income available for support. The obligor's share would become part of the obligor's medical support obligation, and the obligee would be presumed to spend his or her share directly on the children. The Project Team initially proposed 5% of the parents' combined income as the default amount to be apportioned between the parents for uninsured and unreimbursed medical expenses (Task Force meeting of June 2000), but additional research suggested 1% as a more accurate reflection of the children's portion of what Minnesota parents spend on uninsured and unreimbursed medical expenses (Task Force meeting of August 2000). The proposal was further refined by establishing a "cap" on the default amount for uninsured and unreimbursed medical expenses equal to what a median-income Minnesota family of four would spend on these expenses (1% of \$5595 per month, or approximately \$56). Expenses which exceeded this amount over the course of a twelve-month period would be considered extraordinary medical expenses, and the paying parent would seek reimbursement from the other parent based on his or her proportionate share of their combined income available for child support in a manner consistent with current practice (Task Force meeting of November 2000).

Task Force reaction to this proposal for uninsured and unreimbursed medical expenses was mixed. Some supported it on the grounds that it would enhance administrative efficiency, reduce litigation, and reduce arrears (since an obligor's share of uninsured and unreimbursed medical expenses, if not paid, may become arrears subject to income withholding – 518.171, Subd. 10). Others opposed it because actual expenses may differ substantially from the default amount ordered, and because the provision might lead to increased demands for "accounting" for child support money received by the obligee.

The Minnesota Medical Support Work Group considered this proposal concurrently with the Guidelines Review Task Force, and was similarly divided on its merits. Given the lack of consensus in both advisory bodies, DHS ultimately decided to recommend a modified version of the present statutory provision for uninsured and unreimbursed medical expenses. Under Shared Responsibility, such expenses would be apportioned between the parents in

proportion to each parent's share of their combined income available for child support (rather than their share of combined net income). The method of collection would remain consistent with present practice: the parent who pays for the service seeks reimbursement after the fact from the other parent.

22. ***Using an adapted version of the MinnesotaCare premium schedule to determine the obligor's contribution to medical support when neither parent has access to appropriate insurance.*** This provision parallels –and was inspired by – the provision for child care support when an obligor has limited ability to pay. It was first incorporated in the version of Shared Responsibility reviewed by the Task Force at its June 2000 meeting, and like the use of the Basic Sliding Fee co-payment schedule, it was favorably received, though not formally voted upon. Task Force members encouraged the DHS Guidelines Review Project Team to consult with state MinnesotaCare staff to ensure that the premium schedule was appropriately adapted for use in the establishment of medical support, and the Project Team did so. The draft statutory language was further refined by the December 2000 recommendations of the Minnesota Medical Support Work Group, which included, among other things, a number of specific criteria the courts can use to determine whether the insurance to which parents have access is “appropriate” (including accessibility, comprehensiveness, and affordability, all of which are defined in concrete and measurable ways). This was an important contribution, because the “trigger” for using the adapted MinnesotaCare premium schedule for determining support is not a parent's income, but rather the availability of “appropriate” private insurance to at least one of the parents (which is often related to, but not strictly dependent on, income). Like the provision for child care support when an obligor is low-income, the provision for medical support when neither parent has access to appropriate insurance is an innovative way of setting medical support commensurate with a parent's ability to pay, using standards reflected in other state health care policies.

23. ***Taking the obligee's resources into account before applying the “substantial unfairness test.”*** One of the most problematic issues in child support guidelines is how to ensure that parents who pay support have enough remaining income to meet their own basic needs while still making adequate provision for the needs of their children. The current Minnesota guidelines attempt to solve this problem through the application of a “substantial unfairness test” in the process of calculating child care support. The obligor's income is compared to the federal poverty guideline after subtracting spousal maintenance, basic support, and child care support from his or her gross monthly income. If the remaining income is less than the federal poverty guideline for one person, then the child care support portion of the order is typically reduced by an amount equal to the difference between the obligor's remaining income and the federal poverty guideline.

A number of Task Force members noted an inconsistency in the statutory language concerning “substantial unfairness.” The statute specifies that the child care support amount calculated under the guidelines should not be “substantially unfair to *either* parent” (518.551, Subd. 5.(b), emphasis added), yet the income test is only used to determine whether the child care support amount awarded is unfair to the *noncustodial* parent (*sic*, same cite). The concern of these Task Force members was that the custodial parent is then left to make up the

difference from his or her own resources, without a prior determination of whether he or she has sufficient resources to do so. In response to this concern, other Task Force members argued strongly that child support orders must be affordable. They asserted that unless obligors have enough left to live on after paying support, they will simply give up and “go underground,” avoiding payment altogether, which is worse for children than paying a reduced amount of support.

