

Form #4

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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.

97 CSR 7

**Title 97
Legislative Rules
The Bureau for Child Support Enforcement**

Series 7

Distribution of Support Payments

§ 97-7-1. General.

1.1. Scope. – The purpose of this rule is to establish the methods that obligors can use to make payments to the bureau, the methods that the bureau shall use to disburse collections to obligees, sets forth the hierarchy of payment allocation, and establishes the amount of any collection that the state will pass through to obligees whose support is assigned to the state.

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

1.3. Filing Date. –

1.4. Effective Date. –

§ 97-7-2. 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. - 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.

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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. 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.

2.5. 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.

2.6. 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.

2.7. 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~~ Support may include a payment; ~~including interest~~ to third parties on behalf of a child or spouse, including, but not limited to, interest, 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. .

2.8. 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.

§ 97-7-3. Methods by which an obligor may make support payments.

3.1. An obligor who wishes to make a support payment or a payment on fees and costs may do so in a variety of ways:

3.1.a. The bureau accepts payments made by cash, money order or check during normal business hours in the fifty-four (54) county offices operated by the department and in the bureau's central administrative office in Kanawha County;

3.1.b. The bureau accepts payments made by money order or check by mail;

3.1.b.1. The mailing address of the bureau may be obtained by calling any office of the bureau;

3.1.c. The bureau accepts payments by electronic check or credit card through its twenty-four hour telephone service;

3.1.d. The bureau accepts payments by electronic check or credit card through its website.

§ 97-7-4. Hierarchy for allocation of support payments when an obligor owes support to one obligee.

4.1. All amounts collected by the bureau for the payment of child support, spousal support, medical support, fees and costs shall be allocated or credited to individual cases according to the terms of 45 C.F.R. § 302.51, 45 C.F.R. § 302.52, and as set forth in the attached to this rule chart.

4.1.a. When an obligor owes support to only one obligee, all payments collected from that obligor shall be credited to the account of the obligee.

§ 97-7-5. Hierarchy for allocation of support payments when an obligor owes support to more than one obligee.

5.1. When more than one obligee is owed support by the same obligor, allocation of the amounts collected is dependent upon the source of the payment, the status of the support order, and the character of the amounts owed. In addition to the federal regulations related to the hierarchy of allocation set forth in § 97-7-4, the following additional rules apply.

5.2. When the payment is received that is not from an income withholding or from a state or federal income tax refund offset:

5.2.a. If none of the cases have an income withholding in place and none have an order of support, any payments received shall be allocated proportionately among the cases, based upon the number of children in the obligor's cases for whom paternity is established.

5.2.b. If none of the cases have an income withholding in place but all have orders of support, any payments received shall be allocated proportionately among the cases, based upon each case's relative percentage of the total current support obligation owed by the obligor in all of his or her cases.

5.2.c. If all of the cases have an order of support but not all have income withholding notices issued, any payments shall be allocated to the case or cases where income withholding notices have not been issued. The funds shall be allocated proportionately, based upon each case's relative percentage of the total current support obligation owed by the obligor in all of his or her cases without income withholding notices in place.

5.2.c.1. If all of the cases have an order of support but not all have income withholding notices issued, and one or more of the cases without an income withholding notice issued becomes overpaid, any portion of a payment creating an overpayment on a case or cases without an income withholding can be reallocated to a case or cases for the obligor with an arrearage.

5.2.d. If one or more of the cases has an order of support but one or more do not, any payments shall be allocated to the case or cases with the orders of support. The funds shall be allocated proportionately, based upon each case's relative percentage of the total current support obligation owed by the obligor in all of his or her cases with an order of support.

5.2.e. Payments may be accepted in cases in which paternity of a child is not established. However, if the obligor has cases in which paternity has already been legally established, the child for whom paternity is not established will receive no distribution until paternity is established.

5.3. If the source of the payment is an income withholding, the payment shall be allocated only to the cases of that obligor that have an income withholding issued to the employer or source of income that remitted the payment.

5.3.a. The payment is first divided proportionately among the cases that have an unpaid current support obligation for the month in which the payment is received. The proportion is based upon each case's current support obligation in relation to the total amount of current support owed by the obligor on cases with an income withholding notice issued.

5.3.b. If the payment amount satisfies all of the current support due during the month in which the payment is received on cases with an income withholding in place for this source of income, the balance of the payment shall be divided equally among the obligor's cases with an income withholding issued for this source of income for which an arrearage exists.

5.3.b.1. If any cases with an arrearage are owed an amount less than an evenly divided portion of the payment, only the amount necessary to pay off that arrearage will be applied to that case. The remainder of the payment will be divided equally among the remaining cases owed an arrearage.

5.3.c. If all cases for the obligor with an income withholding in place are paid in full, the balance of any payment collected shall be allocated to any remaining case or cases of the obligor, regardless of whether an income withholding has been issued, so long as collection by income withholding is not prohibited by court order or operation of law in that case.

5.4. If the source of the payment is a state tax refund offset, the payment shall be allocated and distributed pursuant to 45 C.F.R. § 303.102.

