



Office of Child Support Enforcement
Attention: Director of Policy and Training
330 C Street SW
Washington D.C. 20201

RE: 45 CFR Part 305
RIN 0970-AC86

The National Child Support Enforcement Association (NCSEA) submits the following comments in response to the proposed rulemaking *Paternity Establishment Percentage Performance Relief*, Federal Register, Vol. 86, No. 199, pp. 57770-57773. While being fully supportive of the rule as written for Federal Fiscal Years 2020 and 2021, NCSEA also requests that the rule be extended through Federal Fiscal Year 2022 since states are reporting that pandemic-induced backlogs and constraints in the past two fiscal years are continuing into this fiscal year.

Justification for the Rule

NCSEA concurs with and supports the justification for the proposed rule. We have several comments which provide additional specificity for this justification. These relate to voluntary paternity programs, IV-D program operations, and the courts. All have an impact on state paternity establishment percentage (PEP) rates.

Disruptions to voluntary paternity programs. Paternity establishment outcomes in States are affected by voluntary paternity programs required under federal law as well as the administrative and judicial actions initiated by child support agencies. The outcomes from the voluntary paternity programs directly affect performance under the PEP for states choosing the statewide measure and indirectly affect performance for states choosing the IV-D measure.

The effectiveness of voluntary paternity programs has been adversely affected by the Covid-19 pandemic in four main ways. First, hospitals have greatly restricted access by fathers after mothers have given birth, making it difficult for them to complete acknowledgments of paternity. Second, in many states, local vital statistics offices have been closed or restricted, compromising the ability of parents to complete acknowledgments of paternity outside the hospital setting. Third, restricted in-person hospital visits have limited the ability of states and their contractors to provide training, technical assistance, and monitoring of corrective actions to hospital staff who



administer voluntary paternity programs. Fourth, due to staffing shortages in the hospitals many have changed their process to send paperwork home with parents rather than obtaining signatures at the hospital. The seriousness of the pandemic's impact on voluntary paternity programs is demonstrated by the disproportionate number of states relying on the statewide version of PEP that are potentially subject to a PEP penalty in FFY 2020.¹

Disruptions to IV-D programs and courts. The effectiveness of paternity establishment processes performed by IV-D agencies has also been adversely affected by the pandemic. First, in most if not all jurisdictions DNA testing was and continues to be disrupted. Many child support agencies obtain DNA samples using their own trained staff. In those agencies, DNA testing has been negatively affected by office closings and restricted access. Where DNA samples have been obtained by a genetic testing contractor, this activity has been negatively affected by consolidation or closure of DNA testing sites to protect the safety of contractor staff. Testing at alternate sites, such as prisons and correctional facilities, has also been affected as such institutions limited or prohibited contractors from entering the facilities to obtain samples.

Second, where states use administrative proceedings to obtain agreed paternity orders, such proceedings have been adversely affected by office closings and restricted access. This has limited states' ability to bring parents together in the office to attempt establishment of agreed paternity orders.

Third, while states have been remarkably successful overall in pivoting to teleworking because of the pandemic, this change has adversely affected agency workflow in paternity establishment. States have been inventive in providing for virtual interviews and conferences but pivoting to this new mode of working has reduced productivity, at least in some jurisdictions. Moreover, as noted in the NPRM, office restrictions have hampered the ability to gather the intake information needed to initiate case actions.

Fourth, the most significant impact has been widespread closure of courts to child support paternity cases. This has delayed or prevented legal actions needed to establish paternity. Even if court proceedings have been conducted, the disruption to court workflow has delayed finalization of paternity orders with judicial signatures.

These processes have also been affected by reduced in-person show rates for office visits, administrative proceedings, and court hearings. Show rates have been reduced both by health and safety concerns as well as suspended sanctions on public assistance for failure to appear.

¹ Of states and territories with paternity scores less than 90 percent in FFY 2020, 16 use the statewide standard and only 3 use the IV-D standard. Preliminary Report FFY 2020 Table P-39.



All of these factors have combined to adversely affect state performance on the PEP measure as a direct result of the pandemic. We expect these results to be temporary, so they fully justify the temporary relief from penalties proposed in the NPRM.

Extending Penalty Relief Through FFY 2022 and Potentially Beyond

The NPRM requested comments on the potential need to extend penalty relief through FFY 2022. NCSEA strongly supports extending the penalty relief through FFY 2022. It also supports giving the Secretary discretion to extend penalty relief even further, perhaps in modified form, should circumstances warrant. Already early in this fiscal year, states indicate that, while access to courts, IV-D offices, and vital statistics offices is improving, it is not back to normal. Reduced access will continue to hinder efforts of states to restore their performance on PEP to normal levels.

Moreover, during the pandemic all offices and courts have experienced backlogs of cases needing attention. States believe it will take at least the remainder of FFY 2022 to work through those backlogs and get all cases processed. The situation is especially acute in the courts where large backlogs of paternity cases have built up as other types of cases have been prioritized.

At this point, it is too early to predict how long it will take for these cases to be resolved. However, some states have indicated that the cumulative impact of the pandemic may cause their PEP rates to have decreased further in FFY 2021 and that the negative momentum resulting from this impact is likely to carry forward into FFY 2022 and perhaps even beyond.

In addition, it is clear that we cannot yet predict the course of the pandemic itself. Whereas earlier this calendar year, the pandemic seemed to be abating, the appearance of the Delta variant caused cases to spike and restrictions to be reimposed just as it had otherwise appeared the situation would return toward normal. It is too early to be sure that another variant will not surface and cause a new surge that will continue to disrupt operations. Because of this possibility, we suggest that penalty relief not only be extended through FFY 2022, but that the Secretary be given the authority to provide further penalty relief in future years (FFY 2023, for instance) if the impact of the pandemic continues to affect the ability of the states to meet the paternity performance measure. This would enable the Department to restore the paternity standard after 2022 if the pandemic abates, but would also give the Secretary the flexibility to extend penalty relief without the need to issue another regulation.

For these reasons, there is strong justification to extend the penalty relief through FFY 2022, after which the situation can be reviewed to determine whether further action would be warranted and the Secretary could continue to extend the penalty relief if the pandemic is ongoing and the states continue to need relief.



Consequences of Not Providing PEP Penalty Relief

As noted by the NPRM, the pandemic has placed great stress on operations of the IV-D program nationally. The pandemic has disrupted operations, created performance challenges, and resulted in additional costs required for response to the disaster. Imposing penalties for failing to meet the PEP standard – which has always been a challenging standard to meet – would place further stress on the affected programs. It would put financial and operational pressure on those states having penalties imposed and the loss of those funds would compromise the operations of their entire programs. In addition to the 19 states and territories that could be penalized for their FFY 2020 results, there could be additional jurisdictions affected in FFY 2021 and FFY 2022.

It would be beneficial to all programs to know that PEP penalties would be waived during those years in which programs are affected by the pandemic. This would allow the programs to focus on recovery and restoration of the impressive level of results that were the norm beforehand.

Submitted on behalf of NCSEA by:



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