



# How recent guidance impacts state child support enforcement programs

**KPMG Government Institute**

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On December 20, 2016, the Centers for Medicare & Medicaid Services (CMS) and the Federal Office of Child Support Enforcement (OCSE) issued the final rule for significant technological and programmatic updates to state-administered child support enforcement (CSE) program operations. The final rule follows from Executive Order 13563, Improving Regulation and Regulatory Review, and an efficiency and process improvement review conducted by OCSE, aimed toward increasing collection and participation rates for child support orders, by better aligning CSE processes with modern technological advances. The review served as a catalyst for this final rule, which intends to capitalize on recent technological advancements to increase child support collection rates and promote program-wide efficiency.

A notice of proposed rulemaking (NPRM) was published in the Federal Register on November 17, 2014. OCSE received over 2,000 sets of comments from state child support agencies, Native American tribes and tribal organizations, state and national child support organizations, district judicial offices, attorneys, and other organizations. The final rule went into effect on January 19, 2017, and states have up to one year following their first quadrennial review, which occurs after December 20, 2017, to become compliant with most of these new rules and regulations. Due to the complexity and scope of these changes, KPMG strongly recommends that State IV-D directors begin reviewing and assessing the implications of these changes immediately to plan for any structural or procedural adjustments this final rule will require.

This final rule strengthens CSE programs by promoting enforcement efficiency through the removal of regulatory encumbrances and antiquated barriers to electronic communication and document management. Additionally, the rule will standardize and streamline payments garnered from income withholding, a collection method that accounts for roughly 75 percent of child support payments annually. These improvements are intended to promote growth in the collection totals of state-wide enforcement programs, which raise an estimated one million people out of poverty every year. A key provision of the final rule will enforce a better alignment between a noncustodial parent's (NCP) ability to pay a support order with the amount of that order, in turn promoting a higher percentage of payment compliance and, correspondingly, an increase in the total support payment collection amount.

## **Updates to child support guidelines requirements Requirements for state guidelines**

The Final Rule updates certain provisions mandated under section 301.1 of the state plan, which requires all state IV-D agencies to produce a state plan that describes how the IV-D program will administer the services under its purview.

Other fiscal and reporting responsibilities, that IV-D agencies must include in their state plans cover persons eligible to receive support order payments, time frames for eligibility notices, and provisions for standardization of accounting records:

- State must maintain a system with adequate accounting records and supporting details to “assure that claims for federal funds are in accordance with applicable Federal requirements.”
- State plan shall include provisions for notification whenever a family may no longer be eligible for Temporary Assistance for Needy Families (TANF) and Medicaid programs. The state’s IV-D agency must inform the family within five working days of the notification of ineligibility.

### Recommendations

To comply with this requirement, states with outdated interfaces and data exchanges between the IV-D and TANF agency will need to upgrade and improve the timeliness of those exchanges. States should consider the time necessary to transfer data between the IV-D and TANF systems and also the time required to generate notices and mailings, informing the family within the five-working-day window, and to include the information required by the regulation.

### Guidelines for setting child support orders

The final rule establishes minimum requirements for each state in setting child support orders. When setting a support order, states must demonstrate that a consideration for the “specific circumstances” of the NCP is explicitly reflected in the order. In addition to the earnings and income of the NCP, the state must also factor into the order amount any known circumstances of the individual that could impact their ability to pay. Further guidelines for Child Support orders require the establishment of specific, numeric criteria, which are used to compute the support obligation, as well as the prohibition of classifying incarceration as “voluntary unemployment.”<sup>1</sup> States are required to review and, if necessary, revise these guidelines at least once each quadrennial review period to confirm its guidelines determine appropriate support order amounts.

A crucial update to requirements of the state plan includes standardizing guidelines for setting child support orders and ensuring a process for making these guidelines readily available to all constituents of the state. These provisions could require state legislative adjustments, in addition to CSE programmatic and technological changes.

State IV-D agencies can expect this final rule to increase their responsibility for setting appropriate support orders and actively managing those order amounts on the NCP’s ability to meet them. A key initiative of this final rule centers around increasing the participation rate of NCPs in both meeting their full support order obligations and remitting payment on time. Ensuring these participation rates are attainable and sustainable requires active management of the support orders.



