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Maintaining County – Basics¹

I. What is Maintaining County? Maintaining County is a policy to determine which among two or more counties is best suited to provide the full scope of IV-D services. Due to those complex legal and program issues affecting the counties and DHS, a policy was created to promote consistency within the IV-D program.

1. **History** – It was quickly recognized that counties needed policy guidance as to how to handle cases where the parties move from the county that either had the application, public assistance referral, or had a court order for support. DHS updated the IV-D Manual in September 1996 by adding Topic 3.2, which provided a maintaining county policy. DHS published an IPP updating the maintaining county policy in May 2002, and issued an FAQ clarifying the IPP in September 2003. A new policy will be released putting all of these issues together based on the work of an ad hoc committee made up of Assistant County Attorneys and Program Supervisors.

One of the best results of the ad hoc committee was setting guiding principles or goals. No policy will ever resolve all of the maintaining county questions or issues between counties. Thus, having guiding principles or goals upon which to reflect and analyze, counties are empowered to work out issues without involving DHS, even when the issues are not specifically addressed in the policy.

¹ Like a flowchart, this outline serves as a supplement and not a substitute to DHS policy. When considering maintaining county issues, please refer to the most updated DHS policy.

2. **Guiding Principles/Goals of the Maintaining County Policy** – There will never be a policy that can answer 100% of the questions or consider 100% of the varying facts. However, to the extent possible, analyze and resolve maintaining county issues as follows:
- Limit the number of orders per family.
 - One county maintains all cases involving the same parties (CP, NCP, children, and/or relative caretakers).
 - Avoid unnecessary venue changes.
 - Use legal analysis to identify and prioritize options consistent with these guiding principles to achieve the best results for the particular case.
 - If a case may be properly venued in two counties, consider the county providing public assistance and/or the county where the child resides.
 - Provide effective customer service.
 - Seek agreement through communication and compromise.
 - Uniformity in analyzing and resolving maintaining county issues.
3. **Role of Players/Resolving Disagreements** –
- a. Child Support Worker – Apply maintaining county policy. Discuss proposed transfer with other county. Bring unresolved issues to Supervisor within 5 days.
 - b. Child Support Supervisor – Apply maintaining county policy. Discuss proposed transfer with other county when the child support workers do not agree. Bring unresolved issues to the Assistant County Attorney within 10 days.
 - c. Assistant County Attorney – Apply maintaining county policy. Resolve issues within 15 days by discussing legal issues and best order issues with an assistant county attorney from the other county. Consult with child support supervisor regarding the unresolved issues.
 - d. DHS Staff – Receive referrals and seek input from counties when the workers, supervisors and attorneys cannot agree. Apply maintaining county policy.
4. **Highlights of the New Policy** -
- a. It is more comprehensive than existing policy because it is based on and incorporates the ad hoc committee’s recommendations, fostering:
 - Consistency in establishing and enforcing child support orders.
 - Consistency in identifying and evaluating pertinent legal and administrative factors to determine which county is best suited to provide the full scope of IV-D services to the case and parties.

- Assurance of the integrity of court orders.
 - Increased communication and collaboration by and among counties in resolving maintaining county issues.
- b. Incorporates the ad hoc committee's guiding principles in order to recognize and emphasize the need for counties to cooperate and compromise with one another in resolving maintaining county issues.
 - c. Provides definitions of certain terms for maintaining county purposes in order to establish uniformity and accuracy.
 - d. Provides a more extensive description of the distinction between jurisdiction and venue.
 - e. Establishes a specific escalation process for maintaining county dispute resolution.

