

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY: W. VA. CODE §48-18-105 (19)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: General Procedures Pertaining to Documents and Files

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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

Series 1

**The Bureau for Child Support Enforcement
General Procedures Pertaining to Documents and Files**

§ 97-1-1. General.

1.1. Scope. -- This legislative rule establishes the cost of providing copies of the Bureau for Child Support Enforcement Policy Manual, provides for confidentiality of records, establishes a procedure to be followed to obtain confidential information contained in a case record, and addresses potential conflicts of interest of employees.

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 97-1-2. 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. 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.

§ 97-1-3. The Bureau for Child Support Enforcement.

3.1. The Bureau for Child Support Enforcement and its employees represent the interests of the State. The bureau does not represent the interests of any individual litigant or child. The term "the State" means the State of West Virginia or any other state, country,

tribe or territory involved in the specific individual case.

3.2. The authority of the Bureau for Child Support Enforcement to act is governed by state and federal law. The bureau has no authority to provide services related to the establishment or enforcement of custody, visitation or shared parenting of a minor child and no authority to establish or modify orders relating to spousal support.

3.3. In addition to any actions taken by the bureau, an applicant for bureau services retains the right and the obligation to take any other actions he or she may see fit to take to establish, collect, protect and preserve any support that is due and owing.

3.3.a. Any party to a child support or spousal support case is free to seek counsel from an attorney of his or her own choosing and to be represented by an attorney of his or her own choosing in any legal or departmental proceeding.

3.3.b. The employees of the bureau shall respect the right of a party to obtain counsel and shall not communicate directly with a party with respect to legal issues if the individual has retained counsel.

§ 97-1-4. The Bureau for Child Support Enforcement's Policy Manual.

4.1. The bureau's policy manual is a public document. As such, it is available for viewing by the public at any bureau office, upon reasonable request, during normal office hours. The manual is also available for review in the Office of the Secretary of State of West Virginia.

4.2. Copies of the entire manual or of specific sections of the manual shall be provided to the public upon receipt of payment. The cost for providing a complete copy of the policy manual is \$40.00 if a paper copy is requested. The cost of providing a complete copy of the policy manual in electronic format is \$5.00. Paper copies of specific sections of the manual shall be billed at the rate of 50 cents per page. The copying fee shall be waived for requests made by other state agencies, federal agencies, legal aid corporations, requests that result in the copying of ten pages or less, or requests from individuals who provide proof that their income is below the federal poverty level.

4.3. The contents of the policy manual include applicable state and federal laws, applicable legislative rules, and procedural instructions on the technical processing of the bureau's cases.

§ 97-1-5. Confidentiality.

5.1. 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. The designation as confidential information includes content

stored in paper format, digital format, or any other method of storage of information.

5.2. Information relating to the date and amount of support owed, the date and amount of support payments received, and copies of any court orders contained in the bureau case record, whether in paper form or digital format, may be provided upon verbal or written request to the parties in the case, to their attorneys, to a court of competent jurisdiction for this case, or to any individual to whom a party has indicated in a written release of information.

5.3. An attorney for an individual may receive any information from the case file that it would be lawful to provide to that party to the case.

5.4. The legal doctrines of attorney-client privilege and attorney work product apply to the work of attorneys employed by the bureau, including the attorney's mental impressions, conclusions, opinions, advice or legal theories concerning a case. Information of this nature is considered to be confidential and shall not be released to the parties, their attorneys, or to any individual.

5.5. Without the permission of the party whose information is being sought or an order of a court of competent jurisdiction, confidential information contained in a bureau case record may only be released to a court with jurisdiction over the case, to a state agency with which the bureau has a cooperative agreement to facilitate the establishment of paternity and/or establishment/modification/collection of support, or to another state or tribal child support agency for the purpose of establishment of paternity and the establishment and enforcement of support orders and to prosecuting attorneys for the purpose of evaluating and pursuing criminal actions arising directly from the non-payment of support obligations.

5.6. The release of confidential information is prohibited when there is reasonable evidence of domestic violence or child abuse and that such disclosure could be harmful to the party.

5.7. Medical information contained in a bureau case record may be subject to heightened confidentiality and disclosure requirements created by the Health Insurance Portability and Accountability Act of 1996.

5.8. Without the permission of the party whose information is sought or an order of a court of competent jurisdiction, medical information contained in a bureau case record may only be released to a court with jurisdiction over the case, or to another state child support program for the establishment of paternity or to obtain reimbursement of medical expenses or to prosecuting attorneys for the purpose of evaluating and pursuing criminal actions arising directly from the non-payment of support obligations.