A number of possible solutions to the dilemmas of “apportioning a *lack of* resources” were discussed over several months, but the one that was ultimately incorporated into the draft statutory language was developed and approved at the October 18, 2000 Task Force meeting. The members agreed that it is important to determine if an obligee has enough resources to compensate for any reductions in child support *before* determining whether, and by how much, support should be reduced. Otherwise, reductions in support will come at the expense of the children. The specific tests proposed by the Task Force were as follows: (1) The obligee must be receiving public assistance, or (2) the obligee must have income adjusted for child support (i.e., gross income minus self-employment expenses minus other orders being paid) of at least 120% of the federal poverty guideline for a household size equal to the obligee plus the children of the action. The relevant obligee income thresholds would be listed on the guidelines worksheet in terms of the number of children for whom support is being determined, as follows:

*If the obligee is receiving public assistance, or the obligee's adjusted gross monthly income (Line 5) is equal to or greater than the basic needs threshold amounts in the table below, the obligor's order for support may be reduced as indicated on Lines 19 and 20.*

### **Children's Basic Needs Threshold Amounts**

<u>Number of Children</u>	<u>Obligee's Adjusted Gross Monthly Income (Line 5)</u>
1	\$1125
2	\$1415
3	\$1705
4	\$1995
5	\$2285
6	\$2575

Although this provision was not formally approved by a vote, its merits were noted as follows:

- It resolves the inconsistency in the present “substantial unfairness test.”
- It gives priority to the needs of the children.
- It is more consistent with the income-shares premises of Shared Responsibility.
- It is relatively simple to administer.

24. ***Raising the amount of income remaining to an obligor after paying support from 100% of the federal poverty guideline to 120% of the federal poverty guideline.*** As noted above, the intent of the current “substantial unfairness test” is to ensure that an obligor has at least a poverty-level income left after paying spousal maintenance and child support. The Task Force has long agreed that this level of income is too low; a poverty-level income is not enough for a person to meet his or her own basic needs. In fact, this conclusion is implicit in state welfare policy; a family must have an income equal to 120% of the federal poverty guideline for a household of its size in order to be considered “self-sufficient” and exit MFIP. Early versions of Shared Responsibility (reviewed at the Task Force meetings of August 1999 and September 1999) maintained the “substantial unfairness” threshold at only 100% of the federal poverty guideline, in an effort to preserve continuity with present statute. However, a number of Task Force members argued that this remaining income level was simply too low (Task Force meeting of September 1999), and was also inconsistent with the “basic needs” definition underlying the presumptive minimum (see #9 above) and implied by MFIP program guidelines. Consequently, the amount was raised to 120% of the federal poverty guideline in the version presented to the Task Force in October 1999, and it has remained there ever since.
25. ***Revising the distribution of any reductions in support resulting from the application of the “substantial unfairness test.”*** As presently practiced, if the “substantial unfairness test” shows that an obligor would have less than a poverty-level income left after paying support, the amount ordered for child care support is reduced, typically by an amount equal to the difference between the obligor’s remaining income and 100% of the federal poverty guideline. The Guidelines Review Task Force wanted to minimize the impact of any reductions in support, first on the children of the action, and second on state revenues. At its meeting of October 18, 2000 the Task Force recommended that any reductions in support resulting from the “substantial unfairness test” (revised as described in #21 and #22 above) be applied first to medical support (since that it most likely to be assigned), second to child care support, and only as a last resort to basic support. The DHS Guidelines Review Project Team incorporated this recommendation in the draft statutory language for Shared Responsibility.
26. ***Enhancing the clarity and consistency of the factors courts must consider in setting or modifying support and in determining whether to deviate from guidelines.*** The Task Force reviewed the statutory language of a number of other states regarding deviation factors at its December 2000 meeting, and made a number of recommendations for the proposed Shared Responsibility statute. The recommended changes and the rationale for each change (including the states whose statutes were consulted in drafting the language) are described in detail in *The Shared Responsibility Child Support Guidelines: Rationale and Research Support* (Minnesota Department of Human Services, March 2001, pp. 51-53). Initially, the DHS Guidelines Review Project Team proposed that these factors be used strictly in determining whether to deviate from the guidelines, eliminating the current language which requires the courts to also consider these factors “in setting or modifying support.” However,

at the December 2000 meeting, some Task Force members expressed concern that this change would unduly limit latitude in the application of the guidelines, and recommended that the list of factors also be considered in setting or modifying support and not simply in determining whether to deviate. Although the Task Force as a whole did not make a specific recommendation on this point, the DHS Guidelines Review Project Team decided to retain the current language and included the phrase "in setting or modifying support" in the proposed list of deviation factors under Shared Responsibility. The Task Force believes that the proposed language will make the factors clearer, more consistent with the premises of Shared Responsibility, and more consistent with applicable federal regulations.