II. Jurisdiction, Venue and other Legal Issues

1. **Jurisdiction – *Jurisdiction = Power***. The power of a court to decide a case. The court must have both personal jurisdiction and subject matter jurisdiction to decide a case.
 - a. **Personal Jurisdiction** – The court's power and authority over a person rather than a type of case or particular issue. Personal jurisdiction may be gained by service of process upon the party while physically present in the state in which the court or located, but may also be gained through long-arm jurisdiction. A party may consent (agree) to personal jurisdiction.
 - b. **Subject matter Jurisdiction** – The court's power and authority to decide certain types of cases or issues as granted by the Constitution, statutes and rules. Parties cannot agree to give the court subject matter jurisdiction over their case or issues.
2. **Venue – *Venue = Place***. The particular place (county) in which a court with jurisdiction may hear and determine a case. Sometimes there is more than one possible place for a case to be venued.
 - a. **Paternity** – § 257.59 – County where ALF/presumed father or child reside or is found.
 - b. **Dissolution** – § 518.09 – County of either spouse.
 - c. **Establishment of Support** – § 256.87 and § 542.09 – County of either party.

3. **Remedies** – The distinction between jurisdiction and venue is important. There are different remedies for cases in which the court lacks jurisdiction and for cases that are improperly venued.
- a. **Lack of Jurisdiction** – If the court lacks jurisdiction, it cannot make a decision. The remedy is for the court to dismiss the case. If the court issues an order when it does not have jurisdiction, the order or judgment is void. The remedy is to vacate the order.
 - b. **Improper Venue** – If the county is not the appropriate venue, the remedy is for the court to change venue.
 - NOTE - In civil cases in Minnesota, including family law cases, venue is not jurisdictional. The fact that a case is improperly venued in a particular county it does not mean that the court in that county loses its jurisdiction to hear and decide the case.
 - c. **Change of Venue** – Relocating a case from one county to a different county. Minnesota Statutes, § 542.11 requires a motion and supporting affidavit as to why it is appropriate to change venue, and requires that all parties are served and provided notice.

A court may order (including stipulated orders) a change of venue if:

- The issue of the case did not occur in the county in which the case was originally venued; or
- The parties consent in writing to a change of venue; or
- A party is prejudiced due to lack of impartiality where the case is venued; or
- The change of venue would be a more convenient location.

Do not change venue without communicating with the other county. County attorneys must be involved in the discussion as well. If a venue change is agreed upon between the two counties, the maintaining county should also be transferred so that the PRISM case and legal case stay together.

Do not request to change venue every time parties move. Avoid the “revolving door.” If it is appropriate to file a legal action in the original county even if the parties do not live there, try to do so first before looking to change venue. But, sometimes a change of venue is the best thing for the case -- to keep one court file or one order for the family, it may be the best option.

4. Other Legal Issues:

- a. What is a Case? - A “case” can be defined as a PRISM case or a court/legal case. Be sure you are clear about which type of case you are talking.
- b. What is the Scope of the Action? – A subsequent motion to set or modify is limited to the issues in the original complaint/petition.
 - i. Establishment Action – Usually limited to support from one party to the other party (not universal from any party to any party).
 - ii. Paternity Action – Limited to the named children (not subsequently born children).
 - iii. Dissolution Action – Often broad petition, generally stating to establish support, not just for Petitioner to pay Respondent support as is true in establishment actions. Be aware that pro se dissolutions sometimes omit any reference to support.
 - iv. Domestic Abuse – Similar to an establishment action, but is limited in duration. If the OFP lasts for 1 year, the support ordered therein lasts for 1 year.
 - v. Custody Action – Similar to a dissolution action, but also may omit any reference to support.

III. Determining Maintaining County

1. No Court Order – Generally, the maintaining county is the county in which either a public assistance referral or nonpublic assistance application is received. However:
 - a. NPA Applicant lives in MN, but not in the Application County – The maintaining county is the county where the NPA applicant resides.
 - b. CP Moves after Case Opened, but Before Legal Action – If the CP moves after the PRISM case is opened, if no legal action has commenced (all necessary parties have been served), the new county of residence becomes the maintaining county.
 - c. CP in an Emergency Shelter – If the CP is in an emergency shelter and a court order must be established:
 - The county where the CP is in the emergency shelter should timely commence the legal action and maintain the case.
 - If the CP moves before the legal action is commenced (before both parties are served), the case should be transferred to the county where the CP resides. If the CP moves around a lot – look to the county where the NCP resides.
 - If the CP moves after the legal action is commenced, it may be a best practice to change venue and transfer maintaining county to the CP’s county of residence, particularly if the NCP does not reside in the county with the emergency shelter.

