

Form #3

OFFICE OF VIRGINIA
SECRETARY OF STATE

Karen L. Bouth
Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

Services Available from the Bureau for Child Support Enforcement

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:

Services Available from the Bureau for Child Support Enforcement

Rule Title: _____

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: 7/29/2013

Signature of Agency Head or Authorized Representative

Karen L. Bowling

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: JULY 7, 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

(304) 558-3780

(304) 558-4092 (FAX)

LEGISLATIVE RULE TITLE: REDIRECTION OF SUPPORT WHEN THERE IS A
CHANGE IN THE PERSON WITH WHOM THE MINOR
CHILD RESIDES

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

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

JUNE 25, 2013

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

NONE

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

COMMENT PERIOD ENDED JULY 25, 2013

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

Attached _____

No comments received X

- e. 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

(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

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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.

NOT APPLICABLE

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 _____

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

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

M E M O R A N D U M

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 97-2
=====

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 explains that the types of services provided by the Bureau, the cooperation requirements, the methods that may be used to be excused from cooperation with the Bureau, and special rules that apply to cases where domestic violence is alleged to have occurred between the parties to the case. It also establishes that there are no fees charged to persons who apply for or receive services from the Bureau.

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

Earl Ray Tomblin
Governor

Karen L. Browning
Cabinet Secretary

MEMORANDUM

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

FROM: Heidi L. Talmage, General Counsel

DATE:

SUBJECT: Brief Statement of Circumstances Requiring Rule
=====

The West Virginia Supreme Court of Appeals, in *Boyd v. Caplinger*, stated that the Bureau's Child Support Manual was not a Legislative Rule because the manual had not gone through the proper legislative process. The Court directed the Bureau to utilize the proper process for incorporating the manual as a Rule.

FILED
2013 JUL 29 PM 12:34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**TITLE 97
LEGISLATIVE RULE
BUREAU FOR CHILD SUPPORT ENFORCEMENT**

Series 2

The Bureau for Child Support Enforcement

§ 97-2-1. General.

1.1. Scope. -- This legislative rule establishes the services provided by the Bureau for Child Support Enforcement, the eligibility of individuals for services, the requirement for individuals who receive certain types of public assistance benefits to cooperate with the bureau, and the procedures to be used to establish good cause for non-cooperation.

1.2. Authority. -- W.Va. Code § 48-18-105 (19)

1.3. Filing Date. -- *June 25, 2013*

1.4. Effective Date. --

§ 97-2-2. Definitions.

2.1. Arrearage. -- The total of any matured, unpaid installment of support required to be paid by an order entered or modified by a court of competent jurisdiction. Said amount shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The term "arrearage" also includes any interest authorized by law which has accrued on unpaid support.

2.2. 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.

2.3. 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.

2.4. 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 their parental rights and have designated the department as the custodian of the minor child.

2.5. Child-Only Medicaid case. -- A Medicaid case opened solely to provide Medicaid benefits to minors. No adults in the household receive Medicaid services.

2.6. Child support formula. -- Pursuant to the terms set forth in W. Va. Code § 48-13-101 et seq., the method used to establish the amount of each parent's financial contribution to the support of their child.

2.7. Confidential information. -- Information about a specific party to a case, including the party's Social Security number, address, information related to banking or other financial transactions, state and federal tax information, information relating to medical treatment and place of employment is deemed to be confidential.

2.8. 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.

2.9. Domestic violence. -- As the terms "family and household members" are defined in W. Va. Code § 48-27-204, the occurrence of one or more of the following acts between family or household members: attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; placing another in reasonable apprehension of physical harm; creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts; committing either sexual assault or sexual abuse, as those terms are defined in articles eight-b and eight-d, chapter sixty-one of the West Virginia Code, or holding, confining, detaining or abducting another person against that person's will.

2.10. Family violence protective order. -- An order issued pursuant to W. Va. Code § 48-5-509, § 48-5-512, § 48-5-608, § 48-27-403 or § 47-27-501 which finds that domestic violence occurred and grants relief appropriate to the circumstances of the case, which shall include an order for a party to refrain from abusing, harassing, stalking, threatening or intimidating a family member, a former household member or a child.

2.11. Full service case. -- A case that has been opened by the Bureau for Child Support Enforcement where the applicant for services has indicated that he or she wishes to receive all services that are provided by the bureau that are applicable to his or her case; a case where the applicant receives certain public benefits requiring him or her to receive

all services that are provided by the bureau that are applicable to his or her case; or a case where no designation of the level of services has been made by the applicant for services.

2.12. 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, modify, and enforce support obligations.