<sup>1</sup>Final Rule Section 302.56

## Key minimum provisions for Child Support Guidelines Section 302

Provide that the child support order is based on the noncustodial parent’s earnings, income, and other evidence of ability to pay

Address how the parents will provide for the child’s healthcare needs through private or public healthcare coverage and/or through cash medical support

Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders

Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation

Review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts

Provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order would result from the application of the child support guidelines

## Recommendations

States should assess current child support orders against known earnings of NCPs to identify orders that may be misaligned and explore actionable improvements reflective of the capabilities of their CSE system. This effort can be completed outside of the core operational CSE system using prevailing data analytics tools and be used to either inform modifications to the system business rules or, at a minimum, generate reports that can be used for manual case reviews.

States should consider implementing an ongoing process to review the current child support orders against available data sources for appropriateness to the NCPs' earnings and present fiscal standing. Streamlining this process using the CSE system to automatically identify orders that require modification could increase the state's capability and capacity for appropriately adjusting support orders, reducing accumulation of arrears and enforcement actions, and increasing collections.

Most states, regardless of their core CSE system's flexibility, should consider the following options:

Build or expand client self-service Web sites or portals to enable custodial parent and NCPs to review their CSE case and order information online and request a review or modification should the NCP experience changes in financial circumstances. It is highly recommended that the functionality is robust enough to allow NCPs to provide proof by submitting paystubs or other relevant documentation electronically. These can be used to trigger case reviews for modification and may be integrated with the CSE system's workflow functionality, if available.

Expand existing interfaces with employers to allow for capture of changes in earnings, such as layoffs, temporary suspensions of employment, or reduction in hours/earnings. Alternatively, employer portals can be used to facilitate this exchange of information between the state's IV-D agency and the employers.

### Categorical provisions on modifying orders

In 2011, the Supreme Court decision in *Turner v. Rogers* ruled that "the State must...have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order."<sup>2</sup> This ruling requires states to assess and potentially adjust support orders for NCPs should the order exceed that individual's ability to pay.

Withholdings offer a crucial mechanism by which states can collect support order payments from NCPs. Previously, the state had significant latitude in enforcing withholding requirements on NCPs, as well as in the classification of employment status for incarcerated parents. This final rule, pursuant to independent research conducted by OCSE and the 2011 *Turner v. Rogers* ruling, abolishes a state's ability to treat incarceration as "voluntary unemployment," in turn affecting a state's flexibility in setting the support order for such an individual. The final rule seeks to eliminate the often-observed situation where an NCP accumulates arrears that are unrealistic to collect, thus contributing to a vicious cycle of incarceration and inability to pay. Such a situation runs the risk of adversely impacting the child, CP, NCP, and other stakeholders.

Further requirements contained in the final rule may force states to conduct economic research and produce performance-based metrics, which confirm that their criteria for setting unemployment withholdings are both just and prudent. The final rule requires the IV-D agency to enter into an agreement with its state workforce agency (SWA) in charge of unemployment compensation that acknowledges the IV-D agency's responsibility to reimburse the SWA for incremental costs associated with unemployment withholding. Further, the IV-D agency must establish specific criteria to guide its selection of cases that will pursue unemployment compensation withholding as a means of meeting the order. These criteria must explicitly reflect how the state envisions the unemployment compensation withholding will be a robust process to select the maximum number of cases with minimal discretion and subjectivity.

<sup>2</sup>Opinion of Justice Breyer; <https://supreme.justia.com/cases/federal/us/564/10-10/opinion.html>

## Recommendations

States should proactively conduct economic research to produce performance-based metrics, which prove their criteria for setting unemployment withholdings. This analysis, combined with common data analytics and modeling tools, can allow the state to identify and establish a reasonable and appropriate threshold for unemployment insurance (UI) recipients who are NCP's with child support order obligations.

Based on the duration and anticipated amounts of their UI payments and CSE obligations, states can evaluate the additional collections they expect to realize without placing an undue hardship on the NCPs during their time of unemployment and reduced earnings and modify CSE orders appropriately until such time as new employment is secured and earnings change.