- d. Paternity Not Established – The intake county is the county that received the public assistance referral or the application for NPA services. The maintaining county is the CP’s county.
 - If the CP lives outside of MN, the maintaining county is the county where the ALF resides or is found.
 - If the CP moves after the PRISM case is opened, but the legal action to establish paternity has not commenced, the CP’s new county of residence becomes the maintaining county.
2. **Existing Court Order** – To provide good customer service and simplify communication, counties should try to ensure that the maintaining county and the county where the case is legally venued are the same. Generally, the county that obtained the court order should remain the maintaining county for orders that:

- a. Set support in a specific dollar amount.
- b. Reserves support – However, a reserved order is not an order for support for the purpose of setting a subsequent support order. Thus, if venue would no longer be proper in the originating county to set a support order, the maintaining county should change to the county where the legal case may be properly venued to set a support order. It is also a best practice to change venue of the original order so that there is one court order and one county involved for all aspects of the case for the family.

Example – Paternity is established in County A. CP is granted sole legal and sole physical custody, parenting time to NCP is reserved, and support is reserved because the NCP is incarcerated. After the order is issued, CP moves to County B. NCP moves to County C after being released from incarceration. County A would no longer be the proper venue to set (establish) support. Maintaining county should change to County B or C, and it would be a best practice to change venue of the paternity case to the same county as issues of custody and parenting time may happen and may affect the support order.

- c. Sets support at zero dollars – Remember, the next action is a modification of support, so even if neither the CP nor the NCP remain in the county that obtained the order, the order may be modified in the original county.
- d. If basic support is reserved, but reimbursement of past support is set - However, see the comments under reserved support above for a time when it may be appropriate to set support.

IV. Case Scenarios

1. **Relative Caretakers (RC) / IV-E Foster Care Cases (FC)** – The maintaining county for intake is the county where the RC resides or where the child is placed in IV-E FC.
 - a. **No Court Order** – If there is no order between the two parents (and an action has not been commenced), the county where the RC resides or the child is placed in FC should maintain the case and proceed to establish an order.
 - b. **Existing Court Order** – If there is an existing order between the two parents, the county with the existing order should proceed with a voluntary or court ordered redirection of the NCP's support obligation.
 - If the county with the existing order will not pursue a redirection, seek the advice of your county attorney.
 - c. **"But What if" - Case Scenarios -**
 - **Both Parents in county with the existing order, RC or FC in a different county** –
 - The county with the existing order should proceed with a voluntary or court-ordered redirection of the NCP's support, and proceed with an action to set support against the CP if appropriate.
 - The county with the existing order should maintain the two PRISM cases.
 - However, it is not wrong to proceed with an action to set support against the CP in the RC or FC county.
 - **Neither parent nor RC or FC in county with the existing order** –
 - The county with the existing order should proceed with a voluntary or court-ordered redirection of the NCP's support and maintain the NCP obligation PRISM case.
 - The county where the RC or FC are located must proceed with an action to set support against the CP if appropriate, and should maintain the CP obligation PRISM case.
 - However, it is not wrong to proceed with an action to set support against the CP in the CP's county of residence.
 - **Only the CP lives in the county with the existing order** –
 - The county with the existing order should proceed with a voluntary or court-ordered redirection of the NCP's support and proceed with an action to set support against the CP if appropriate.
 - The county with the existing order should also maintain the two PRISM cases.
 - However, it is not wrong to proceed with an action to set support against the CP in the RC or FC county.