2.13. Income Withholding. -- Pursuant to W. Va. Code § 48-14-105, § 48-14-401, a method by which the bureau withholds monies from an obligor's income to be remitted to the bureau for the payment of the obligor's support obligations. Income withholding may be used to collect both current support and arrearages, if any are owed.

2.14. IV-A agency. -- An agency of state government that has a federally-approved state plan in effect which authorizes the agency to provide cash assistance under Title IV-A of the Social Security Act. In West Virginia, the authorized IV-A agency is the Bureau for Children and Families.

2.15. Reduced service case. -- A case that has been opened by the Bureau for Child Support Enforcement where the applicant for services has specifically stated that the service that is requested is the only service he or she wishes to receive from the Bureau for Child Support Enforcement. There are four types of Reduced Service Cases. The types of Reduced Service Case are the following:

2.15.a. Locate services only. -- This reduced service type of case is opened solely to provide assistance to authorized law enforcement officials who are seeking information from the Bureau for Child Support Enforcement to locate a child who is believed to be the subject of a parental kidnapping or other child custody situation. This type of case shall only be opened upon the request of authorized law enforcement officials.

2.15.b. Collection and distribution of child support only. -- In this reduced service type of case, the support obligor pays the support obligation to the Bureau for Child Support Enforcement. The bureau distributes the payment collected to the support obligee. The bureau shall collect both current support obligations and arrearages, if any are owed. If payments cease, the bureau does not initiate a search for other sources of income or assets.

2.15.c. Income withholding only. -- In this reduced service type of case, the bureau issues an income withholding notice to a source of income that owes or may owe a payment to the support obligor. The bureau distributes the collected payment to the support obligee. The bureau shall collect both current support and arrearages, if any are due. In this type of reduced service case, the bureau does not take any action to establish, modify or enforce the support obligation, other than to issue the income withholding notice to the source of income designated by the applicant for service. If payments cease, the bureau does not initiate a search for other sources of income or assets.

2.15.d. Collection and distribution of spousal support only. -- In this reduced service type of case, the bureau shall enforce the collection of payments of spousal support from the obligor and distribute them promptly. The bureau has no authority to take any action to establish or modify a spousal support obligation.

2.16. 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 operated by the Bureau for Medical Services.

2.17. Medical support. -- A specific type of support that obligates the parent or parents of a minor child to provide financial support for the provision of medical care for their minor child, or obligates a spouse or former spouse to provide financial support for the provision of medical care for a spouse or former spouse. The financial support may be in the form of a sum certain to be paid to the custodian of the child, spouse, or former spouse, an order to be financially responsible for specific medical expenses, an order to enroll a child, spouse or former spouse in an insurance plan, responsibility for premium payments, deductibles, or other methods of assigning responsibility that are within the discretion of the court.

2.18. Obligee. -- An individual or the estate of a decedent to whom a duty of support is owed or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; or a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or an individual seeking a judgment determining parentage of the individual's child.

2.19. Obligor. -- An individual or the estate of a decedent who owes or is alleged to owe a duty of support, or who is alleged, but has not been adjudicated to be a parent of a child, or who is liable under an order of support.

2.20. Order of support. -- A judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, or the support and maintenance of a spouse or former spouse, which provides for monetary support, health care, arrearage or reimbursements.

2.21. Recent family violence protective order. -- An order issued pursuant to W. Va. Code § 48-5-509, § 48-5-512, § 48-5-608, § 48-27-403 or § 47-27-501 which finds that domestic violence occurred and grants relief appropriate to the circumstances of the case, which shall include an order for a party to refrain from abusing, harassing, stalking, threatening or intimidating a family member, a former household member or a child. For this purpose, a recent family violence protective order is one in which the order is currently in force, or

has no expiration date, or expired less than two years prior to the date that it is presented to the bureau.

2.22. State case registry. -- A database maintained by the Bureau for Child Support Enforcement pursuant to W. Va. Code § 48-18-122 that contains a listing of all cases entered by courts of competent jurisdiction in West Virginia that contain a child support obligation.

2.23. Support. -- The payment of money, including interest, for a child or spouse, ordered by a court of competent jurisdiction or an administrative agency authorized to establish support obligations, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time; or a payment, including interest, to third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or the payment of money, including interest, to a mother for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

2.24. Transitional Medicaid. -- A specific type of Medicaid that permits low-income families to maintain Medicaid coverage for a limited period of time after the household becomes ineligible due to income in the household from new employment or from child support collections.

2.25. Uniform Interstate Family Support Act. -- Pursuant to W. Va. Code § 48-16-101 et seq., a procedure established to assist support obligees and obligors who reside in different states or territories to establish and enforce support obligations.

2.26. Voluntary cooperation Medicaid cases. -- Medicaid recipients who are not required to cooperate with the establishment of paternity or the establishment and enforcement of child support obligations. These include recipients of Transitional Medicaid, Child-Only Medicaid recipients, and Medicaid cases where a pregnant woman is the only recipient of the service.

