

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 JUL 13 PM 3:55

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: THE BUREAU FOR CHILD SUPPORT ENFORCEMENT TITLE NUMBER: 97

RULE TYPE: LEGISLATIVE CITE AUTHORITY: W.V.A. CODE § 48-18-105 (19)

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: ESTABLISHING AND ENFORCING PATERNITY AND SUPPORT
OBLIGATIONS FOR CHILDREN IN THE LEGAL CUSTODY OF THE
DEPARTMENT

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 25, 2013 AT 12 noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

HEIDI L. TALMAGE, ESQUIRE

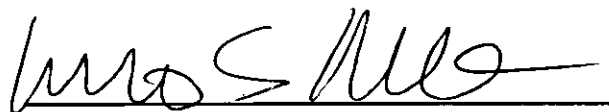
GENERAL COUNSEL

BUREAU FOR CHILD SUPPORT ENFORCEMENT

350 CAPITOL STREET, ROOM 147

CHARLESTON, WV 25301-3703

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILD SUPPORT ENFORCEMENT**

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

MEMORANDUM

TO: The Office of the Secretary of State
Administrative Law Division

FROM: Heidi L. Talmage, Esquire
General Counsel

DATE:

SUBJECT: Brief Summary of Proposed Legislative Rule 97-5

=====

Pursuant to West Virginia Code § 48-8-105 (19), the Bureau for Child Support Enforcement is authorized to file rules to address issues related to the establishment of paternity, the establishment, modification, and enforcement of support obligations, and other issues required to maintain compliance with Federal IV-D requirements. This proposed Legislative Rule establishes the services to be provided by the Bureau for Child Support Enforcement for the establishment of paternity and the establishment and enforcement of support for children who are in the legal custody of the Department.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Establishing and Enforcing Paternity and Support Obligations for Children in the Legal Custody of the Department

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: The Bureau for Child Support Enforcement

Address: 350 Capitol Street, Room 147
Charleston, WV 25301-3703

Phone Number: 304-356-4730 Email: kim.s.rider@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The contents of the proposed legislative rule do not change the type of services provided by the Bureau. The proposed rule also does not change the method of delivery of services. The proposed rule simply places the pertinent contents of the Bureau's existing policy manual into legislative rule format in order to bring the Bureau into compliance with State law. There will be no effect on either the costs of the services or the revenue of the Bureau.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Establishing and Enforcing Paternity and Support Obligations for Children in the Legal Custody of the Department



Rule Title:

Establishing and Enforcing Paternity and Support Obligations for Children in the Legal Custody of the Department

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

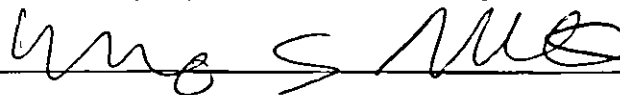
None anticipated, as this is merely placing the current Policy Manual into Legislative Rule format in order to bring the Bureau into compliance.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 6/4/13

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 25, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) THE BUREAU FOR CHILD SUPPORT ENFORCEMENT
350 CAPITOL STREET, ROOM 147
CHARLESTON, WV 25301-3703

LEGISLATIVE RULE TITLE: ESTABLISHING AND ENFORCING PATERNITY AND
SUPPORT OBLIGATIONS FOR CHILDREN IN THE LEGAL
CUSTODY OF THE DEPARTMENT

1. Authorizing statute(s) citation § 48-18-105 (19)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) or Public Comment Period ended:

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

- c. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Kim Rider, Assistant to General Counsel

Bureau for Child Support Enforcement

350 Capitol Street, Room 147

Charleston, WV 25301-3703

304-356-4730 - phone 304-558-4092 - fax kim.s.rider@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Heidi L. Talmage, General Counsel

Bureau for Child Support Enforcement

350 Capitol Street, Room 147

Charleston, WV 25301-3703

304-558-3780 - phone 304-558-4092 - fax

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

2013 JUN 25 PM 3:55

Title 97

Legislative Rules

The Bureau for Child Support Enforcement

Series 5

Establishing and Enforcing Paternity and Support Obligations for Children in the Legal Custody of the Department

§ 97-5-1. General.