As these rule changes will likely spur an increase in workload for state IV-D agencies, states should begin to assess their internal capabilities and the overall impact to their business service delivery model to become compliant with the new standards and identify options for addressing any gaps in those capabilities. These options should consider opportunities for new or adapted systems automation to enhance the overall process.

### Establishment and enforcement of support obligations

This final rule includes several updates to the establishment and Enforcement functions of CSE of which IV-D agencies will need to be mindful. Areas affected by these updates include—but are not limited to—locating an NCP, establishing and updating support orders, enforcement of support obligations, and case closure criteria.

#### Location of noncustodial parent

In support cases where the NCP's identity is unknown, the final rule grants significant latitude to IV-D agencies in allowing the use of a myriad of sources to track down the missing party. The final rule contains an extensive list of what constitutes an "appropriate source" for the location of including:

- Federal Parent Locator Service (FPLS) and interstate location networks
- Public assistance programs, such as those offering medical assistance and social services
- Electronic communications and Internet service providers, utility companies, the U.S. Postal Service, financial institutions, unions, and corrections institutions
- State agencies and departments that maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, criminal records, and other sources.

The final rule offers significant latitude for states to explore innovative options to identify NCPs who have evaded the traditional means of location. In accordance with the stated directive of this final rule to promote efficiency through modernizing CSE functions in accordance with advancements in technology, IV-D agencies should explore expanding their technology-leveraged options for the purpose of NCP location. The capabilities of automated location services have dramatically increased in recent years; states should seek partnerships that will allow for a cost-effective expansion of their location capabilities that takes full advantage of the latest advancements in technology.

#### Establishing, updating, and enforcing support orders

While the NPRM largely omitted any revisions to establishment of support obligations criteria, the final rule includes specific requirements regarding the implementation of establishment procedures. Additionally, the increase in collection totals and participation rate both served as a crucial catalyst for the issuance of this final rule, and in line with that directive, states will observe an increase in their respective responsibilities relative to the establishment, enforcement, and maintenance of support obligations. These revisions include:

- Requirement that states “take reasonable steps to develop a sufficient factual basis for the support obligation.”<sup>3</sup> Examples of reasonable actions for determining a support obligation threshold include parent interviews and questionnaires, relevant testimonies, independent investigations, case conferencing, and monitoring electronic data sources.
- Requirement that states “gather information regarding the earnings and income of the noncustodial parent.”<sup>4</sup> When such information is neither readily available nor easily deduced, this requirement extends the responsibility of the state to gather all relevant fiscal information about the parent in question and provide recommendations to the court based on available information to help set a reasonable order.
- Requirement that the state officially document any evidence used to produce a support obligation in the case record.

The final rule intends to implement a sustainable means of consistently increasing collection totals and rates while simultaneously decreasing incarceration rates for noncompliance through additional safeguards against unrealistic support order obligations. Thus, states are required to establish standardized guidelines that drive the actions of their IV-D agencies in civil contempt citation cases. At a minimum, these guidelines must address:

- Provisions that require the IV-D agency to actively screen civil contempt cases for information concerning the subject’s ability to pay their order or other conditions that would impede his/her ability to comply with the order
- A defined process for providing the court with relevant information pertaining to the NCPs ability to pay the order to assist in the determination of that individual’s ability to pay the purge amount of the order
- That the NCPs ability to pay is the critical question in the civil contempt action and states need to provide clear notice of this to the NCP.

### Recommendations

States should assess whether connecting with information sources that provide income and earnings information represent completely new business interactions or an expansion of existing processes. These sources could be national databases or direct employer interfaces that may be more frequent than quarterly wage reporting, which is currently known to have a lag of up to six months from when data is submitted and when it is available to the state IV-D agency.

States should also consider impact on current organizational and staffing structures to determine if they are sufficient to satisfy these requirements or if significant organizational and staffing adjustments may be required. Further, states should evaluate the abilities of current systems to include factual references and sources within case notes and to attach documents to case notes providing the verifications required. Depending on current abilities, states should determine the extent to which they can modify their current CSE systems to support the capture and processing of additional information (either with user input or systems interfaces) as part of the child support case and any applicable workflow and business processes, policies, and training that may be required to implement the changes successfully.

