



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Child Support Services


Office of the Director

84A Christiana Road, New Castle, DE 19720

Phone 302-395-6520

MEMORANDUM

To: Juanita Devine, Program Manager
Region III, Office of Child Support Enforcement

From: Theodore G. Mermigos Jr., IV-D Division Director
Delaware, Division of Child Support Services 

DATE: July 07, 2020

RE: Flexibilities for State and Tribal Child Support Agencies during COVID-19
Pandemic DCL-20-04

On behalf of the State of Delaware, Division of Child Support Services (DCSS), I respectfully request that flexibilities be granted to the State's IV-D Child Support Program in accordance with Section 301 of the Stafford Act, 42 U.S.C. § 5141.

In addition to the attached flexibilities, the State of Delaware additionally requests the following flexibilities listed below be granted by the Federal Office of Child Support Enforcement:

- Financial penalties for failure to meet program performance measures in Federal Fiscal Years 2020 and 2021 be waived and reinstated at the conclusion and evaluation of Federal Fiscal Year 2022, if necessary.
- Financial penalties for failure to meet Data Reliability Audit requirements in Federal Fiscal Years 2020 and 2021 be waived and reinstated at the conclusion and evaluation of Federal Fiscal Year 2022 if, necessary.
- Exempt Delaware's IV-D agency from FMAP increases for the duration of the declared COVID-19 emergency.
- Exemptions from Self-Assessments review and evaluation for the evaluation of Federal Fiscal Year 2020 and 2021.

To help aid you in the decision-making process, I offer the following information.

- President Trump declared a nationwide emergency pursuant to the Stafford Act on March 13, 2020.
- The Governor of the State of Delaware declared a COVID-19 State of Emergency due to a public health threat on Friday, March 13, 2020.

- DCSS, in the State of Delaware, is a judicial state and relies on the Delaware Family Court for the adjudication of paternity, creation of child support obligations, modification of child support orders, and some enforcement activities, such as contempt findings and incarceration for non-paying obligors. The State of Delaware Family Court restricted access to the public on Friday, March 13, 2020. On March 20, 2020, all Family Court mediation sessions were rescheduled, and commissioner hearings were severely scaled back, with the Court only hearing a few cases where the obligor was incarcerated. All new supports, modifications and arrears hearings were postponed. The Court just started holding virtual hearings at the end of May 2020 for those new supports and modifications that were scheduled to be heard during COVID-19. The Court is not scheduling any arrears hearings until the COVID-19 backlog has been alleviated.
- Effective March 16, 2020, employees at the Delaware Division of Child Support Services began to file for Paid Emergency Leave, in all three of the DCSS offices. By doing so, this reduced the number of employees in the workplace about 20%. It took a few weeks to get most employees set up to work from home and on a teleworking schedule. As a result, there has been a gap in services, especially case processing, due to those employees retained in the office being tasked with critical duties such as answering customer service telephone calls. The Department of Justice offices were also closed which limited access to DCSS attorneys and court filings.
- Effective March 16, 2020, the Child Support Specialist, who reports to the maternity ward of the largest birthing hospital in the State, has been unable to continue to provide Paternity Acknowledgement outreach to unwed mothers who gave birth in New Castle County, Delaware.
- To this date, the same circumstances exist with employees out on leave, paternity outreach hindered, the limited staff in the office still assisting with customer service calls and other coverage, and those teleworking showing less productivity than during normal working office hours.
- The increase in Delaware's FMAP rate by 6.2 percentage points to 64.06% has resulted in a loss of \$160,700 in state revenue from January 1 to May 31. This revenue is an essential part of the Child Support operating budget and ensuring the day-to-day activity continue within the agency. The impact of the loss of revenue is compounded by increased costs related to health and safety measures put in place to combat the transmission of COVID-19. Additionally, Delaware's unemployment rate has soared to 14.3% in April (pre-COVID-19 it was steady at 4%) leaving a grim financial outlook for many months to come.