5.5. If the source of the payment is a federal tax refund offset, the payment shall be allocated and distributed pursuant to 45 C.F.R. § 303.72.

§ 97-7-6. Exceptions to the allocation process.

6.1. When a payment is received from a case-specific enforcement action, such as the filing of a lien or a contempt action, and the obligor has more than one case open with the bureau, the bureau employee assigned to the case may authorize an exception to the normal allocation process to apply the payment to the specific case.

6.2. When a court orders that a specific payment be applied to a specific debt, the bureau shall comply with the terms of the order.

§ 97-7-7. Distribution of collections to a support obligee.

7.1. Obligees may choose between two methods for the receipt of support collected.

7.1.a. Support payments may be accessed by the obligee through the use of a bureau-issued debit card; or

7.1.b. Support payments may be deposited electronically to the obligee's bank account.

7.2. If an obligee fails to make a selection, the bureau shall issue a debit card to the obligee and shall disburse all support collected for the obligee through the debit card.

7.3. In order to minimize delay and allow the obligee the opportunity to choose between a debit card or direct deposit to a bank account, the first three payments received on any case are disbursed by the bureau to the obligee by check. Thereafter, payments are made through the use of the debit card or the direct deposit.

7.4. An obligee may change the method of receipt at any time by completing the appropriate form. Forms are available at any bureau office and on the bureau's website.

§ 97-7-8. Distribution when an obligee's whereabouts are unknown.

8.1. When an obligee is owed current support or an arrearage and the bureau is unable to locate a valid address for the obligee, the bureau shall continue to collect the support obligation through all legal methods while searching for an address. Money to be distributed to the obligee shall be held by the bureau and shall be distributed to the obligee when a valid address is obtained. The allocation and distribution hierarchy shall

not be manually overridden to allow funds properly allocated to the missing obligee's case to be disbursed to another obligee, if the obligor owes a support obligation to more than one individual, or to the state.

8.2. If, after sixty days, the bureau has been unable to locate a valid address for the obligee and the obligee is not required by law to receive services from the bureau, the bureau may send a notice by first-class mail to the last known address of the obligee to advise the obligee that closure of the case will occur if an address is not supplied to the bureau within sixty calendar days of the date of the letter.

8.3. Should the sixty days elapse without the location of a valid address for the obligee, the bureau shall close the case for the obligee and apply any sums held for this obligee to any other support obligation, court costs or fees owed by the obligor. If no other support obligation, court costs or fees are owed by the obligor, the balance shall be refunded to the obligor.

§ 97-7-9. Support assigned to the state.

9.1. When an obligee receives cash public assistance or certain types of Medicaid services and is owed child, spousal or medical support by an obligor, the obligee is required by law to assign to the state the right to retain his or her child or spousal support collected, up to the amount of the cash public assistance or Medicaid received by the obligee, as a reimbursement to the state and federal government for the assistance received. Persons who receive voluntary cooperation Medicaid services are not subject to the provisions of this section.

9.2. The amount assigned to the state as reimbursement for the cash public assistance, Medicaid benefits or foster care maintenance payments is governed by federal law. For obligees whose cash public assistance benefits began on or after July 1, 2009, the assignment of support is governed by 45 C.F.R. § 302.32, 45 C.F.R. § 302.50, 45 C.F.R. § 302.51, 45 C.F.R. § 303.72, and Action Transmittal 07-05 from the Federal Office of Child Support Enforcement, dated July 11, 2007.

§ 97-7-10. Payment collected in excess of the amount due.

10.1. When an order of support has been established and an amount is collected which is in excess of the amount due and owing on all cases for the obligor, including all current support, arrearages, fees and costs, the excess collection is considered to be future support.

10.2. If the obligor owes an on-going support obligation, the future support shall be retained by the bureau until the next month's support is due, and shall be applied to that debt.

§ 97-7-11. Documentation of support payments.

11.1. W. Va. Code § 48-18-115 requires that all support payments owed to an obligee who is a recipient of services from the bureau shall be paid through the bureau.

11.1.a. Except as provided below, when payments are made directly to the obligee, the obligee shall immediately provide the payment to the bureau for allocation and distribution.

11.1.a.1. The receipt of the following types of benefits paid on behalf of a child shall be reported to the bureau by the obligee but are not required to be redirected to the bureau for allocation and distribution:

11.1.a.1.A. Any benefits received on behalf of a minor child from the Social Security Administration;

11.1.a.1.B. Any benefits received on behalf of a minor child from the United States Department of Veterans Affairs;

11.1.a.1.C. Any benefits received on behalf of a minor child from the Railroad Retirement Board;

11.1.a.1.D. Any benefits received from the United States Department of Labor Black Lung Benefits program.

11.1.b. If the obligee is a recipient of cash public assistance and he or she fails to immediately provide the payment to the bureau for allocation and distribution, the bureau employee assigned to the case shall report this information to the IV-A agency when it is discovered.

11.1.c. If the obligee fails to provide the payment to the bureau for allocation and distribution, the bureau shall verify the receipt and amount of the payment before crediting the payment against any current support or arrearage owed by the obligor.

11.1.c.1. Verification may occur through a variety of methods.