§ 97-2-3. Services offered by the Bureau for Child Support Enforcement.

3.1. The Bureau for Child Support Enforcement offers two levels of services to customers: full service cases and reduced service cases. If an application is received which does not specify the level of services requested, the application shall be considered to be a full service case.

3.2. Unless the applicant for services is required by operation of law to receive full services, every applicant for services may choose between receiving full services or

receiving reduced services in one of the categories offered by the bureau. Unless the applicant is required by operation of law to receive full services, the applicant may change his or her choice of the level of service at any time by completing a new application for services.

3.3. Persons who elect to receive full services may not choose between the services that are offered. Full service cases shall receive all services offered by the bureau that are appropriate for that case.

3.3.a. The service array available to full service cases includes the following:

3.3.a.1. Location services. -- This service involves the use of available resources to locate any parent or putative parent whose whereabouts are unknown, and the use of available resources to locate the income and assets of a person who owes or may owe a support obligation.

3.3.a.2. Establishment of paternity. -- This service involves the use of a variety of legal methods to establish paternity for a child who is born out-of-wedlock or for whom paternity has not been otherwise established. Genetic testing services are available in appropriate cases.

3.3.a.3. Establishment of child support orders. -- The bureau shall file a petition with the appropriate court of competent jurisdiction to obtain an order of support. The term "child support" also includes medical support for the minor child.

3.3.a.4. Enforcement of child and spousal support orders. -- The bureau enforces unpaid child support and spousal support orders in a variety of ways. These include, but are not limited to, collection through income withholding against wages and other sources of income, state tax offsets, federal tax offsets, and seizure of assets.

3.3.a.5. Uniform Interstate Family Support Act. -- If a support obligor or potential support obligor resides outside the State of West Virginia, the bureau may use the process found in W. Va. Code § 48-16-101 et seq. to establish paternity, establish a support order and to enforce the terms of existing orders of support.

3.3.a.6. Establishment and enforcement of medical support. -- The bureau shall seek to establish medical support for any child in its caseload who does not have a medical support order in place, and the bureau shall seek enforcement of existing medical support obligations if they remain unfulfilled.

3.3.a.7. Collection and distribution. -- The bureau shall collect support payments as they become due and owing from the person designated by the court as the obligor of the support. Funds collected shall be distributed promptly.

3.3.a.8. Review and adjustment of support orders. -- Upon request of a party or parties to a case, the bureau shall review the available income of the parties, calculate the child support formula, and compare the amount of support recommended by the formula to the amount actually ordered by the court. If there is a variation of at least ten percent (10%) in the amount of the support obligation, the bureau shall take appropriate steps with the court of competent jurisdiction to file a petition to request modification of the support amount.

3.4. Services offered and provided to persons who do not receive cash public assistance, Medicaid or foster care services shall be the same as the services offered and provided to individuals receiving those benefits.

§ 97-2-4. General Eligibility Requirements.

4.1. Any individual may apply for the services of the bureau if:

4.1.a. The individual is a resident of West Virginia, is the parent, guardian, or primary caretaker of a minor child, and wishes to establish paternity, child support, or medical support for the minor child; or

4.1.b. The individual is a resident of West Virginia and is a party to a court order that contains a spousal support obligation, a child support obligation, or a medical support obligation; or

4.1.c. The individual is a non-resident of West Virginia but the support obligor or potential support obligor is a resident of West Virginia or has income or assets in West Virginia.

4.2. All persons who receive services from the bureau shall, as a condition of receiving services, agree to promptly repay any support payments which he or she erroneously received, if requested to do so by the bureau or if ordered to do so by a court of competent jurisdiction.

§ 97-2-5. Circumstances where the Bureau may decline to provide services.

5.1. The bureau may decline to establish paternity or child support or to collect and enforce a support obligation where good cause for non-cooperation has been established pursuant to § 97-2-8.

5.2. The bureau may decline to commence a new civil action when the parent or parents of the minor child have a pending action in which the support of the minor child is an issue.

§ 97-2-6. Child Support Services provided to recipients of cash public assistance, Medicaid or foster care programs.

6.1. Because of their participation in certain types of state and federal programs, certain individuals are required to cooperate with the bureau in the establishment and enforcement of child support obligations. In the following situations, the bureau is required to open a full service case for these individuals, regardless of whether the applicant requests full services:

6.1.a. West Virginia residents who are recipients of cash public assistance, when the eligibility for that program is based upon the absence of one or both of the parents of the minor child;

6.1.b. Children who are in the legal custody of the department;

6.1.c. West Virginia residents who are recipients of Medicaid; unless the Medicaid coverage is only for the minor child or children in the household and does not cover the adults in the household.

