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Agency of Human Services

Memorandum

To: **Senate Judiciary Committee**
From: **Sarah B. Haselton, Esq.,**
Managing Attorney for the Office of Child Support
Re: **Passage of H.278**
An Act Relating to Acknowledgment or Denial of Parentage
Date: **April 9, 2019**

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) required all states to adopt an in-hospital process for voluntarily acknowledging parentage as a condition of the receipt of Federal IV-D Funds. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) expanded and modified required paternity acknowledgment procedures.

While states have the discretion to design their own paternity acknowledgment forms, the federal Office of Child Support Enforcement (OCSE) has issued a list of required data elements that must be contained on any state paternity acknowledgment form, for the form to be valid. Vermont's Acknowledgment of Parentage Form contains the requisite data elements required by the federal government. OBRA and PRWORA further indicate that, signatories' completion of a valid voluntary acknowledgment of parentage form must operate as a conclusive finding of paternity.

OBRA and PROWRA contemplate a signatory's ability to rescind their acknowledgment of paternity within the earlier of 1) 60 days; or 2) the date of an administrative or judicial proceeding to establish a support order in which the signatory is a party.

As presently drafted, the rescission process contained in the Vermont Parentage Act (VPA), as codified at 15C of the Vermont Statutes Annotated, is inconsistent with federal law. Specifically, 15C VSA §307(a) arguably affords signatories of an acknowledgment of paternity to attempt to rescind at any time. While Vermont's current statute does indicate that signatories of an acknowledgment of parentage only have 60 days to file a rescission with the Vermont Department of Health (VDH), so too, it affords signatories the opportunity to rescind by commencing a court action within 60 days after the effective date of the acknowledgment of parentage, or within 60 days after the first court hearing in a proceeding in which the signatory is a party to adjudicate an issue relating to the child. Vermont's statute as currently drafted fails to specify that parties only have the ability to pursue rescission within ***the earlier of*** 60 days after the effective date of the acknowledgment, or a court process involving the minor child.

Passage of H.278 ensures that Vermont's rescission process is consistent with federal law by making clear that signatories to an Acknowledgment of Parentage who wish to rescind, only have the ***earlier*** of 60 days to file a rescission with VDH, or by resolving the matter in a court process. The proposed Bill, H.278, is also consistent with the rescission process adhered to by other states and mirrors that contained in the Uniform Parentage Act and Maine Parentage Act, both acts upon which the VPA is largely premised.

Bill H.278 further resolves the statutory inconsistencies contained within the VPA due to 15C V.S.A. §307(a). While the rescission process articulated in 15C V.S.A. §307(a) is at odds with various provisions of the VPA, the conflict is most notable in 15C V.S.A. §308(a), which indicates that signatories to an Acknowledgment of Parentage only have ***two years*** after the effective date of the Acknowledgment to challenge said acknowledgment. Further, the statute requires that the challenge may only arise on the basis of fraud, duress, coercion, threat of harm, or material mistake of fact. When read together, 15C V.S.A. §307 and §308 are in complete contradiction to one another.

Finally, relative to the rescission period which the bill seeks to redress, the language in the proposed bill is consistent with the rescission process outlined in the former 15 V.S.A. §307, which was replaced by the VPA. Specifically, former 15 V.S.A. §307(f) contained the following language: "A person who has signed a Voluntary Acknowledgment of Parentage form may rescind the acknowledgment within 60 days after signing the form or prior to a judicial determination of parentage, ***whichever occurs first***" (emphasis added).

H.278 also makes a technical correction to the VPA insofar as the sharing of information between VDH, OCS and the Family Services Division. The former statute, which the VPA has replaced, explicitly authorized VDH to share acknowledgment of parentage forms with OCS. As a result of mere oversight, similar language authorizing this documentation exchange was left out of the VPA. Language contained in the proposed bill authorizes the VDH to share all paternity documentation kept by VDH with both OCS and FSD to the extent either agency requires these documents to resolve paternity issues pertaining to parties with whom they have cases.

For the reasons articulated above, OCS offers its ardent support of H.278. Passage of this bill ensures that the rescission process involving acknowledgments of parentage will be consistent with federal law, as well as both the Uniform Parentage Act, and Maine Parentage Act, both of which Vermont's Parentage Act are largely premised upon. This bill will further resolve the statutory conflict that is present in the VPA, given the current language contained in 15C V.S.A. §307, which is inconsistent with other provisions of the statute. Passage will help ensure efficiency of process and judicial economy by staving off the need to bring litigation that the ambiguity in the present statute creates.

Finally, we respectfully request that the committee consider an additional change that came to our attention last week. The Vermont Parentage Act ("the VPA," codified at Title Fifteen C, chapters 1-8) became law on July 1, 2018, repealing the Parentage Proceedings Act (Title Fifteen, chapter 5, subchapter 3A). There are still various statutes that reference the repealed law, and 33 V.S.A. §5111(a) is one of them.

Section 5111 is the provision within Title 33, Chapter 51 that permits the Court to order genetic testing for the purpose of identifying a child's genetic parents. Subsection (a) refers to the repealed law, and we recommend amending the statute so that it is consistent with the VPA as follows:

> If a child is placed in the legal custody of the Department and the identity of a parent has not been legally established at the time the petition is filed, the Court may order ~~that the mother,~~ the child~~,~~ and the child's alleged ~~father~~ genetic parents to submit to genetic testing and may issue an order establishing parentage pursuant to ~~15 V.S.A. chapter 5, subchapter 3A~~ 15C V.S.A. chapters 1-8 (relating to parentage proceedings). A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

This proposed amendment does not change the substance of 33 V.S.A. §5111(a); it merely brings it in line with the VPA.