


MINNESOTA FAMILY SUPPORT & RECOVERY COUNCIL

2017 ANNUAL CONFERENCE



FLEXIBILITY, EFFICIENCY, AND MODERNIZATION IN CHILD SUPPORT ENFORCEMENT PROGRAMS:

Implementing the Final Federal Rule

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Background

- Notice of Proposed Rule Published: November 17, 2014
- Final Rule Published: December 20, 2016
- Effective Date: January 19, 2017
- First comprehensive revision of child support regulations since 1996 welfare reform
- Both mandatory and optional changes
 - Various compliance dates for the mandatory changes
 - No compliance dates for optional changes
 - OCSE Compliance Date Chart: https://www.acf.hhs.gov/sites/default/files/programs/css/final_rule_compliance_dates_table_1220.pdf


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CSD's Work

- January 12, 2017: Published [County Message #5939](#) notifying counties of final rule
- January 2017 – February 2017: read and completed 14 policy analyses on the various subject matter areas
- March 2017: presented and shared analyses with the CSD Management Team
- March – July 2017: CSD staff attended National Child Support Directors Workgroup Meetings and participated in drafting the final report
- April – June 2017: prepared a webinar for the counties
- July 2017: presented webinar and answered follow-up questions: <https://www.dhssir.cty.dhs.state.mn.us/PRISM/Communications/ResourceLibrary/Pages/default.aspx>
- July – August 2017: CSD Policy and Planning Supervisor attended County Supervisor Groups

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State Plan Updates



- OCSE issued AT-17-03 on April 10, 2017, identifying 10 plan pages requiring updates to document compliance with the new regulations:
 - 2.1: Contempt
 - 2.4: Direct payments
 - 2.5-2: NOCS requirement in foster care cases
 - 2.5-4: Optional paternity-only limited services
 - 2.8: Public coverage meeting coverage needs
 - 2.12-10: Modification: incarceration, public coverage
 - 3.1 Cooperative arrangements (can include corrections officials)

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State Plan Updates



- 3.3: State Statutes
- 3.8-3: System requirements: identifying SSI recipients, preventing FIDM levies
- 3.11: Guidelines
- As we go through this process, interaction with OCSE may clarify what we need to do to meet some of the requirements.

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Sections of the Final Federal Rule



- Guidelines and Establishment of Support
- Quadrennial Review
- Due Process Protections in Civil Contempt Proceedings
- Modifications for Incarcerated Parents
- Case Closure
- Limited Paternity-Only Services
- Medical Support
- Notice of Continued Services Requirements
- Income Withholding
- SSI Benefits
- Payments Directly to the Family

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Goals of the Final Federal Rule



- Increase state and employer flexibility to better serve families;
- Improve program effectiveness, efficiency, and innovation;
- Improve customer service; and
- Remove barriers identified by employers, states, and families that impede efficient and timely child support payments.

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Guidelines and Establishment of Support




The final rule mandates that:

- Child support guidelines must provide that the child support order is based on the NCP's earnings, income, and other evidence of ability to pay by taking into consideration:
 - all earnings and income of the NCP;
 - the basic needs of the NCP who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or other method;
 - if imputation of income is authorized, the specific circumstances of the NCP to the extent known.

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Guidelines and Establishment of Support



- Specific circumstances to be considered when imputing income include:
 - NCP assets,
 - residence,
 - **employment and earnings history**,
 - job skills,
 - educational attainment,
 - literacy,
 - age,
 - health,
 - criminal record and other employment barriers, and
 - record of seeking work, as well as the **local job market**,
 - the availability of employers willing to hire NCP,
 - **prevailing earnings level in the local community**, and
 - other relevant background factors in the case.
- State may not use a standard amount in lieu of fact-gathering in a specific case.

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Guidelines and Establishment of Support




The final rule mandates that:

- Incarceration may not be treated as voluntary unemployment in establishing or modifying orders.
 - Minn. Stat. 518A.32, subd. 3(3) already provides that incarceration is not considered voluntary unemployment.
 - However, it contains an exception when incarceration due to non-payment of support.