- Only the NCP lives in the county with the existing order –
 - The county with the existing order should proceed with a voluntary or court-ordered redirection of the NCP’s support and maintain the PRISM case.
 - The county where the RC or FC are located must proceed with a legal action against the CP if appropriate, and should maintain the PRISM case.
 - However, it is not wrong to proceed with an action to set support against the CP in the CP’s county of residence.
2. **Orders for Protection** – Orders for Protection (OFPs) are temporary orders that are only enforceable until the order expires. If the OFP expires after one year, the ongoing support terms also expire, but the arrears do not expire.
- a. Intake County – The county that receives the public assistance referral or NPA application.
 - b. Maintaining County - The county that receives the public assistance referral or NPA application will maintain the case. However:
 - if the NPA applicant lives in MN but not in the application county, the applicant’s county of residence will maintain the case.
 - If the CP moves before the legal action is commenced (before both parties are served), maintaining county should be transferred to the county where the CP resides.
 - If the CP moves after the commencement of the legal action, the county that commenced the legal action, maintaining county should continue with the legal action county.
3. **Subsequent Children** – If subsequent children are born to the same CP and NCP after the issuance of a support order, generally, a new action must be commenced to establish support for the subsequent children.
- a. If the NCP still resides in the county that issued the order for the prior born children – The original order county will be the maintaining county.
 - b. If neither parent lives in the county that issued the order for the prior born children – The CP’s county of residence will be the maintaining county. It is a best practice to pursue a change of venue of the original court case to the CP’s county and merge the new file with the old file so that there will be one county court and one court order for the family.
4. **Multiple Orders** – If there is more than one order for support for the CP and NCP (in their same roles) and the children:
- a. The county with the most recent support order addressing support will maintain the case.

- b. If the most recent order is silent about support, the county with the support order granted immediately prior to the most recent order will maintain the case.
 - c. If the most recent order reserves support, the county with the support order granted immediately prior to the reserved support order will maintain the case.
5. **Role Reversal** – These cases happen when there is an existing order between the CP and NCP, and the children move in with the NCP. For the following scenarios, assume the NCP has gained custody through a court order or with the consent of the CP or the NCP is on MFIP with the child.
- a. Only the CP lives in the county with the existing order –
 - The county with the existing order should establish a support order against the CP.
 - The county with the existing order should also satisfy, suspend, or terminate the support order against the NCP.
 - It does not matter whether the NCP receives public assistance or applies for NPA services.
 - However, it is not wrong to proceed to establish support against the CP in the NCP’s county.
 - b. Only the NCP lives in the county with the existing order –
 - The county with the existing order should establish a support order against the CP.
 - The county with the existing order should also satisfy, suspend, or terminate the support order against the NCP.
 - It does not matter whether the NCP receives public assistance or applies for NPA services.
 - However, it is not wrong to proceed to establish support against the CP in the CP’s county.
 - c. Neither the CP nor NCP lives in the county with the existing order –
 - The county with the existing order should establish support against the CP if it is within the scope of the original action (was the original petition or complaint broad enough to set support against either parent?).
 - If it is not within the scope of the original action to set support against the CP, the NCP’s county or residence should establish a support order against the CP.
 - It does not matter whether the NCP receives public assistance or applies for NPA services.
 - The county with the existing order should also satisfy, suspend, or terminate the support order against the NCP.
 - However, it is not wrong to proceed to establish support against the CP in the CP’s county.

6. **Enforcement** – Generally, the maintaining county should take all appropriate actions on the case. If a hearing is needed on an enforcement action and the original order is from another county, follow the procedures to transfer the case to the county of the original order.

a. **FIDM** –

- **Order originated in MN** - The hearing to contest the FIDM levy must take place in the county where the order originated.
- **Order originated in another state** – The hearing to contest the FIDM levy must take place in the county where the order was registered.
- **Timely Communication is Necessary** – Timely communication between counties is essential in the contested FIDM process since the hearing must occur within 10 calendar days after the obligor requests a hearing.

b. **COLA** – If a party files a motion to contest the COLA, and the maintaining county is not the county with the support order, maintaining county should be transferred to the county of the order.