6.a.c.1. If an order of support is already established in a child-only Medicaid case and the bureau receives a referral from the Bureau for Children and Families, the bureau must open the case for full services.

§ 97-2-7. Assignment of Rights and requirement of cooperation with the Bureau for the recipients of certain government benefits.

7.1. The bureau provides mandatory full services to recipients of cash public assistance.

7.1.a. As a condition of the receipt of cash public assistance, the support obligee shall assign to the state the right to collect any child support and/or spousal support that is due and owing to the obligee during the period of time that he or she receives cash public assistance benefits. The amount assigned shall not exceed the total amount of cash public assistance paid to the household.

7.1.b. Obligees receiving cash public assistance shall cooperate with the bureau in the establishment of paternity for any child born out-of-wedlock or for whom paternity has not been otherwise legally established. This mandated cooperation includes providing accurate and truthful information to the bureau concerning the conception and birth of the child, supplying information regarding the income and assets of the parties, the Social Security Numbers of parties to the case, if known, the whereabouts of the other party, submitting to genetic testing to establish paternity, appearing for hearings, and providing testimony to the court. It also involves informing the bureau promptly of changes of residency and legal address.

7.1.c. Recipients of cash public assistance shall cooperate with the bureau in the establishment, modification and enforcement of support obligations, including providing accurate and truthful information to the bureau regarding the income and assets of the parties, the whereabouts of the other party, appearing for hearings and providing testimony to the court. It also involves informing the bureau promptly of changes of residency and legal address.

7.1.d. If a recipient of cash public assistance receives a child or spousal support payment directly, the recipient shall redirect that payment immediately to the bureau, either by mailing the check or money order to the bureau or by bringing the payment to the bureau's office.

7.2. The bureau provides mandatory full services to recipients of Medicaid who are not exempt from participation in the child support program. The Medicaid program determines which types of Medicaid cases are exempt from mandatory participation in the child support program. However, any Medicaid recipient who meets the eligibility requirements as set forth in Section § 97-2-4 may apply voluntarily for services.

7.2.a. Recipients of Medicaid who are exempt from the mandatory cooperation requirement include women whose eligibility for Medicaid is due to their pregnancy and the mother has no other child in the household, transitional Medicaid recipients, and individuals who have been determined to have good cause for non-cooperation.

7.2.b. For recipients of Medicaid who are not exempt from mandatory participation in this program, the individual assigns to the state the right to collect any medical support and shall cooperate with the bureau to establish paternity, child support, and medical support. The amount of medical support required to be assigned to the State shall not exceed the total cost of the provision of services by Medicaid, and shall be only for the period of time that the household received Medicaid.

7.2.c. Recipients of Medicaid who are required to participate in the child support program shall cooperate with the bureau in the establishment of paternity for any children born out-of-wedlock or for whom paternity has not been otherwise established. This mandated cooperation includes providing accurate and truthful information to the bureau concerning the conception and birth of the child, supplying information regarding the income and assets of the parties, the Social Security Numbers of parties to the case, if known, the whereabouts of the other, submitting to genetic testing to establish paternity, appearing for hearings, and providing testimony to the court. It also involves informing the bureau promptly of changes of residency and legal address.

7.2.d. Recipients of Medicaid who are required to participate in the child support program shall cooperate with the bureau in the establishment, modification and enforcement of support obligations, including providing accurate and truthful information to the bureau regarding the income and assets of the parties, the whereabouts of the other party, appearing for hearings and providing testimony to the court. It also involves

informing the bureau promptly of changes of residency and legal address.

7.2.e. Recipients of Medicaid who are required to participate in the child support program or who voluntarily elect to participate in the child support program shall redirect to the bureau any child support or medical support payment received directly by the recipient. Payments may be redirected by either mailing the check or money order to the bureau or by bringing the payment to the bureau's office.

7.3. For Medicaid recipients who are not mandated by operation of state or federal law to participate in the child support enforcement program, the bureau shall provide services in the same manner as if the individual is not a recipient of public benefits. Non-mandatory Medicaid recipients who elect to apply for services from the bureau may choose to receive full services or elect one of the categories of reduced services.

7.4. Support collected for a child who is in the legal custody of the department shall be transmitted to the department that has been awarded custody of that child. The department shall retain from any current support collected the amount of the child's monthly foster care maintenance payment. Any collection in excess of the amount of the child's foster care maintenance payment shall be distributed according to 45 C.F.R. § 302.52.

§ 97-2-8. Good Cause Determinations.