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Guidelines and Establishment of Support




The final rule mandates that:

- Child support guidelines must address how the “parents will provide for the child’s health care needs through private or public health care coverage”.
 - Current law does provide that medical support is established for both public and private health care coverage. See Minn. 518A.41, subd. 1(d).
 - However, Minn. Stat. § 518A.41, subd. 1(a) currently defines “health care coverage” to exclude public coverage.

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Guidelines and Establishment of Support




The final rule mandates that:

- The IV-D agency must:
 - Take reasonable steps to develop a sufficient factual basis for the support obligation, through investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources.
 - Gather information regarding the earning and income of the NCP, including the new imputation factors.
 - Base the support obligation or recommended support obligation amount on the earnings and income of the NCP whenever available. If evidence of earnings and income is not available or insufficient to use to measure the parent’s ability to pay, then the amount should be based on available information about the specific circumstances of the NCP in the new imputation factors.
 - Document the factual basis for the support obligation or the recommended support obligation in the case record.

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Guidelines and Establishment of Support



- Although Minnesota law already provides that child support must be based on available earnings and income, which applies to the IV-D agency, counties should examine their use of the following tools in developing a sufficient factual record to support the determination of income and the child support order:
 - investigations
 - case conferencing
 - interviews with both parties
 - appearing and disclose procedures
 - parent questionnaires
 - taking testimony
 - electronic data sources

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Guidelines and Establishment of Support- Next steps



- Sponsor legislation, if determined to be needed, to bring Minn. Stat. § 518A.32 into compliance with the federal rule by:
 - Adding factors for imputation of income of either parent; and
 - Deleting the exception for incarceration for nonpayment of support.
 - Revise existing policy as to incarceration and imputation of income factors to comply with the federal rule.
- Sponsor legislation to clarify that the definition of health care coverage in Minn. Stat. 518A.41 does include public coverage.

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Guidelines and Establishment of Support- Next steps



- Review training materials, brochures, and the public website for needed updates.
- Work with counties to train workers and the bench in on the new imputation of income factors to be considered.
- Work with counties to ensure that reasonable steps to develop a sufficient factual basis for the determination of income and the basis of the support award are being taken.
- Edit the Ability to Pay Calculation and Determining Monthly Income sections of the Guidelines Child Support Calculations topic of SIR MILO to include the new provisions.

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Guidelines and Establishment of Support - Discussion





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Quadrennial Review

The new final rule adds to the scope of the child support guidelines review that is mandated to occur every four years.


- The added requirements mandate that the following data be gathered and considered:
 - detailed labor market data
 - the impact of guidelines policy on low-income case participants
 - the effects of child support orders on employment rates of case participants
- The final rule also adds specific types of child support case data to examine (default, imputed income, self-support reserve).
- The final rule also requires that there be a meaningful opportunity for public input on child support guidelines during the Quadrennial Review process.



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Quadrennial Review- Next steps

- CSD will form an internal group to analyze the content and timing of policy and procedure implementations that are needed to be in compliance by no later than 2022. The group will:
 - Seek stakeholder feedback as appropriate during the process
 - Incorporate input from the Child Support Task Force if still applicable as the 2022 Quadrennial approaches.
- The group will determine the appropriate size and structure of the process and the formation of the team needed to conduct the 2022 Quadrennial Review, specifically data gathering requirements and staffing needs.



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Quadrennial Review – Next steps



- In order to comply with these additional requirements:
 - New PRISM coding will be necessary because some of the required data is not easily obtained through PRISM or the Data Warehouse. For example, PRISM does not have a searchable identifier for default orders, and information about whether income is imputed is not reliable.
 - A meaningful opportunity for public input into the Quadrennial Review process, including input from low-income custodial and noncustodial parents and their representatives, must be provided.