7. **Review and Modification** – The maintaining county must initially respond to a request for a review of the support order for modification. If the maintaining county and the order county are different, and it is decided that a modification is warranted, the maintaining county may either:

- Transfer the case to the county with the order, or
- Request the county with the order change venue to the maintaining county.

Both options require timely communication between the two counties. Ultimately, the county where the modification is decided will be the maintaining county.

8. **Interstate** –

- **MN Initiating State** – CP resides in MN, NCP resides in another state:
 - i. **No Support Order** - If the CP resides in Minnesota, the NCP resides in another state, and a proceeding to establish a support order has not been forwarded to the responding state, the CP's county of residence will maintain the case.
 - If the CP's county of residence changes to a different Minnesota county *before the proceeding is forwarded* to the responding state, the CP's new county of residence will maintain the case.
 - If the CP's county of residence changes to a different Minnesota county *after the proceeding is forwarded* to the responding state, the CP's prior county of residence will continue to maintain the case.

- ii. Existing Support Order – If the CP resides in Minnesota, the NCP resides in another state, and there is an existing support order, determining the maintaining county may depend on whether the existing support order was established in Minnesota or in another state.
- MN Support Order – If the order was established in Minnesota, the county that issued the order that is to be enforced will maintain the case.
 - Other State’s Support Order –
 - Enforcement: If the order was established in another state, the CP resides in Minnesota, and the NCP resides in another state, the CP’s county of residence will maintain the case. If the CP’s county of residence changes to a different Minnesota county *after the proceeding or referral is forwarded*, the case should not be transferred. The prior county of residence will continue enforcing the case and will maintain the case.
 - Review/Modification: If the CP resides in Minnesota, the NCP resides in another state, and that state established the order, the CP’s county of residence will maintain the case and the other state will conduct the review/modification. If the CP’s county of residence changes to a different Minnesota county, the case should not be transferred. The prior county of residence will maintain the case.

If the CP resides in Minnesota, the NCP resides in another state, the order was established in a third state, and the NCP requests a review, the CP’s county of residence will conduct the review. If the CP’s county of residence changes to a different Minnesota county, the prior county of residence will continue to maintain the case and conduct the review. If a modification is not required, the case should not be transferred and that county will continue to maintain the case. If a modification is required, the case should be transferred to the new county of residence to commence legal action and that county will become the maintaining county.

- b. MN Responding State – NCP resides in MN, CP resides in another state:
- i. No Support Order - If the NCP resides in Minnesota, the CP resides in another state, there is no existing support order and no establishment action initiated, the NCP's county of residence will maintain the case.
 - If the NCP's county of residence changes to a different Minnesota county *before an establishment action is initiated*, the NCP's new county of residence will maintain the case.
 - If the NCP's county of residence changes to a different Minnesota county *after an establishment action is initiated*, but before an order is issued, the county that commenced the legal action will maintain the case.
 - *NOTE* - If, under the same circumstances, there is a request to establish paternity, the ALF's/NCP's county of residence is the maintaining county. If the ALF's/NCP's county of residence changes to a different Minnesota county the paternity/support establishment action is initiated, the new county of residence will maintain the case. If the county of residence changes after the action is initiated, but before an order establishing paternity and support is issued, the county that commenced the legal action will maintain the case.
 - ii. Existing Support Order – If the CP resides in another state, the Central Registry initially assigns the responding interstate case. Minnesota will accept a case:
 - even if the other state has a basis of jurisdiction over the NCP(long arm)
 - regardless of whether the other state had the option of using direct income withholding
 - at the other state's request to establish a court order, even if there is another state's order that is silent on support or reserves support

If legal action is required and the NCP's county of residence has changed to a different Minnesota county, the case must be transferred from the county where the Central Registry assigned the case.