8.1. The term "good cause" means that legitimate reasons exist for an applicant's failure to cooperate with the bureau to establish paternity, establish a support obligation or enforce a support obligation. Examples of good cause include, but are not limited to, fear of emotional or physical harm to the custodian or the child by the child's other parent, fear of domestic violence, fear of kidnapping or abduction by the other parent, or a belief that it is in the best interest of the child not to cooperate because the child was the result of an incident of incest or rape.

8.2. When advised that an applicant for services has requested a good cause determination, the bureau shall cease all work on the case until a decision is made on the pending request for exemption by the appropriate individual or agency authorized to make such a determination.

8.3. A determination of good cause simply authorizes the bureau to close its case. It does not set aside the underlying order of support, if one exists, and it does not relieve the obligor of his or her responsibility to provide support for his or her child.

8.4. The determination of good cause which permits an applicant to avoid cooperation with the bureau is made by different entities, depending on the specific circumstances in the case.

8.4.a. In cases where participation with the bureau is mandatory because the applicant receives certain types of Medicaid or cash public assistance, the determination of good cause is made by the Commissioner of the Bureau for Children and Families or his or her designee, if the applicant is a resident of West Virginia. If the applicant is a non-resident of West Virginia, the IV-A agency in the applicant's state or territory of residence is authorized to make the good cause determination.

8.4.b. The Cabinet Secretary for the Department of Health and Human Resources or his or her designee shall make the good cause determination for a child who is in the custody of the Department.

8.4.c. The bureau shall determine the existence of good cause in non-mandatory cases. A determination that good cause exists shall excuse the applicant from participation in some or all of the services provided by the bureau, depending on the specific circumstances of the case and the wishes of the applicant. If participation in all services offered by the bureau is determined to be inappropriate or unadvisable, the bureau shall close its case and take no further action to establish or enforce any support obligation.

8.5. Factors to be considered in making a good cause determination are:

8.5.a. The possibility that physical harm will occur to the child if the parent/guardian cooperates in the establishment of paternity or the establishment and enforcement of the support obligation;

8.5.b. The possibility that emotional harm will occur to the child if the parent/guardian cooperates in the establishment of paternity or the establishment and enforcement of the support obligation.

8.5.c. The possibility that physical harm will occur to the parent if the parent/guardian cooperates in the establishment of paternity or the establishment and enforcement of the support obligation.

8.5.d. The possibility that emotional harm will occur to the parent if the parent/guardian cooperates in the establishment of paternity or the establishment and enforcement of the support obligation.

8.5.e. The possibility that the child will be kidnapped or abducted if the parent/guardian cooperates in the establishment of paternity or the establishment and enforcement of the support obligation.

8.5.f. If the child was conceived as a result of an incident of incest or rape and the parent or guardian declines to establish paternity or to establish or enforce a support obligation.

8.6. Good cause determinations made by an authorized individual or his or her designee shall be conclusive and are not subject to review by the bureau.

8.7. Upon receipt of a good cause determination by the Bureau for Children and Families, a IV-A agency in another State, or the Cabinet Secretary, the bureau shall close its case and take no further action to establish paternity or to establish or collect any support obligation.

§ 97-2-9. Communication with IV-A.

9.1. For applicants who are required to participate in the child support program due to the applicant's receipt of certain types of public assistance, the bureau shall provide to the Bureau for Children and Families or to the comparable IV-A agency in another state or territory, information related to the applicant's cooperation with the bureau's efforts to establish or enforce a support obligation, changes in income, changes in the amount of support due and owing, amounts of support collected, establishment of paternity for a minor child of the parties, establishment of a medical support obligation, enforcement of a medical support obligation, and any other information which may have a bearing on the applicant's eligibility for public assistance.

§ 97-2-10. Continuation of services after the receipt of cash public assistance, Medicaid, or foster care services has ended.

10.1. When the bureau is notified that an applicant's receipt of public assistance has ended, the bureau shall notify the applicant that support services shall be continue automatically at the full service level unless the applicant notifies the bureau to close the case.

§ 97-2-11. Reduced Service Cases for the collection of spousal support.

11.1. The bureau provides an abbreviated array of services for cases in which the applicant has applied to open a reduced service case for the collection and distribution of spousal support.

11.2. The bureau shall enforce the already-existing spousal support obligation through all legal methods of collection including income withholding.

11.3. The bureau shall promptly distribute support payments collected.

11.4. The bureau shall use available resources to locate the obligor whose whereabouts are unknown, and shall use available resources to locate the income and assets of a person who owes a spousal support obligation.

11.5. The bureau shall enforce the already-existing spousal medical support obligation through all legal methods of collection.

11.6. The bureau has no authority to establish a spousal support order or a spousal medical support order if one does not already exist.

