

# Overview - Final Rule

## 2016 Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs

### Background

The child support program ensures noncustodial parents provide financial support for their children, primarily collected through payroll withholding. Child support payments lift approximately one million families out of poverty each year, and account . Among poor single mothers with children that receive it, child support accounts for 41 percent of the family's income.

In 2015, the child support program collected \$28.6 billion for almost 16 million children. Eighty-six percent of all child support cases had support orders in place, and nearly 72 percent of those cases had at least some payments during the year. The child support program collects \$5.26 for every government dollar spent.

The final rule makes changes to increase the effectiveness of the child support program for all families, which will result in an increase in timely payments to families, a decline in the nonpayment rate, and an increase in the number of noncustodial parents working and supporting their children.

The new rule removes regulatory barriers to cost-effective approaches to give states needed flexibility to increase the accuracy and accountability of support orders. The changes are consistent with research evidence and knowledge in the field and informed by many successful state-led innovations over the past two decades.

The rule also increases program efficiency and simplifies operational requirements by removing outdated barriers to electronic communication and document management. Given that three-quarters of child support payments are collected by employers through payroll withholding, the rule standardizes and streamlines payment processing so employers are not unduly burdened. Most importantly, these new provisions and guidelines are expected to result in families receiving more consistent payment of child support.

### Summary

The Flexibility, Efficiency, and Modernization of Child Support Programs Final Rule strengthens and updates the child support program by amending existing rules, some of which are 35 years old, to:

- Ensure child support obligations are accurate and based upon the noncustodial parents' ability to pay;
- Increase consistent, on time payments to families;
- Move nonpaying cases to paying status;
- Increase the number of noncustodial parents supporting their children;
- Improve child support collection rates;
- Reduce the accumulation of unpaid and uncollectible child support arrearages; and
- Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.



## Major Provisions

### Setting Accurate Support Orders Based on the Specific Case Facts

Research finds that setting an accurate order based upon the noncustodial parent's ability to pay improves the chances that the parent will comply with the support order and continue to pay over time. The new rule incorporates the longstanding federal requirement that child support orders reflect the noncustodial parent's ability to pay established under income-based guidelines adopted by each state. The rule :

- Increases public participation and transparency in state guidelines review processes;
- Requires child support agencies to increase their case investigative efforts to improve the accuracy of child support orders by ensuring that all relevant information is collected;
- Includes language for states to consider the noncustodial parent's specific circumstances in imputing income when evidence of income is limited;
- Standardizes and streamlines payment processing to ensure that processing payments from payroll withholding, a highly effective support enforcement tool that accounts for three-fourths of child support payments, does not unduly burden employers;
- Increases state flexibility in ensuring that parents meet their medical support obligations by providing health care coverage or payments for medical expenses that are reasonable in cost and best meet the health care needs of the child; and
- Clarifies that health care coverage for purposes of medical support obligations includes public and private insurance.

### Implementing Due Process Safeguards in *Turner v. Rogers*

The rule incorporates civil contempt due process requirements to implement the 2011 Supreme Court decision in *Turner v. Rogers*. The final rule establishes criteria that child support agencies must use to determine which cases to refer to court for a civil contempt action and how they prepare cases for a civil contempt proceeding. Under the rule:

- State child support agencies must maintain and use an effective system for enforcing the support obligation by establishing criteria for filing civil contempt petitions in child support cases funded under Title IV-D. The criteria must include requirements that the IV-D agency:
  - screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;
  - provide the court with such information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and
  - provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

## Ensuring the Right of All Parents to Seek a Review of Their Order When Their Circumstances Change

Federal law requires states to review, and if appropriate, adjust support orders when either parent has experienced a substantial change in financial circumstances, so that the support orders continue to reflect a parent's ability to pay. However, some states continue to legally bar review and adjustment of orders when parents are incarcerated on the grounds that these parents are "voluntarily unemployed." While children continue to need the support, their parents usually have limited earnings ability while in prison. As a result, they can accrue tens of thousands of dollars of child support debt that interfere with employment success, resulting in higher rates of nonpayment upon release from prison, which is not in the best interests of children. The final rule requires that:

- A state may not exclude incarceration from consideration as a substantial change in circumstances, such as by treating incarceration as "voluntary unemployment."
- When modifying an order, states may consider an incarcerated parent's income and assets in setting the order amount. However, states retain the authority to set the level of the order based upon the parent's ability to pay.
  - ◻ In addition, after learning that a parent who owes support will be incarcerated for more than 180 calendar days, the state must either send a notice to both parents of the right to request a review and adjustment or automatically initiate a review and adjustment after notifying both parents.

## Increasing State Flexibilities and Evidence-Based Innovation

The rule also supports state flexibilities and encourages evidence-based innovation by:

- Giving states the flexibility to offer "unbundled" paternity establishment services to allow applicants for child support services to request help only with establishing paternity, without receiving order establishment and enforcement services, in cases in which this is the preference of both parents and both parents reside in the state.
- Expanding the circumstances in which a state may close certain types of cases where a determination has been made that collections are extremely unlikely based on the circumstances, such as very serious work-limiting disability of the noncustodial parent, in an effort to direct resources for cases where collections are possible and ensure that families have more control over whether to receive child support services.
- Strengthening notice provisions to ensure that safeguards are in place to keep recipients informed about case closure actions.
- Removing outdated barriers to electronic communication and document management, which frequently limit methods of storing or communicating information to a written or paper format.
- Incorporating several technical changes to update, clarify, revise, or delete former regulations to ensure that the child support regulations are accurate, aligned with current state practice, and up-to-date.

## Significant Changes Made by the Final Rule

HHS received over 2,000 helpful comments from the public, states, members of Congress and other stakeholders, and we carefully considered all of the comments we received. Most commenters were supportive of the main provisions of the final rule and, importantly, states broadly supported the rule's provisions and recognized that they build on the work states have done to identify best practices and build the evidence base for what works in maximizing child support collections and supporting families. Many comments provided helpful recommendations, and the impact of these comments can be seen throughout the final rule.

In response to comments, we made some significant changes in the final rule, including:

- Removal of a technical provision designed to clarify cost allocation requirements in situations where states consider parenting time in calculating child support order amounts or address parenting time and child support in the same judicial proceeding. While the provision was strongly supported, the comments reflected considerable misunderstanding about the provision's scope and raised questions about whether federal matching funds could be used to establish parenting time. We decided the provision was duplicative of existing federal cost principles and therefore not necessary.
- Removal of a provision that would have allowed states, at their option, to use child support funds to provide job services to noncustodial parents whose barrier to paying child support was a lack of a job and job skills. While this provision received strong support, concerns about the provision also were raised and we think the issue merits further study and discussion.
- Clarifying the provision that support orders must be based on parental income, earnings, and other evidence of ability to pay, emphasizing the need for an evidentiary basis for determining support order amounts, and providing additional guidance on use of imputed income.
- Strengthening the responsibility of child support agencies to investigate and screen cases scheduled for civil contempt proceedings in order to assist the court in making ability to pay determinations required pursuant to *Turner v. Rogers*.
- Increasing the number of days an individual must be expected to be incarcerated in order for states to be required to send a notice to parents of the right to request a review and adjustment.
- Narrowing the scope of limited services to paternity-only services for parents who live in the same state instead of allowing a wide range of limited services. Several commenters had expressed concerns about the difficulty and cost for states to implement a broader menu of limited services in the context of intergovernmental enforcement.