



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood  
Governor

OFFICE OF THE SECRETARY  
Capitol Complex  
Building 3, Room 206  
Charleston, WV 25305  
Telephone: 304/558-0684 Fax: 304/558-1130

Joan E. Ohl  
Secretary

September 9, 1997

FILED  
SEP 11 8 40 AM '97  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Building 1, Suite 157K  
Charleston, West Virginia 25305


RE: Legislative Rule §97-6

Dear Secretary Hechler:

Please accept this letter as my official request to withdraw Legislative Rule §97-6-1.

Thank you for your attention to this matter. If you should have any questions, please contact Ilene Schnall, Acting In-House Counsel for the Bureau for Child Support Enforcement, at 558-0907.

Sincerely,

  
Joan E. Ohl  
Secretary

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

Form #2

Do Not Mark in this Box

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: DHHR - CHILD SUPPORT ENFORCEMENT DIVISION TITLE NUMBER: 97  
RULE TYPE: LEGISLATIVE; CITE AUTHORITY WVC 48A-2-9(a); WVC 48A-2-24(d)  
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 NEW RULE BEING PROPOSED: 6

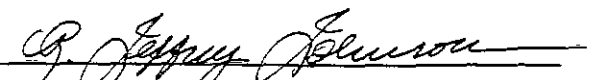
TITLE OF RULE BEING PROPOSED: APPLICATION OF SUPPORT PAYMENTS WHEN THERE  
IS A CHANGE IN PHYSICAL CUSTODY OF A CHILD WITHOUT A COURT ORDER

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 9/15/97 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

ILENE SCHNALL, DEPUTY IN-HOUSE COUNSEL  
CHILD SUPPORT ENFORCEMENT DIVISION  
1900 KANAWHA BLVD, EAST  
BUILDING 6, ROOM 817  
CHARLESTON, WV 25305

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.60

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**  
**APPLICATION OF SUPPORT PAYMENTS WHEN THERE IS A CHANGE IN PHYSICAL CUSTODY OF A CHILD WITHOUT A COURT ORDER**

Rule Title: \_\_\_\_\_  
 Type of Rule:  Legislative     Interpretive     Procedural  
 Agency: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

THERE WOULD BE NO FINANCIAL IMPACT IF THIS LEGISLATE RULE WERE PASSED.

3. Objectives of these rules:

IS TO DETERMINE THE PROCEDURES FOR ALLOCATING THE SUPPORT PAYMENTS MADE FOR A MINOR CHILD WHEN THE PHYSICAL CUSTODY OF THE CHILD TRANSFERS WITHOUT A CHANGE IN THE COURT ORDER.

Rule Title: APPLICATION OF SUPPORT PAYMENTS WHEN THERE IS A CHANGE IN  
PHYSICAL CUSTODY OF A CHILD WITHOUT A COURT ORDER

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: AUGUST 8, 1997

Signature of Agency Head or Authorized Representative

*B. Jeffrey Johnson*

FILED

TITLE 97  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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SERIES 6  
APPLICATION OF SUPPORT PAYMENTS WHEN THERE IS A CHANGE IN PHYSICAL CUSTODY OF A CHILD WITHOUT A COURT ORDER

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§97-6-1. General.**

1.1. Scope. -- This legislative rule establishes procedures by which the Department of Health and Human Resources, Child Support Enforcement Division (CSED) shall allocate the support payments made for a minor child when the physical custody of the child transfers without a change in the court order.

1.2. Authority. --  
W. Va. Code §48A-2-9(a), and  
W. Va. Code §48A-2-24(d).

1.3. Filing Date. --

1.4. Effective Date. --

**§97-6-2. Definitions.**

2.1. Affidavit - a sworn statement made in writing, under oath, and signed by a Notary Public.

2.2. Caretaker - a parent or other person having actual physical custody of a child and who is responsible for exercising parental rights and responsibilities with regard to the child.

2.3. Child Support Enforcement Division - the agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child

and spousal support enforcement and meeting the staffing and organizational requirements of the Secretary of the Federal Department of Health and Human Services. W. Va. Code §48A-1A-7.

2.4. Court of Competent Jurisdiction - a circuit court within this state or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency. W. Va. Code §48A-1A-12.

2.5. Custodial Parent - a parent who has been granted legal custody of a child by a court of competent jurisdiction. W. Va. Code §48A-1A-13.

2.6. Noncustodial Parent - a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted legal custody of

the child. W. Va. Code §48A-1A-13.