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Quadrennial Review– Next steps



- The CSD group will determine appropriate training and education efforts for business partners well in advance of the 2022 Quadrennial Review with regard to deviations, imputed income procedures, *etc.*, so that the data is available to analyze during the 2022 review.
- The new data requirements should be integrated into the new system through the Systems Modification Project.

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Contempt



- Requires a Review of the State’s Contempt Process in Referring and Pleading out Contempt Cases
 - Agencies must have a screening process in place to review cases for contempt that includes an “individual case review” that examines the NCP’s “actual and present ability to pay”
 - Agencies must give clear notice to the NCP that his/her ability to pay is the crucial question in the action
 - Agencies must provide the court with information regarding the NCP’s ability to pay so court can make appropriate factual determinations regarding the NCP’s contempt status and set appropriate purge conditions when applicable

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Contempt – Steps Taken



- Submitted State Plan Page
- Will honor County Supervisors' request to form a County/State Workgroup to addresses the contempt requirements under the final federal rule
- Workgroup options:
 - Included in the Enforcement CLV Group
 - DHS run workgroup
 - County run workgroup

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Contempt – Next Steps



- The State/County Workgroup will address the contempt requirements of the final rule, specifically considering the following:
 - When screening cases for contempt, are counties looking for inabilities as well as the ability to pay and comply with the proposed contempt order?
 - Is the NCP provided with clear notice that his/her ability to pay is the crucial question in the contempt action? Do court documents need to be revised?
 - Does the bench generally have the appropriate information, and is the bench using the information to make appropriate factual determinations regarding the NCP's ability to pay?
 - When information is lacking, when if ever, is contempt appropriate?
 - How can modifications be used in conjunction with contempt to right-size orders?


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Contempt - Discussion




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Incarcerated Modifications



A State Must Elect 1 of 3 Options:


1. The State may elect in its State Plan to initiate review of an order after learning that a NCP will be incarcerated more than 180 calendar days.
2. If the State declines the state plan election, then within 15 business days of learning that the NCP will be incarcerated more than 180 calendar days, the state must have a law or policy in place so it notifies both parents of their right to request a review.

OR

3. The requirement is satisfied if the State has or enacts a law or rule that modifies a child support obligation upon incarceration by operation of law.

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Incarcerated Modifications – Next Steps



- MN is making the State Plan Election (Option #1)
- Policy change to make the [Streamlined Review and Modification Process for Incarcerated NCPs](#) section of User Docs mandatory
- Issue County Message
 - County child support agencies will be required to proactively review and adjust a child support orders (w/o waiting for a review request) whenever an agency learns that a NCP will be incarcerated for more than 180 days
- Submit updated State Plan page

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Incarcerated Modifications – Optional Steps



- Future: Explore enacting a statute that changes the obligation of an incarcerated parent by operation of law.

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Case Closure

- Provides 7 new case closure options
- Shortens locate timeframes at State option
- Adds a mandatory case closure requirement
- Emphasis that supporting documentation needs to be maintained in the case record whenever a case is closed

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Case Closure – Steps Taken

- New Mandatory Case Closure Requirement: Cases must be closed when: the child is eligible for health care services from the Indian Health Service (IHS); and the IV-D case was opened because of a Medicaid reimbursement referral based solely upon health care services provided through an Indian Health Program.
 - This requirement is a non-issue for MN because we don't get these referrals.
- Locate Case Closure Options: 3 locate timeframes can be shortened at state option
 - CSD will implement these optional changes, but PRISM programming changes are required as well as changes to DORD and User Docs.

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Case Closure – Steps Taken (cont.)

- 7 New Case Closure Options
 - No Current Support and all Arrears are Assigned
 - NCP is Entering or Has Entered Into Long-term Care Arrangement
 - NCP is Living With the Child as Primary Caregiver or Family is Intact
 - NCP is Incarcerated, Institutionalized, or has a Total and Permanent Disability
 - NCP is Receiving SSI
 - Transfer of Case to Tribal IV-D agency
 - Inappropriate Referral from IV-A, IV-E, or Medicaid
- County/State Case Closure Workgroup will prioritize and work through these 7 options

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Limited, Paternity-only Services Implementation – Next Steps


- Continue to assess the pros and cons of implementing this new service option



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Limited, Paternity-only Services Implementation – Optional Steps

- Implement new service option, including:
 - Policy development;
 - Changes to statute;
 - Changes to documents;
 - State Plan update; and
 - System updates.