11.7. The bureau has no authority to file a petition to request modification of a spousal support obligation.

11.8. The bureau shall not collect a spousal support obligation of \$5.00 or less per month.

§ 97-2-12. Reduced Service Cases for collection and distribution of support payments.

12.1. The bureau provides an extremely abbreviated array of services for cases where the applicant has applied to open a reduced service case for the collection and distribution of support payments.

12.2. The reduced service case for collection and distribution does not include the use of income withholding, tax offsets, seizure of assets, passport denial, or any other type of collection activity. The bureau simply receives payments as provided by the support obligor, records the obligor's individual payment amounts and dates, and distributes those payments to the support obligee. At any point when payments are not received, the bureau shall not use its automated resources to attempt to locate the obligor or any source of income and shall not use any enforcement methods to collect the unpaid support.

§ 97-2-13. Reduced Service Cases for the collection of support through the issuance of an income withholding notice.

13.1. The bureau provides an abbreviated array of services for cases where the applicant has applied to open a reduced service case for the collection of a support obligation through the use of an income withholding.

13.2. The bureau shall issue income withholding notices to sources of income provided to us by the obligor and/or obligee, collect and distribute all payments received from the obligor's source of income and record the obligor's individual payment amounts and dates of the payments. At any point when payments are not received, the bureau shall not use its automated resources to attempt to locate the obligor or any source of income.

§ 97-2-14. Reduced Service Cases opened for the purpose of providing the Bureau's locate information to assist law enforcement.

14.1. The bureau has access to a vast array of tools that can be used to locate an

individual.

14.2. In circumstances where authorized individuals believe that a minor child is the subject of a kidnapping or a parental abduction, the bureau is permitted to provide information to the authorized authorities solely for the purpose of assisting law enforcement in their attempts to locate the child. Persons authorized by statute to request and receive this type of information include:

14.2.a. Any agent or attorney employed by the federal, state, county, municipality or other agency of government, such as a prosecuting attorney, assistant prosecuting attorney, or a law enforcement officer, who has the duty or authority under state law to enforce a child custody or visitation determination;

14.2.b. Any court or agent of the court having jurisdiction to make or enforce a child custody or visitation determination;

14.2.c. Any agent or attorney employed by the federal, state, county, municipality or other agency of government who has the authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child.

14.3. Parents of an abducted child and their private counsel are not "authorized individuals" within the meaning of the state and federal law, and may not open this type of reduced service case or request access to this type of information. This type of reduced service case may only be opened upon the request of an authorized individual. Locate information of this nature may only be provided to those authorized individuals.

§ 97-2-15. The process of applying to receive services from the Bureau for Child Support Enforcement.

15.1. The bureau shall not require the receipt of an application prior to opening a new case in those circumstances where the applicant is required by state or federal law to cooperate with the bureau. However, because the application form requests information that is important in the processing of the case, the bureau shall attempt to obtain a completed application from the applicant.

15.2. Before opening a case for an individual who is not required by state or federal law to cooperate with the bureau, the bureau shall require the receipt of a completed and signed application for services.

15.3. An application for bureau services may be obtained from any bureau office, may be found on-line on the bureau's website, or may be obtained from the West Virginia Supreme Court of Appeals.

15.4. If the bureau employee assigned to the case has sufficient information to open the case, he or she shall proceed to do so within the timeframes established in state or federal

law. However, if the employee does not have sufficient information to open the case, the employee shall conduct an interview with the applicant, either in person or by telephone, to gather information and documents, and determine the action needed. Any contact necessary to proceed with the opening of the case shall be conducted within the timeframes established in state or federal law.

15.5. Regardless of whether an application for bureau services is received, when a court forwards to the bureau a certified copy of an order of support, the bureau shall enter the pertinent information from that document into the state case registry. If any party to the order receives public assistance from the IV-A agency, the bureau shall proceed to open a case as required by law. If no party to the order is considered to be mandatory for services, after the pertinent information from the document is entered into the state case registry, no further action on the case shall be taken by the bureau unless a signed application for bureau services is later received.

15.6. As a part of the ongoing requirement to cooperate with the bureau, the applicant may be required to produce information and documents, including but not limited to, birth certificates, marriage certificates, court orders, Social Security numbers, lists of assets of the parties, and address information.

§ 97-2-16. Failure to cooperate with the Bureau.

16.1. In cases where the applicant for services fails to cooperate with the bureau, the bureau may take certain actions.

16.1.a. If the applicant is required by law to receive services from the bureau, the bureau shall notify the IV-A agency of the applicant's failure to cooperate.

16.1.b. If the applicant is not required by law to receive services from the bureau, the bureau may close the case of any applicant who knowingly provides false information to the bureau or to the court, or fails to submit to genetic testing to establish paternity when necessary, fails to appear for hearings, fails to maintain an updated address with the bureau, or fails to take any other actions necessary for the bureau to process the case.