### Review and adjustment of child support orders

This Final Rule establishes specific time frames and criteria for states to use in the review, and subsequent adjustment, of existing child support orders. At a minimum, the state must inform both the CP and NCP of their right to request a review and adjustment of the current support order at least once every three years. If the state learns, at any point during that three-year span, that the NCP will be incarcerated for more than 180 calendar days, the state may initiate its review and adjustment of the support order, provided that it notifies both parents of the action. In the case mentioned above of the NCPs impending incarceration for at least 180 calendar days, the state must notify both parents of their right to request an order review within 15 business days of the date on which the IV-D agency learns of the incarceration. Any existing state law that automatically adjusts a support order for such an incarceration would supersede this notification requirement, and thus, the state would not need to take further action.

<sup>3</sup> Final Rule Section 303.4

<sup>4</sup> Final Rule Section 303.4

### Case closure criteria

Perhaps the most expansive changes included in this final rule relate to updates to case closure criteria. The final rule expands and updates IV-D agencies' abilities to close a CSE case in an effort to increase operational efficiency. States are now granted more latitude to close cases based on a number of key circumstantial occurrences across several CSE functional areas.

Changes to case closure criteria could significantly impact state CSE procedural operations and may even require updates to core components of the CSE system. Promoting operational efficiency through system modernization is a main goal of this final rule, and states will need to ensure that their CSE systems can process support order outcomes in compliance with these new regulations.

State IV-D agencies should conduct an immediate and thorough review of this section, as the provisions contained within it could require significant procedural and legislative changes that may take a significant amount of time to implement.

The final rule does afford an extension for states that need a legislative update to become compliant with these new provisions. However, it may take IV-D agencies years to fully realize the necessary CSE procedural adjustments resulting from this final rule. Therefore, immediate evaluation of the status quo in conjunction with planning for the desired future operational state of the IV-D agency is the most prudent first step.

### Federal Financial Participation

The rule increases flexibility of state IV-D agencies to receive federal reimbursement for cost-effective practices that ultimately seek to increase the effectiveness of standard enforcement activities and expenses that are reasonable, needed, and related to the child support enforcement program. The rule also clarifies expenses that are not Federal Financial Participation (FFP) reimbursable and those are also summarized below.

#### Allowable expenditures for which Federal financial participation is available:

Specifically, the rule clarifies, amends and expands previous regulation to indicate that FFP is available for the following expenses:

- Establishment of agreements between IV-D and other key agencies administering programs, including Titles IV-E (Foster Care and Adoption Assistance), XIX (Medicaid), and XXI (Children's Health Insurance Program (CHIP)) programs
- Added flexibility to facilitate easier case referrals between IV-D agency and other federal programs
- Additional establishment of paternity activities for education and outreach
- Additional educational and outreach activities used to inform the general public, parents and family members, and young people who are not yet parents about the CSE program, responsible parenting and coparenting, family budgeting, and other financial consequences of raising children when the parents are not married to each other
- Added allowable bus fare, gas, or other minor transportation expenses to allow participation by parents in child support proceedings and related activities, such as genetic testing appointments.

FFP is available to increase self-representation and alternative dispute resolution processes in child support cases when the expenses are related to IV-D services.

### Eligibility for case closure may be impacted by:

Status of current support order

Status and amount of support order arrearages

Age of the child and income status of the NCP

Inability to establish paternity

Inability to locate NCP after the state has exhausted all options to do so

Inability of the NCP to pay due to institutionalization, incarceration, or a medically verified total disability

NCP's sole income coming from Supplemental Security Income or Social Security Disability Insurance

NCP being a citizen of a foreign country without income or assets in the United States

Another assistance agency (e.g., IV-A, IV-E, SNAP, Medicaid) referred a case to the IV-D agency that is inappropriate to establish, enforce, or continue enforcing a support order

**Expenditures for which federal financial participation is not available:**

Several child-support-related activities are expressly prohibited from receiving federal assistance. Some key examples of these activities include:

- Federal funding related to job services and job placement for NCPs
- Construction and major renovations
- Education and training programs and educational services for state and county employees and court personnel, except for direct cost of short-term training provided to IV-D agency staff
- Any expenditures that have been reimbursed by fees collected as required by this chapter
- The costs of counsel for indigent defendants in IV-D actions
- Any expenditures for jailing of parents in CSE cases
- Minimal and trivial costs for including parenting time provisions in CSE orders
- The costs incurred by guardians ad litem in IV-D actions.<sup>5</sup>

**Modernization updates**

The provisions of this final rule intend to promote overall fairness and increased rates of compliance with support orders by ensuring states set realistic orders based on the specific circumstances of NCPs and their ability to pay. By establishing quantitative, evidence-based standards for setting support orders and incorporating circumstantial barriers to an NCP's ability to meet those orders, states should observe a reduction in the accumulation of arrears and an increase in overall compliance with orders. These new rules will also require states to comply with technological modernization standards to promote maximum operational efficiency.

Existing regulations for the dissemination of case information and record keeping posed an unnecessary burden on states by requiring antiquated means of documenting and preserving case information in written records. The removal of these barriers will promote operational efficiency both within state IV-D agencies and in fulfilling their CSE obligations that require intergovernmental communication.

However, many states may need assistance updating their business operating models and methods of record keeping and communication, as this effort likely falls outside the purview of their current employees. Redefining the business needs of the program will be critical for states that are considering a CSE system replacement, have recently implemented a new CSE system, or are in the midst of that change as their systems implementation requirements, and development plans may be affected by these modernization efforts.

**Opportunities and actions state IV-D agencies may wish to evaluate**

States should conduct an impact assessment of their core business services delivery model, CSE system, and ancillary systems, where appropriate, to determine the extent to which they can be modernized to accommodate the new regulations. If the state was not already planning a major system modernization and if the system(s) is deemed to be flexible and can accommodate changes to business processes, workflow, and business rules and can accommodate additional data sources (particularly data exchanges with UI agencies and other potential sources of income and earnings information), the state should consider incremental changes to bring its system in line with the new regulations. These states should consider evaluating their caseload against some of the changes

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<sup>5</sup> Final Rule Section 303.23

**Federal financial assistance can significantly ameliorate the overall burden of implementing and executing the requirements outlined in this final rule. KPMG strongly recommends that state IV-D agencies review both the exempted and eligible areas with respect to financial aid and determine if the state needs assistance in procuring potential funds for modernization efforts.**

described potentially in external data repositories before designing the specific functions in their core system. For example, a state may wish to assess existing CSE case obligations against more current income information of NCPs to determine how many and which cases are impacted and could result in order modifications. This is highly recommended before implementing the changes in the core system and will help the state anticipate the expected result.

### **For states considering a replacement of their CSE system or those in early planning stages of modernization**

These states should ensure that they thoroughly reflect the new regulation in their system requirements that would be used to design and ultimately implement the system. A thorough, up-to-date accounting for requirements is integral to ensure that the new system conforms to these regulations and does not require significant modifications postimplementation to achieve compliance. States considering transfer systems should closely evaluate the modularity and flexibility of those systems, more so than how good of a match that system may have been based on previous requirements. States may wish to consider employing prevailing data analytics tools in this evaluation to automate the requirements assessment.

KPMG recommends that states begin immediately—if they have not yet started—to assess the impacts these changes will necessitate with respect to their child support system modernization plans and operations. Regardless of how efficiently a state already runs its CSE program and the status of a state’s system modernization or replacement plans, the scope of change brought about by this final rule will require all to be cognizant of the new requirements and plan for their timely inclusion into CSE program operations.

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### *About the authors*

**Jack Umansky**  
**Lead Director - Child Support Enforcement (CSE), Health and Human Services**

**T:** 518-951-8199  
**E:** [jackumansky@kpmg.com](mailto:jackumansky@kpmg.com)

**Paul A. Hencoski**  
**U.S. Lead, Partner**  
**Health and Human Services**

**T:** 212-872-3131  
**E:** [phencoski@kpmg.com](mailto:phencoski@kpmg.com)

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