- **Example 1:** A county received an interstate request to establish paternity. The ALF's county of residence changed to a different Minnesota county before the legal action is initiated. The prior county of residence will transfer the case to the new county of residence.
- **Example 2:** A county received an interstate case, prior to the registration of the other state's order, the NCP's county of residence changed to a different Minnesota county. The prior county of

residence will transfer the case to the new county of residence. The new county must then register the order and provide ongoing enforcement.

If the NCP resides in Minnesota and the CP resides in another state but applies for IV-D services in Minnesota, after the intake is complete, the maintaining county will be:

- The county where the order is registered, if the request is for enforcement of an existing Minnesota order
- NCP's county of residence, if the request is to establish a support obligation or to enforce another state's order
- The Alf's county of residence or the county where the ALF is found, if the request is to establish paternity

9. **Temporary Orders** – If a temporary order is issued in one county, and later a permanent order is issued in another county, the county that issued the permanent order is the maintaining county.

- NOTE – if there are conflicting orders involving the same CP and NCP in the same roles and the same children, a controlling order determination may be necessary.

10. **Reserved Orders** – According to case law in Minnesota, an order that reserves support is not an order for the purpose of setting a subsequent support order. Thus, if the CP and NCP no longer live in the county with the reserved order, and venue would no longer be appropriate to set a support order, the maintaining county should change to the county where the legal case may be properly venued to set a support order.

- It is also a best practice to change venue of the original order so that there is one court order and one county involved for all aspects of the case for the family.

V. Procedure for Transferring Maintaining County

1. **Initial Contact** – The child support worker should contact the child support worker in the other county by phone or email to transfer maintaining county. The new county should respond to the transfer request within 5 working days.
2. **No Response** – If the new county does not respond to the transfer request within 5 working days, the child support worker should contact the service conflicts contact person listed for the new county in the Child Support Directory in SIR, and the service conflicts contact person should respond to the transfer request within 5 working days.

3. **Payment History** – When a case is transferred to a new maintaining county:
 - There are pre-PRISM payments for the case, a payment history (payment listing, not a full account review) must be provided relating to the pre-PRISM payments.
 - There are post-PRISM payments for the case, a payment history should be provided. Enough information should be provided so that the new maintaining county can do an account review.
 - However, the new maintaining county cannot refuse to accept a transferred case solely because a payment history was not provided at the time of the transfer.

VI. Keys to Making the Maintaining County Policy Work

1. **Communication** – Communicate about what you think should happen to cases.
 - a. If the person on the other end of the phone or email does not agree with you, assess their position and if you still do not agree, talk to someone else or escalate.
 - b. If you think a change of venue is best, contact the other county first. Make sure the attorneys from both counties are consulted about this decision before the paper work is signed, served and filed.
 - c. Call your colleagues from other counties if you are stuck and cannot figure out what to do. Sometimes a person not invested in the outcome may have a fresh set of eyes and can evaluate the case differently than you. They may agree with you, but may come up with a better way to explain the decision, etc.
 - d. Use your attorneys. Remember that the maintaining county policy is part administrative/program analysis and part legal/attorney analysis.
2. **No Dumping** - No dumping cases. If you can work the case from both a program and legal aspect, and it is not too much trouble for the parties and the courts for you to keep the case, keep it. Just because there is a policy that allows cases to be transferred from one county to another does not need they must be transferred when one or both parties move from the original county.
3. **Compromise** – Ever heard the phrase “you scratch my back and I will scratch your back?” That applies to this policy. Sometimes you will need to take a horrible, terrible, very bad case from your neighboring county, but sometimes you will turn to them for the same request.
4. **80/20 Rule** – While the maintaining county policy covers many of the common situations, it doesn’t cover them all. Think of it as the 80/20 rule; and that is the reason the ad hoc work group came up with their guiding principles/goals. Get to know the guiding principles and apply them to your sticky/stinky situations.