1.1. This legislative rule establishes the services to be provided by the Bureau for Child Support Enforcement for the establishment of paternity and the establishment and enforcement of support for children who are in the legal custody of the department.

1.2. Authority. - West Virginia Code § 48-18-105 (19)

1.3. Filing Date. -

June 25, 2013

1.4. Effective Date. -

§ 97-5-2. Definitions.

2.1. Bureau. The Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement is established by W.Va. Code § 48-18-101 and is designated as the single state agency to fulfill the obligations of the State of West Virginia under Title IV-D of the Social Security Act. Pursuant to W. Va. Code § 48-18-122, the bureau operates the central state case registry.

2.2. Cash public assistance. Cash public assistance. – Monetary benefits provided to eligible individuals under Title IV-A of the Social Security Act. Eligibility for these benefits involves meeting income, asset and household composition requirements.

2.3. Department. The Department of Health and Human Resources. The Department of Health and Human Resources is established pursuant to W. Va. Code § 5F-1-2 and contains within it the Bureau for Child Support Enforcement.

2.4. Child in the legal custody of the department - A child is considered to be in the legal custody of the department for child support purposes under the following circumstances: if a court of competent jurisdiction entered an order placing the child in the legal custody of the department, or if the parent or parents of the minor child have signed a time-limited voluntary agreement for placement of the child into the department's custody or if all of the living parents of the minor child have signed a voluntary relinquishment to permanently end his or her parental rights and have designated the department as the custodian of the minor child.

2.5. Good cause. – A determination made by an authorized individual or organization that an applicant for child support services has a valid reason for failure to comply with the obligation to cooperate with the Bureau for Child Support Enforcement in its attempts to establish paternity, and establish and enforce support obligations.

2.6. IV-E Agency. - The agency of state government that oversees the services provided under Title IV-E of the Social Security Act. These include the provision of safe and stable homes for children who have been removed from their natural home environment. In West Virginia, the IV-E agency is the Bureau for Children and Families.

2.7. Medicaid. - A program authorized under Title XIX of the Social Security Act to provide payment for medical services for certain low income persons. Eligibility for services is subject to income, asset, and household composition requirements, and, in certain categories of eligibility, the applicant must meet specified medical requirements. In West Virginia, this program is administered by the Bureau for Medical Services.

§ 97-5-3. Methods by which a child is placed into the legal custody of the department.

3.1. The department assumes the legal custody of a minor child when:

3.1.a. An order of a court specifically grants legal custody of a minor child to the department; or

3.1.b. The parent, parents, or guardians of a minor child sign a time-limited voluntary agreement which places custody of the minor child with the department; or

3.1.c. The parent, parents, or guardians of a minor child sign a permanent relinquishment of all parental rights and place custody of the minor child with the department.

§ 97-5-4. Services to children in the custody of the department.

4.1. Cases involving children who have been placed into the legal custody of the department shall receive the full array of services available through the bureau to establish paternity, if necessary, and to establish, modify, and enforce child support obligations.

4.2. When a child is placed into the legal custody of the department, both parents of the child shall be considered as potential support obligors and the bureau shall take all appropriate steps to establish paternity, if it is not already established, and to establish, modify, and enforce a support obligation for the child, including the establishment, modification, and enforcement of a medical support obligation.

4.3. By operation of law, when a child is placed into the legal custody of the department, all child support and medical support obligations accruing during the period of time that the child is in the department's custody that are/have been established for the benefit of that child are assigned to the department. The department is permitted by operation of law to reimburse itself from the child support paid, for the cost of maintaining the child in foster care. However, payments received in excess of the foster care maintenance cost are also remitted to the IV-E agency. The distribution of any funds in excess of the amount assigned to the department shall be determined by the policy of the IV-E agency in compliance with 45 C.F.R. § 302.52.

4.4. If either paternity or support remains an issue, the bureau's attorney shall move to intervene in the foster care case in circuit court to resolve any outstanding issues related to paternity and support.

§ 97-5-5. Termination of parental rights.