5.9. When the bureau receives a written request for information contained in its file that is deemed to be confidential, the bureau shall mail a notice by first-class mail to the last

known address of the party who is the owner of the requested information to notify him or her of the request. The notice shall advise the party of the right to object to the release of the information on the grounds that the information is not relevant to the establishment of paternity, the determination of the amount of support or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the party of his or her right to review the records of the bureau in advance of responding to the request for the release of information in order to determine what information may exist in the bureau's file.

5.9.a. If the party responds that he or she has no objection to the release of the requested information, the bureau attorney assigned to the case shall review the request and release the information, unless state or federal law would specifically prohibit such a release.

5.9.b. If the party files a written objection to the release of the requested information, the bureau attorney assigned to the case shall review the request and the response, and make a determination as to whether the release of the requested information complies with state and federal law. The parties to the case and the requestor, if the requestor is not a party to the case, shall be notified in writing of the attorney's decision and shall be given ten days advance notice of the release of the information, if the determination is to release all or part of the requested information.

5.9.c. If no response is received to the request, the bureau's attorney assigned to the case shall review the request and make a determination as to whether the release of the requested information complies with state and federal law. The parties to the case and the requestor, if the requestor is not a party to the case, shall be notified in writing of the decision of the bureau's attorney and shall be given ten days advance notice of the release of the information, if the determination is to release all or part of the requested information.

5.10. Notwithstanding the requirements of confidentiality of information contained in the bureau's files, if a bureau employee believes that information contained in a file would impact a case member's eligibility for means-tested benefits administered by the Department of Health and Human Resources, the bureau employee shall report this information to the appropriate worker within the Bureau for Children and Families and to the employee's own supervisor. Because of the nature of this type of disclosure, no advance notice shall be provided to the parties to the case when information is released under this subsection.

5.11. Notwithstanding the requirements of confidentiality of information contained in the bureau's files, if a bureau employee believes that he or she has obtained information in the course of his or her employment pertaining to the abuse and/or neglect of a minor child or a disabled individual of any age, the employee shall immediately report this information to the appropriate worker within the Bureau for Children and Families and to the employee's own supervisor. Because of the nature of this type of disclosure, no advance notice shall be provided to the parties to the case when information is released under this subsection.

5.12. Agents or attorneys of the United States or of a state or territory may be provided with reasonable and appropriate information normally deemed as confidential if said 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.

5.13. The bureau also maintains personnel records regarding its employees. An employee's personnel records may be disclosed to the employee, to the employee's attorney, or to any individual to whom a party has indicated in a written release of information.

5.14. Upon the signing of the appropriate documentation acknowledging their duty of confidentiality, state and federal auditors may review documentation contained in the bureau's records, including information designated as confidential information, for the purpose of determining the bureau's compliance with standards.

§ 97-1-6. Application for and receipt of Bureau services by Bureau employees, family members, and household members.

6.1. Employees of the bureau, their spouses and dependents, or members of their households desiring to make application for benefits or services offered by the bureau shall make arrangements to complete the application process through a supervisor.

6.2. The supervisor shall process the application, complete all case maintenance activities, and perform any necessary reviews.

6.3. Any bureau employee who receives services from the Bureau for Child Support Enforcement is strictly prohibited from viewing or accessing his or her own case record, except under the same circumstances as any party to a case would be permitted to review his or her case file. This prohibition applies to the case record in paper format, digital format or any other format for the storage of case information. If an employee's obligee or obligor has more than one case, the employee is prohibited from viewing or accessing the information in those cases as well.

6.4. When an employee applies for or receives services from the bureau, the employee must use annual leave or compensatory time for any time spent in making the application for services or for any actions the employee takes regarding his or her own case, such as meeting with the case worker, attending hearings, or completing forms or documents.

6.5. All active or closed employee paper files are maintained separately from regular files. These case records shall be kept in locked personnel file cabinets and only the bureau's unit supervisor and Regional Manager shall have access. All active or closed

employee digital case records shall be maintained as confidential case records, accessible only by the bureau's unit supervisor or Regional Manager.

6.6. Employees shall not provide services to or make decisions concerning cases involving present or former co-workers. All cases involving present or former co-workers shall be referred to a supervisor for reassignment.

§ 97-1-7. Potential conflicts of interest involving persons not employed by the Bureau for Child Support Enforcement.

7.1. Bureau employees shall not access, process, or make decisions on cases involving relatives, friends, neighbors, present or former co-workers, or business, club, or church acquaintances. The bureau's unit supervisor shall either perform the case work or assign the case to another bureau employee.

7.2. No bureau employee shall accept any gifts from any party or family member of a party to a bureau case to which that employee is assigned.

§ 97-1-8. Fair Hearings.

8.1. Recipients of the bureau's services are entitled to a Fair Hearing to challenge or dispute certain actions taken by the bureau. Rules relating to the right to a Fair Hearing and the procedure to be followed are found in the Common Chapters Manual of the Department of Health and Human Resources.