§ 97-2-17. Domestic Violence and Good Cause for non-cooperation with the Bureau.

17.1. When a bureau employee becomes aware that a party to a bureau case has claimed or is claiming that domestic violence has occurred between that party and another party to the case, the bureau employee shall act promptly to safeguard the security of confidential information about the parties contained in the bureau's case records.

17.2. If the bureau employee receives a report of domestic violence directly from the party to the case, the party shall be given a copy of the Affidavit of Domestic Violence and the Notice of Good Cause, if appropriate.

17.3. The differences in the purpose of the Affidavit of Domestic Violence and the Notice of Good Cause and the effect of signing each document shall be explained to the party.

17.3.a. The purpose of the Affidavit of Domestic Violence is to provide heightened awareness to the bureau employees assigned to the case of the potential for domestic violence between the parties to the case and to alert the bureau to take additional steps to withhold any information from the other party that might permit him or her to locate the party claiming domestic violence or the child of the parties. The signing of an Affidavit of Domestic Violence does not authorize the bureau to close the case or to stop any establishment or enforcement activities.

17.3.b. In order for a party to be excused from cooperation with the bureau to establish paternity, or to establish or enforce a support obligation, there must be a finding of good cause for non-cooperation. The procedure for requesting a determination of good cause is found in § 97-2-8 of this Rule.

17.3.c. It is the choice of the person who is claiming that an incident of domestic violence occurred whether to file either the Notice of Good Cause, the Affidavit of Domestic Violence, to file both, or to file neither.

17.4. Upon receipt of a completed Affidavit of Domestic Violence or upon receipt of a recent Family Violence Protective Order, the bureau employee assigned to the case shall immediately take the appropriate steps to prevent the release of confidential information from the bureau's case records by designating the case as a family violence case. If a recent family violence protective order is presented to the bureau, the steps to prevent the release of confidential information shall be taken, whether or not an Affidavit of Domestic Violence is completed. This action shall be taken whether the recent family violence protective order is temporary, emergency, or final in nature.

17.4.a. If a party declines to sign the Affidavit of Domestic Violence and the family violence protective order expired more than two years ago, the family violence designation shall not be applied to the case.

17.4.b. The designation of the case as one where domestic violence exists shall be reviewed with the party requesting protection at least every two years. At the review, if the party requests continued protection, the bureau employee shall provide the party with a new Affidavit of Domestic Violence. If a new Affidavit of Domestic Violence is signed or if a valid family violence protective order is tendered to the bureau, the case shall continue to receive the heightened level of protection from disclosure of confidential information.

17.4.c. If, at the time of review, the party fails to sign a new Affidavit of Domestic Violence or does not tender a valid family violence protective order or other evidence that the threat of harm continues to exist, the bureau employee shall remove the designation as a family violence case.

17.5. Every party to a case who discusses domestic violence issues with a bureau employee shall be offered appropriate pamphlets and a list of local resources, including domestic violence prevention agencies.

§ 97-2-18. Special procedures involving Uniform Interstate Family Support Act cases.

18.1. Pursuant to W. Va. Code § 48-16-312, if a party to a case brought under the authority of the Uniform Interstate Family Support Act signs an Affidavit of Domestic Violence or a similar document, the attorney for the bureau who is assigned to the case shall file a motion with the court to seal the party's confidential information. The motion filed with the court shall not disclose the party's confidential information.

§ 97-2-19. Requests from authorized individuals to release confidential information in a Domestic Violence or Good Cause situation.

19.1. Both federal and state laws require the bureau to maintain the confidentiality of information contained in the bureau's case records which could be used to locate a party or child. However, there are procedures that may be used to allow appropriate individuals to access the confidential information of another party.

19.2. A court of competent jurisdiction may order the bureau to release confidential information to the court solely for the purpose of establishing paternity and child support or for the purpose of enforcing or modifying a child support order. For the purpose of this section, the term "court of competent jurisdiction" shall mean a court having jurisdiction to make or enforce a child custody or visitation determination.

19.2.a. A party to a court case or the person's private attorney may not apply directly to the bureau to obtain the information. If a party to a court case believes that obtaining this information is vital to the prosecution of his or her case, the party to the court case may apply to a court of competent jurisdiction to obtain the information.

19.2.b. If an appropriate request is received from a court of competent jurisdiction for an appropriate purpose, the bureau shall forward the request to the Federal Office of Child Support Enforcement. If the request is deemed by the Federal Office of Child Support Enforcement to be from an appropriate court for an appropriate purpose, the Federal Office of Child Support Enforcement shall convey the information to the bureau to convey to the court. The bureau shall forward the data in a sealed packet to the requesting court.