5.1. A relinquishment or termination of parental rights does not, by itself, automatically end a parent's obligation to financially support his or her child. When advised by social services or the court that a parent's rights have been terminated, either voluntarily or by order of the court, the bureau's attorney shall review the most recent court order to assess the status of the support obligation.

5.2. If the court has not addressed the issue of support in light of the termination or relinquishment of parental rights, the bureau attorney shall seek clarification from the court to determine whether the obligation previously entered for the benefit of the child or children shall continue, be modified or terminated.

§ 97-5-6. When the child leaves the custody of the department.

6.1. When notified by social services or the court that the minor child is no longer in the department's custody, the bureau employee assigned to the case shall determine the reason that the child is no longer in the department's custody and determine the appropriate action to be taken. The bureau attorney assigned to the case shall review the most recent order of the court to determine if the court has modified any existing support obligation in light of the change of circumstances.

6.1.a. If the child has been returned to the custody of one or both of his or her parents, the bureau employee shall determine whether there is a need for bureau services to continue to the family. If continuation of bureau services to the family is appropriate, the bureau employee shall take prompt action to open a full service case for the family, if one is not already open.

6.1.b. If arrears are owed to the department or to the child at the time that the child leaves the department's custody, the bureau employee shall continue to take all appropriate actions to enforce the payment of that arrearage.

§ 97-5-7. Placement of the child with third-parties, subsidized guardianship and cash public assistance payments.

7.1. When the court or the social service agency places a child who has been in the custody of the department with a third-party, and the court grants legal guardianship to the third-party caregivers, the child is no longer in the custody of the department. In some circumstances, the legal guardians are provided with a financial subsidy to enable them to provide a home for the child; this payment is separate and distinct from a foster care maintenance payment, in that the third-party caregivers have now become the legal guardians for the minor child.

7.2. When a legal guardianship occurs, the legal guardian shall receive services from the bureau unless the guardian specifically requests that services no longer be provided.

7.2.a. When the bureau employee assigned to the case determines that the child is no longer in the custody of the department and has been placed in a legal guardianship situation, the employee shall attempt to contact the new legal guardian to advise the guardian of the status of the child support obligation and the services available.

7.2.b. The subsidy payment received by the legal guardian is not a public assistance benefit. Therefore, there is no requirement that child support collected for the benefit of the minor child residing with his or her legal guardian be assigned to the department for recoupment purposes.

7.3. When the court or the social service agency places a child who has been in the custody of the department with a third-party who is eligible to receive cash public assistance, the child may be included in a cash public assistance grant.

7.3.a. Cases involving cash public assistance grants are required to receive full services from the bureau. Cash public assistance is subject to applicable federal regulations relating to assignment of support collections for recoupment.

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Attachment A	-	45 C.F.R. § 302.52 - Distribution of support collected in Title IV-E foster care maintenance cases.
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LEXISNEXIS' CODE OF FEDERAL REGULATIONS
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*** This section is current through the April 25, 2013 ***
*** issue of the Federal Register ***

TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT
PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND
HUMAN SERVICES
PART 302 -- STATE PLAN REQUIREMENTS

[Go to the CFR Archive Directory](#)

45 CFR 302.52

§ 302.52 Distribution of support collected in Title IV-E foster care maintenance cases.

Effective October 1, 1984, the State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated in accordance with the provisions of § 302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse itself for foster care maintenance payments. Of that amount retained by the State as reimbursement for that month's foster care maintenance payment, the State IV-D agency shall determine the Federal government's share so that the State may reimburse the Federal government to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

45 CFR 302.52

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b)(1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments provided under title IV-A, the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best interests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under sections 408(a)(3) 471(a)(17) of the Act for the current month and all past months.

(c) When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support. Under this requirement, any collection made by the State under this paragraph must be distributed in accordance with paragraph (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 0960-0385)

HISTORY: [50 FR 19648, May 9, 1985, as amended at 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986; 64 FR 6237, 6249, Feb. 9, 1999, as confirmed at 68 FR 25293, 25303, May 12, 2003]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

NOTES: NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at 66 FR 39450, 39452, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 302 appear at 64 FR 6237, 6247, Feb. 9, 1999.]

CASE NOTES Applicable to entire Part:Part Note