27. ***Maintaining the present practice of determining child support under "equal parenting time" arrangements on a case-by-case basis, rather than establishing an alternative formula.*** One of the criticisms frequently levied against Minnesota's current guidelines and case law is that they make no consistent provision for cases in which the parents share substantially equal parenting time. This issue is sometimes referred to as the "joint custody" issue, but the Task Force chose to reframe it as the "equal time" issue because joint physical custody arrangements can vary so greatly in terms of actual parenting time exercised by each parent. From the time Shared Responsibility was first introduced, it was anticipated by both the Task Force and the Project Team that the model would be adapted for use in "equal time" cases. At the November 2000 meeting of the Guidelines Review Task Force, the DHS Guidelines Review Project Team presented for its review a "equal time" version of Shared Responsibility. An "equal time" order, like a "standard" Shared Responsibility order, would be based on USDA data estimating the costs of raising children, and would apportion those costs between the parents in proportion to their share of combined income available for child support. The major difference between a "standard" Shared Responsibility order and an "equal time" order is that, instead of *discounting* the basic support amount in order to reserve parenting-time income to the obligor, an equal time order would first *multiply* USDA estimates of child-rearing expenses by 1.5 to reflect the duplication of expenses in the two households. Each parent would be assumed to be spending half that amount directly on the child during his or her parenting time. The assumed direct spending would be treated as a credit, and would be subtracted from each parent's proportionate share of their combined (enlarged) responsibility for basic support. The parent with the larger income pays the difference between his or her proportionate responsibility and his or her presumed direct spending to the other parent as basic support. "Equal time" orders would only be issued when the court order specified that the children were spending at least 45% of overnights in a calendar year with each parent. Not surprisingly, the "equal time" orders were substantially lower than the "standard" orders in the sample cases DHS presented to the Task Force.

The Task Force debated the merits of an "equal time" version of Shared Responsibility version at considerable length. Below is an excerpt from the minutes of the November 15, 2000 meeting outlining the advantages and disadvantages of the proposal:

**Reasons to develop an “equal time” version of Shared Responsibility:**

- *It would satisfy a long-standing demand for a consistent approach to establishing support when children are spending approximately half their time with each of their parents. This issue has been on the agenda of the Task Force since its inception.*
- *It bases support, not on the label used for a custody arrangement (“joint custody”) but on actual parenting time. It would therefore not encourage disingenuous litigation over custody labels when the real issue is the amount of the child support obligation. Defining “equal time” as a minimum of 45% of overnights with each parent over the course of a calendar year sets the standard for “equal time” high enough that disingenuous litigation over parenting time would also be discouraged.*
- *It provides a consistent approach to establishing support under equal parenting time arrangements, rather than relying on inconsistent applications of inconsistent case law.*
- *If there is no statutory provision for the determination of support under equal parenting time arrangements, courts will probably use Hortis/Valento to adapt Shared Responsibility. This would be inappropriate because:*
  - ✓ *Hortis/Valento is based on the questionable assumption that the proportion of time a child spends with a parent is always the same as the proportion of the child’s expenses met by the parent. An Equal Time Order would assume that “time equals money” only when children are spending roughly half their time with each parent.*
  - ✓ *Shared Responsibility already incorporates a “separate household discount” into the basic support schedule. It assumes that children in separated households “cost less” than they actually do, so that the non-custodial parent can retain some income to spend directly on the child during parenting time. An equal time order should begin with the opposite assumption – that children spending equal time in two households cost more than children in two-parent households. Applying Hortis/Valento to Shared Responsibility would result in support orders that significantly underestimate children’s needs.*

**Reasons NOT to develop an “equal time” version of Shared Responsibility:**

- *The assumption that parents’ direct spending on children is equal when the children spend equal time with each parent may be in grave error. Financial arrangements in equal time parenting situations vary greatly, and most parents who develop equal time parenting arrangements also work out the necessary financial arrangements, including child support.*
- *A statutory provision for equal time arrangements would violate the recommendation of the Parental Cooperation Task Force that child support and parenting time should be kept separate.*

- *The likelihood that child support orders would be significantly reduced under equal time arrangements would provide an incentive for some parents to litigate for equal time, even if such an arrangement was not in the best interests of the children. It would also provide an incentive for other parents to litigate against equal time, even if such an arrangement was in the best interests of the children.*
- *If more couples litigated over the percentage of parenting time, more cases would move from ex pro into district court, because child support magistrates cannot rule on custody or parenting time.*
- *An equal time alternative might also increase the demand for modification. If an obligor who is paying equal-time support is spending less than equal time with the children, the obligee has a strong incentive to go in for a modification. Worse yet, an equal time alternative may exacerbate access problems: The obligee has an incentive to interfere with the obligor's parenting time as a prelude to bringing a motion for modification.*
- *Because equal time arrangements vary so greatly among families, with respect both to schedules and expenses, it is best to leave the determination of support to the courts on a case-by-case basis, rather than to the legislature.*

At the conclusion of this discussion, the Task Force made a majority-vote recommendation against incorporating an equal-time version of Shared Responsibility into the draft statutory proposal. The majority of the members present at the November 2000 meeting were ultimately persuaded that the disadvantages of an equal-time provision outweighed the benefits.

## CONCLUSION

The Child Support Guidelines Review Advisory Task Force has played a vital role in the development of the Shared Responsibility model and the analysis of its potential impact. Every provision of Shared Responsibility was reviewed and discussed, if not actually developed, at one or more Task Force meetings. Members' suggestions for research and their examination of both hypothetical and actual case outcomes also provided invaluable support for the development of the final proposal. The Minnesota Department of Human Services is indebted to the Child Support Guidelines Review Task Force for its many months of service and its shared commitment to the well-being of Minnesota children and their families.