2.7. Per Child Order - a child support order issued by a court of competent jurisdiction which designates a specific dollar amount of support for each child included in the order.

2.8. Support Order - 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, which provides for monetary support, health care, arrearage, or reimbursements, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief. W. Va. Code §48A-1A-30.

**§97-6-3. Physical Custody of Children Changes to Third Party Without Court Order.**

3.1. In accordance with West Virginia Code §48A-2-24(d), when the physical custody of a minor child transfers from the custodial parent to a third party or the noncustodial parent without a change of custody made in the court order, the court ordered child support obligation owed by the noncustodial parent, or at least a portion of it, shall be paid by the CSED to the physical custodian of the child.

3.2. If there is only one child included in the order, or if the court has ordered a specific dollar amount of support for each child in the order, or if all of the children included in the order move to the same place, the order in the amounts specified per child shall be paid to the new caretaker of the children. If all of the children do not move to the same location, and the order is not a per child order, the total amount of the obligation shall be divided evenly among the children included in the order, and each child's portion of the order shall be paid to the new caretaker of the child(ren).

3.3. Before the CSED removes the child(ren) from the custodial parent's CSED case file and establishes the third party as the caretaker for the child(ren) in a new case, thus allowing the CSED to pay the support to the third party, the third party must sign an affidavit attesting that the child(ren) will be living with her/him for a period of thirty (30) days or more, and file an application for services with the CSED.

3.4. If any of the children in an existing order go to live with a third party, a modification or clarification from the court shall be pursued by the CSED as soon as possible.

3.5. If the child(ren) move from place to place frequently, the CSED attorney should suggest to the court that a per child order be established.

3.6. Child support arrearages under the existing order shall accrue to the caretaker with physical custody of the child(ren) at the time the arrearage accumulates.

**§97-6-4. Physical Custody of Children Changes to Noncustodial Parent Without Court Order.**

4.1. The child(ren) may go to live with the noncustodial parent for an indefinite period of time as opposed to a period of extended visitation, such as summer vacation. This can occur when the custodial parent either voluntarily relinquishes the child(ren) to the noncustodial parent or abandons the child(ren) with the noncustodial parent.

4.2. If there is only one child included in the order, or if the court has ordered a specific dollar amount of support for each child in the order, or if all of the children included in the order go to live with the noncustodial parent, the order in the amounts specified per child shall follow the children. If all of the children do not go to live with the noncustodial parent and the order is not a per child order, the total amount of the obligation shall be divided evenly among the children included in the order, and each child's portion of the order shall be paid to the child's caretaker.

4.3. When the child(ren)'s transfer to the noncustodial parent is confirmed by established CSED procedures as specified in subsection 4.4, the court ordered child support

obligation for the child(ren) transferred to the noncustodial parent's physical custody shall be temporarily suspended. Any income withholding on the case shall be modified to temporarily suspend the collection of the current support obligation for the child(ren) with the noncustodial parent. If other children included in the order are still in the physical custody of the custodial parent or another third party, the support obligation, or portion thereof, and income withholding for those children shall not be suspended.

4.4. CSED procedures established to confirm a child's transfer of physical custody from the custodial parent to the noncustodial parent shall include, but not be limited to, the following:

4.4.a. The noncustodial parent must apply for CSED services;

4.4.b. Present a copy of a petition for a change of custody for the child(ren); and

4.4.c. Sign an affidavit attesting that the child(ren) will be living with him/her for a period of thirty (30) days or more.

4.5. Arrearages owed by the noncustodial parent under the existing court order for support will still be owed and shall be collected by the CSED. Any income withholding already in place on the case shall remain in place to collect these arrearages.

4.6. Child support

arrearages under the existing order shall accrue to the caretaker having physical custody of the child(ren) at the time the arrearage accumulates.

4.7. Arrearages collected through income withholding when the child(ren) reside with the former noncustodial parent shall be collected at the rate of ten percent (10%).



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Telephone: (304) 558-0684 FAX: (304) 558-1130

Joan E. Ohl  
Secretary

August 11, 1997

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Building 1, Suite 157K  
Charleston, West Virginia 25305

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RE: Legislative Rule § 97-6

Dear Secretary Hechler:

Please accept the attached proposed rule for filing.

Thank you for your attention to this matter. If you should have any questions, please contact Ilene Schnall, Deputy In-House Counsel for the Bureau for Child Support Enforcement, at 558-0907.

Sincerely,

*Joan E. Ohl*  
Joan E. Ohl  
Secretary

Attachments