

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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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 9-3-4;

AMENDMENT TO AN EXISTING RULE: YES NO X 42 USC 651

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 15

TITLE OF RULE BEING PROPOSED: PROCEDURES WHEN THE CARETAKER AND/OR THE
NONCUSTODIAL PARENT IS/ARE RECEIVING PUBLIC ASSISTANCE BENEFITS

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

\$3.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES PROCEDURES WHEN THE CARETAKER AND/OR THE NONCUSTODIAL PARENT IS/ARE

Rule Title: RECEIVING PUBLIC ASSISTANCE BENEFITS

Type of Rule: X Legislative Interpretive Procedural

Agency DHHR - CHILD SUPPORT ENFORCEMENT DIVISION

Address 1900 KANAWHA BLVD., EAST

BUILDING 6, ROOM 817

CHARLESTON, WV 25305

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 LEGISLATIVE RULE WERE PASSED.

3. Objectives of these rules:

IS TO DETERMINE HOW TO HANDLE CASES WHEN THE CARETAKER AND/OR THE NONCUSTODIAL PARENT IS/ARE RECEIVING PUBLIC ASSISTANCE BENEFITS.

Rule Title: PROCEDURES WHEN THE CARETAKER AND/OR THE NONCUSTODIAL PARENT
IS/ARE RECEIVING PUBLIC ASSISTANCE BENEFITS

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

TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 15
PROCEDURES WHEN THE CARETAKER AND/OR THE NONCUSTODIAL PARENT
IS/ARE RECEIVING PUBLIC ASSISTANCE BENEFITS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Aug 12 21 PM '97

FILED

§97-15-1. General.

1.1. Scope. -- This legislative rule establishes procedures by which the Department of Health and Human Resources, Child Support Enforcement Division (CSED), shall handle cases when the caretaker and/or the noncustodial parent is/are receiving public assistance benefits.

1.2. Authority. -- W. Va. Code §48A-2-9(a), W. Va. Code §9-3-4, 42 U.S.C. 651.

1.3. Filing Date. --

1.4. Effective Date. --

§97-15-2. Definitions.

2.1. Arrearages - the total unpaid and overdue support obligation owed by a legally responsible person. Arrearages include interest which has accrued on the unpaid and overdue obligation.

2.2. Assignment of Rights - an eligibility requirement for public assistance benefits and for medical assistance or medicaid only cases whereby the applicant/recipient must assign to the State all rights (past, present, future support) he or she may have on his or her own behalf, or in behalf of a dependent child, to child support and/or spousal support and/or medical support.

2.3. 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.

2.4. 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.

2.5. 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.

2.6. Family Law Master - a person appointed by the Governor to conduct hearings and issue temporary orders and enter recommended orders. W. Va. Code §48A-1A-18.

2.7. Non-custodial Parent - means a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted custody of the child. W. Va. Code §48A-1A-13

§97-15-3. Establishment Of A Support Order While The Noncustodial Parent Is Receiving Public Assistance Benefits.

3.1. If the noncustodial parent is receiving public assistance benefits, the CSED will file a petition to establish a support order.

3.2. The CSED shall recommend that, at a minimum, a fifty dollar (\$50) order be entered.

§97-15-4. Debt will Accrue to the Caretaker Receiving Public Assistance When The Noncustodial Parent Also Receives Public Assistance.

4.1. Title IV-D of the Social Security Act, and Chapter 48A of the West Virginia Code authorizes the CSED to collect support on behalf of recipients of public assistance.

4.2. In accordance with the assignment of rights provision in West Virginia Code §9-3-4, the State of West Virginia may retain support payments received for any member of the benefit group to repay the state debt up to the

amount of public assistance received or the court ordered amount, whichever is less.

4.3. Arrearages accrued during the period of time the caretaker receives assistance are likewise owed to the State of West Virginia by virtue of the assignment of rights provision. W. Va. Code §9-3-4.

4.4. Because §9-3-4 prohibits the accrual of a state debt while the noncustodial parent is receiving public assistance benefits, the support shall be owed and payable to the caretaker for the period of time that the noncustodial receives public assistance benefits.

4.5. The CSED shall not collect the court ordered support while the noncustodial parent is receiving public assistance benefits. However, once the noncustodial parent is no longer receiving the public assistance benefits, the CSED shall use any and all enforcement methods to collect the support due the caretaker and/or the State of West Virginia or any other state.

§97-15-5. Enforcement Actions Filed Against The Noncustodial Parent While Receiving Public Assistance Benefits In A Case Where The Caretaker Does Not Receive Public Assistance Benefits.

5.1. Where there is a court order for support and the caretaker is not receiving public assistance benefits and the noncustodial parent is, the CSED shall file any and all enforcement actions as are appropriate to secure support

for the caretaker.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Office of the Secretary
State Capitol Complex
Building 3, Room 206
Charleston, West Virginia 25305
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

FILED
AUG 12 1 21 PM '97
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RE: Legislative Rule § 97-15

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
Secretary

Attachments