19.2.c. Upon receipt of the sealed packet from the bureau, the court shall determine whether disclosure of that information could be harmful to the parent or child and issue an order regarding whether disclosure shall occur.

19.3. Certain authorized individuals may be provided with reasonable and appropriate information normally deemed as confidential if the request is related to allegations of parental kidnapping or the unlawful taking or restraint of a child or the making or enforcing of a child custody or visitation determination. Any such request and response shall comply in all respects with 45 C.F.R. § 303.15. Because of the nature of the request, no advance notice shall be provided to the parties to the case when information is released under this subsection.

19.4. Persons authorized by statute to request and receive this type of information include:

19.4.a. Any agent or attorney employed by the federal, state county, municipality or other agency of government, such as a prosecuting attorney, assistant prosecuting attorney, or a law enforcement officer, who has the duty or authority under state law to enforce a child custody or visitation determination;

19.4.b. Any court or agent of the court having jurisdiction to make or enforce a child custody or visitation determination;

19.4.c. Any agent or attorney employed by the federal, state, county, municipality or other agency of government who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

19.5. Parents or legal guardians of an abducted child and their private counsel are not "authorized individuals" within the meaning of the state and federal law and may not apply directly to the bureau to obtain confidential information.

§ 97-2-20. Fees for Services.

20.1. The bureau shall not charge an application fee.

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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

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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:

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

(iii) 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)

HISTORICAL: *15 FR 10648*, May 9, 1985, as amended at *30 FR 3779*, Aug. 6, 1985; *51 FR 37731*, Oct. 24, 1986; *64 FR 6237*, 6249, Feb. 9, 1999, as confirmed at *68 FR 25255*, 25256, May 12, 2003]

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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 303 -- STANDARDS FOR PROGRAM OPERATIONS

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45 CFR 303.15

§ 303.15 Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody or visitation cases.

(a) Definitions. The following definitions apply to this section:

(1) Authorized person means the following:

(i) Any agent or attorney of any State having an agreement under this section, who has the duty or authority under the laws of the State to enforce a child custody or visitation determination;

(ii) Any court having jurisdiction to make or enforce a child custody or visitation determination, or any agent of the court; or

(iii) Any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(2) Custody or visitation determination means a judgment, decree, or other order of a court providing for custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications.

(b) A State shall enter into an agreement with the Office that meets the requirements of section 463 of the Act and this section of the regulations so that the State IV-D agency may request information from the Federal PLS for the purpose of:

- (1) Enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or
- (2) Making or enforcing a child custody or visitation determination.
- (c) An agreement under section 463 of the Act must contain the following provisions:
 - (1) The Director will provide the State IV-D agency with the most recent home address and place of employment of a parent or child if the information is requested for the purposes specified in paragraph (b) of this section.
 - (2) The State shall make requests for information under the agreement only for the purposes specified in paragraph (b) of this section.
 - (3) The State shall make requests to the Federal PLS through the State PLS established under § 302.35 of this chapter.
 - (4) The State shall submit requests in the standard format and exchange media normally available to or used by the State PLS.
 - (5) The State shall identify requests in a manner prescribed by the Office in instructions so that requests can be distinguished from other types of requests submitted to the Federal PLS.
 - (6) The State shall impose, collect and account for fees to offset the costs to the State and the Office incurred in processing requests.
 - (7) The State shall periodically transmit the fees collected to cover the costs to the Federal PLS of processing requests. Fees shall be transmitted in the amount and in the manner prescribed by the Office in instructions.
 - (8) The State shall adopt policies and procedures to ensure that information shall be used and disclosed solely for the purposes specified in paragraph (b) of this section. Under this requirement, the State shall:
 - (i) Restrict access to the information to authorized persons whose duties or responsibilities require access in connection with child custody and parental kidnapping cases;
 - (ii) Store the information during nonduty hours, or when not in use, in a locked container within a secure area that is safe from access by unauthorized persons;
 - (iii) Process the information under the immediate supervision and control of authorized personnel, in a manner which will protect the confidentiality of the information, and in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or other means;
 - (iv) Brief all employees who will have access to the data on security procedures and instructions;
 - (v) Send the information directly to the requestor and make no other use of the information;
 - (vi) After the information is sent to the requestor, destroy any confidential records and information related to the request.
- (d)(1) An agreement under section 463 of the Act must be signed by the Governor of the State or the Governor's designee.
- (2) The agreement must also be signed by the Attorney General of the State who must certify that the signing State official has the authority under State law to commit the State to the agreement.

HISTORY: [46 *FR* 54557, Nov. 3, 1981; 64 *FR* 6237, 6250, Feb. 9, 1999, as confirmed and amended at 68 *FR* 25293, 25303, 25304, May 12, 2003]

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