With all these factors coming into play, I would appreciate your consideration of the barriers we face, and I look forward to hearing from you.

PC: The Honorable Molly Magarik, Cabinet Secretary
Demetricus Johnson, Program Compliance Specialist, Region III
Julie Shahan, Deputy Director

Attachment: Modifications of Timeframes in Title IV-D of the Social Security Act and 45 CFR 301-310

| CRITERIA | DESCRIPTION | STATUTE/REGULATION | CURRENT REQUIREMENT | FLEXIBILITY |
|------------|--|--|------------------------|---|
| STATE PLAN | <p>(1) In intergovernmental IV-D cases, amounts collected by the responding State on behalf of the initiating agency must be forwarded to the initiating agency within 2 business days of the date of receipt by the State Disbursement Unit (SDU) in the responding State, in accordance with §303.7(d)(6)(v) of this chapter.</p> <p>(2) Amounts collected by the IV-D agency on behalf of recipients of aid under the State's title IV-A or IV-E plan for whom an assignment under sections 408(a)(3) or 471(a)(17) of the Act is effective shall be disbursed by the SDU within the following timeframes:</p> <p>(i) Except as specified under paragraph (b)(2)(iv) of this section, if the SDU sends payment to the family (other than payments sent to the family from the State share of assigned support collections), the SDU must send these payments within 2 business days of the end of the month in which the payment was received by the SDU. Any payment passed through to the family from the State share of assigned support collections must be sent to the family within 2 business days of the date of receipt by the SDU.</p> <p>(ii) Except as specified under paragraph (b)(2)(iv) of this section, when the SDU sends</p> | <p>454B (c) (1)</p> <p>302.32(b)(1), (2)(i), and 2(ii)</p> | <p>2 Business Days</p> | <p>5 Business Days for fully electronic processes and 10 Business days if manual processes are required.</p> <p>5 Business Days for fully electronic processes and 10 Business days if manual processes are required.</p> |

collections to the family for the month after the month the family becomes ineligible for title IV-A, the SDU must send collections to the family within 2 business days of the date of receipt by the SDU.

| | | | | |
|-----------------------------|--|--------------------------|------------------|---|
| STATE PLAN | <p>The State must 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. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.</p> | 467(a), 469 302.56(e) | Every 4 years | <p>If a state is in the process of conducting a review or is initiating a review in 2020, the state has one additional year to complete the review. Does not apply to the State of Delaware.</p> |
| PATERNITY AND SUPPORT ORDER | <p>Within 90 calendar days of locating the alleged father or noncustodial parent, regardless of whether paternity has been established, establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under §303.3(c)).</p> | 303.4(d) | 90 Calendar Days | 365 Calendar Days |
| ENFORCEMENT | <p>Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the</p> | 303.6(c)(2) | 30 Calendar Days | 180 Calendar Days |

| | | | | |
|-------------|---|---------------------------------|------------------|-------------------|
| ENFORCEMENT | <p>order or the location of the noncustodial parent, whichever occurs later.</p> <p>If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under §303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or the location of the noncustodial parent, whichever occurs later;</p> | 303.6(c)(2) | 60 Calendar Days | 120 Calendar Days |
| INTERSTATE | <p>(i) Ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV-D agency, for a determination of the controlling order and a reconciliation of arrearsages if such a determination is necessary; and</p> <p>(ii) Refer any intergovernmental IV-D case to the appropriate State Central Registry, Tribal IV-D program, or Central Authority of a country for action, if one-state remedies are not appropriate;</p> | 303.7(c)(4)(i),(ii) | 20 Calendar Days | 180 Calendar Days |
| INTERSTATE | <p>Within 20 calendar days of completing the actions required in paragraphs (1) through (3) and, if appropriate, receipt of any necessary information needed to process the case:</p> <p>Within 75 calendar days of receipt of an intergovernmental form and documentation from its central registry:</p> | 303.7(d)(2)(i), (ii), and (iii) | 75 Calendar Days | 180 Calendar Days |

(i) Provide location services in accordance with §303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the noncustodial parent;

(ii) If unable to proceed with the case because of inadequate documentation, notify the initiating agency of the necessary additions or corrections to the form or documentation;

(iii) If the documentation received with a case is incomplete and cannot be remedied without the assistance of the initiating agency, process the case to the extent possible pending necessary action by the initiating agency;

Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial parent has been located and notify the responding State's own central registry where the case has been sent.

Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the

INTERSTATE

303.7(d)(3)

10 Working Days

180 Working Days

INTERSTATE

303.7(d)(4)

10 Working Days

180 Working Days

| | | | |
|---|------------------------|-------------------------|--------------------------|
| <p>initiating agency and the responding State's own central registry of its action;</p> <p>When the request is for a determination of controlling order: (i) File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later;</p> | <p>303.7(d)(5)(i)</p> | <p>30 Calendar Days</p> | <p>180 Calendar Days</p> |
| <p>Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days of receipt of the determination from the tribunal;</p> | <p>303.7(d)(5)(ii)</p> | <p>30 Calendar Days</p> | <p>180 Calendar Days</p> |
| <p>Within 10 working days of receipt of instructions for case closure from an initiating State agency under paragraph (c)(12) of this section, stop the responding State's income withholding order or notice and close the intergovernmental IV-D case, unless the two States reach an alternative agreement on how to proceed;</p> | <p>303.7(d)(9)</p> | <p>10 Workdays</p> | <p>60 Workdays</p> |
| <p>The State must provide notice if the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV-D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is</p> | <p>303.8(b)(7)(ii)</p> | <p>15 Business Days</p> | <p>365 Business Days</p> |

required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law.

INCOME

WITHHOLDING

303.100 (e)(2), 303.100 (e) (3)

(2) In the case of an immediate withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date the support order is received if the employer's address is known on that date, or, if the address is unknown on that date, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of

303.100 (e)(2), 303.100 (e) (3), 454A(g)(1)(A)(i), 466, 453A (g) (1)

2 Business Days

5 Business Days for fully electronic processes and 10 Business days if manual processes are required.

New Hires, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, the State must send the notice to the employer required under paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.

453A(g)(1)

(g) Transmission of Information. —

(1) Transmission of wage withholding notices to employers.— Within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, the State agency enforcing the employee’s child support obligation shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) child support obligation (including any past due support obligation) of the employee, unless the employee’s income is not subject to withholding pursuant to section 466(b)(3).

454A(g)(1)(A)(i)

(g) Collection and Distribution of Support Payments. —

(1) In general. — The State shall use the automated system required by this section, to assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 454B, through the performance of functions, including, at a minimum —

(A) transmission of orders and notices to employers (and other debtors) for the withholding of income —

(i) within 2 business days after receipt of notice of, and the income source subject to, such withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State;

(c) Collection and Disbursement of Support Payments. To the maximum extent feasible, assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 454B of the Act through the performance of functions which, at a minimum, include the following:

(1) Transmission of orders and notices to employers and other debtors for the withholding of income:

(i) Within 2 business days after receipt of notice of income, and the income source subject to withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State;

Procedures under which notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV-D program at least once a year. In addition, a notice must be provided at any time to either the custodial or noncustodial parent upon request.

SYSTEMS

307.11 (c) (1) (i)

2 Business Days

5 Business Days for fully electronic processes and 10 Business days if manual processes are required.

TRIBAL PLAN

309.75(c)

Yearly notices of support collected due may be sent to families no later than December 31, 2020. Does not apply to the State of Delaware.

TRIBAL PLAN

Indicate that child support guidelines will be reviewed and revised, if appropriate, at least once every four years;

309.105(a)(4)

Every 4 years

If a tribe is in the process of conducting a review or is initiating a review in 2020, the tribe has one additional year to complete the review
Does not apply to the State of Delaware.