11.1.c.1.A. The parties may agree on the amount and date of the payments made; or

11.1.c.1.B. A party may present payment receipts, cancelled checks, copies of money orders, or other documentation of payment.

11.1.d. Upon receiving documentation of alleged payments by one party to the case, the bureau employee assigned to the case shall provide copies of the documentation to the other party, giving him or her ten (10) days notice to object in writing to the offers of proof submitted.

11.1.d.1. If no objection is received, the payment shall be credited.

11.1.d.2. If an objection is received, either party to the action or the bureau may file a motion with the court of competent jurisdiction to determine the amount of the arrearage due and to grant a judgment for any support due and owing.

§ 97-7-12. Relating to the receipt of Social Security benefits by the minor child.

12.1. A child's Social Security benefits based upon the disability of his or her parent may only be applied against the parent's current child support obligation or arrearage if a court of competent jurisdiction enters an order which specifically authorizes such a set-off. *Should "set-off" be an "off set"?*

§ 97-7-13. Designation of Court-Ordered Support Amounts.

13.1. When an order of support specifies that the monthly support amount is "per child", the number of children in the household shall be multiplied by the per child amount to determine the monthly support obligation.

13.1.a. As each child reaches the age or circumstances for emancipation or if a child moves from the home, the monthly support obligation shall be automatically reduced by the "per child" amount.

13.2. If the order does not express the support amount as "per child", the monthly support amount is the support for all of the minor children of the obligor residing in the household. The support amount does not reduce automatically when a child leaves the home or is legally emancipated.

13.3. If an order of support states that the monthly support amount is for the minor child or children and the spouse or former spouse, and the order does not designate a specific amount as spousal support, the entire monthly support amount shall be considered to be child support until there is no eligible child in the household. When there is no eligible child in the household, the entire sum shall be designated as spousal support.

§ 97-7-14. Payments from obligors or employers returned for insufficient funds.

14.1. When the bureau receives a check that is dishonored due to insufficient funds, the bureau employee receiving notice of the dishonor shall cancel any disbursement pending within the bureau's payment system that is based upon the dishonored check.

14.2. If disbursement has already occurred to the obligee of any portion of the payment made by the dishonored check, the bureau shall send a demand letter to the maker of the check to demand payment of the disbursed portion of the check. This letter and the procedures to be followed by the bureau to attempt to collect any disbursed funds shall be in full compliance with W. Va. Code § 55-16-1.

14.3. If, within a twelve-month period commencing from the date of the first notice of dishonor of a check, the bureau receives a second dishonored check from the same maker, the bureau shall advise the maker by certified letter that future payments of support shall be made in the form of a certified check, cashier's check or by money order.

14.3.a. If the maker continues to remit payments to the bureau using a personal check, or a business check if the maker is an employer, the bureau shall cash the check or checks but shall not disburse the funds from the check until the bureau receives confirmation that the check has been honored by the maker's financial institution.

14.3.b. Upon receipt of six consecutive payments honored by the maker's bank, the bureau shall again disburse payments upon receipt.

§ 97-7-15. Checks reported as lost by the obligee or obligor.

15.1. When an obligee or obligor reports that a check issued to him or her by the bureau has been lost, the bureau shall issue a replacement check if the lost check has not been cashed and the payee shall sign an appropriate affidavit stating the

circumstances surrounding the loss of the check. If the affidavit is not signed in the presence of a bureau employee, the affidavit shall be signed before a Notary Public.

15.2. If the check has been cashed, the bureau shall not replace the check but shall cooperate with law enforcement to assist in the investigation of the crime if a report is filed by the obligee with his or her law enforcement agency.

§ 97-7-16. Refunds to an obligor.

16.1. If the bureau receives properly withheld funds in excess of the amount due from an obligor, and the overpayment was caused by an error on the part of the bureau, the bureau shall refund the overpayment to the obligor, regardless of whether the overpayment has been collected from the obligee.

16.2. If the bureau receives funds in excess of the amount due from an obligor, and if the overpayment has already been disbursed to the obligee, and the overpayment was caused by a circumstance outside the control of the bureau, the bureau shall not refund the overpayment until the overpayment sum has been repaid by the recipient of the support payment. If any portion of the overpayment remains in the possession of the bureau, the bureau shall refund that portion of the overpayment.

16.2.a. Prior to issuing a refund to the obligor, the bureau employee assigned to the case shall attempt to contact the obligor to determine if he or she wishes to waive the return of the overpayment. If not waived, the funds shall be returned to the obligor within thirty days of the time that the obligee repays the bureau.

16.3. If the bureau receives funds in excess of the amount due from the obligor and the funds were properly withheld, the bureau shall apply the properly withheld funds to any unpaid current support obligation and arrearage owed by the obligor in any of his or her cases. The bureau shall also retain an amount no greater than one month of the obligor's current support obligation in all cases, and shall hold that sum until the support for the next month shall become due. Any funds in excess of one month of the obligor's current support obligation shall be refunded to the obligor within thirty days of their receipt.

16.4. An obligee who receives an overpayment or any other payment for which the obligee was not entitled to receive shall promptly return the sum of the overpayment to the bureau upon notice by the bureau that the amount received was in error.