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Limited, Paternity-only Services: Discussion

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Securing and Enforcing Medical Implementation



- New provisions affecting medical support are found in multiple sections of the final rule.
- There are three main new provisions:
 - Public coverage is acceptable as a way of satisfying the obligation to address the child's health coverage needs.
 - When determining whether insurance is "reasonable in cost," it is no longer required that the cost be understood as the marginal cost for the child.
 - Providing for health care needs must be an adequate basis for review-mod
- States have the option to adopt an alternative standard.

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Securing and Enforcing Medical Implementation – Next Steps



- Address statutory provisions concerning public coverage
 - Minnesota Statutes §518A.41 includes the following definition: "Health care coverage" means medical, dental, or other health care benefits that are provided by one or more health plans. Health care coverage does not include any form of public coverage."

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Securing and Enforcing Medical Implementation – Optional Steps



- Develop and implement new standard of reasonable cost

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Medical - Discussion




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Notice of Continued Services Implementation


- Changes were made to the notice requirements for families no longer eligible for assistance: the Notice of Continued Services in Minnesota.
- The change is really a recognition that continued services may no longer be appropriate in former IV-E foster care cases.
- Analysis noted that Minnesota's statute mirrored the old requirement and thus did not include flexibility in sending the notice.



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Notice of Continued Services Implementation – Next Steps

- Address statutory provision mirroring old regulation
- Develop policy concerning the appropriateness of continued services in IV-E foster care cases



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Income Withholding Implementation

- Not a change: federally-approved form always required.
- Language strengthened because OCSE continues to receive reports of problems.
- MN recognizes the OMB-approved form is required.
- OCSE wants guidance provided to non-IV-D participants as well.
- CSD is working on improving the guidance offered on the public website, including link to the OMB-approved form on the OCSE website.

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Income Withholding Implementation – Next Steps

- Update public web with link and instructions
- Educate case participants
 - We don't provide services to non-IV-D participants, but we can tell them about the requirement.

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Income Withholding Implementation – Optional Steps

- Strengthen requirements in statute
 - Minn. Stat. § 518A.53, subd. 3 holds that "A payor of funds shall implement income withholding according to this section upon receipt of an order for or notice of withholding. The notice of withholding shall be on a form provided by the commissioner of human services."

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FIDM/SSI System Requirements Implementation – Steps Taken

- SSA interface implemented
- FIAD updated to include SSI information
 - County message 5903 (October 2016)
- Counties notified of 5-day requirement
 - County message 6033 (June 2017)
- State Plan update submitted



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FIDM/SSI System Requirements Implementation – Next Steps


- Finalize state plan update



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Direct Payments; Third Parties Implementation – Steps Taken

- Assessment of direct deposit exceptions for third party payments
 - County Message 5963 (February 2017)
- Direct deposit exception policy updated to exclude private collectors as an exception reason
- Documents Updated to reflect these updates
 - F9944 Notice of Cancellation of Direct Deposit
 - F9938 New Case Direct Deposit Letter
 - F9945 Notice of Mandatory Direct Deposit of Support Payments
 - County Message 6032 (June 2017)



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Direct Payments; Third Parties Implementation – Next Steps

- Resolve any outstanding cases
- Educate case participants
- Educate private collectors




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Questions

Submit case specific questions to the CSD Help Desk.
 Submit questions regarding this presentation to:
dhs.csdpolicyandplanning@state.mn.us

- Additional federal resources are available at:
<https://www.acf.hhs.gov/css/resource/final-rule-resources>

THANK YOU FOR ATTENDING!



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