**REQUEST FOR MODIFICATION OF PROGRAM TIMEFRAMES**

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF REVENUE**

**CHILD SUPPORT ENFORCEMENT DIVISION**

**Introduction**

The Commonwealth of Massachusetts, like other states, has been significantly impacted by the COV-19 crisis. The Commonwealth has taken and continues to take significant and unprecedented steps to ensure the safety and well-being of its residents. The Department of Revenue’s (DOR) Child Support Enforcement program has been greatly affected by these steps. As a result, the Commonwealth respectfully submits this request for modification of program timeframes.

The Commonwealth of Massachusetts is a judicial state so the most critical impact to the Child Support Enforcement program is the establishment and modification of child support orders as a result of the closures of the Probate and Family Court to all but emergency matters and the slow ramp-up of virtual hearings. DOR and the Court did not have a virtual hearing process in place in March 2020. DOR and the Court have developed a new process and are implementing that new process. However, up until the middle of June, no DOR cases were able to be heard. The Court is opening to the public in a very limited manner on July 13, 2020 but there is no plan in the foreseeable future for DOR cases to be heard in-person rather we will continue a virtual hearing process. The backlog is increasing every day and although DOR is working with the Court on multiple paths to address this backlog, it is expected that it will take a significant amount of time to get back to normal operations. Service of process was suspended until early June. In addition, all genetic marker testing was and continues to be suspended and the voluntary paternity acknowledgment rate decreased from 80% to 40% due to limitations in our hospitals (shortened hospital stays, very limited visitors, etc.) Any further resurgence in COVID cases resulting in further closures or delayed re-openings will have an impact on DOR’s ability to address the backlog.

Other areas of the program have been impacted as well. Relevant details are provided in this document that support our request for the modification of program timeframes.

**Request for Modification of Program Timeframes**

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| CRITERIA DESCRIPTION (w/citations) | CURRENT REQUIREMENT | MODIFICATION REQUEST | RATIONALE |
| Review of Child Support Guidelines  42 U.S.C. § 667(a)  45 C.F.R. § 302.56(e) | Every 4 years | Additional year before review must be completed | Guidelines Task Force was being formed just as COVID-19 hit, causing a delay in the first meeting until June 23, 2020. This is also the first time MA will have to comply with the more demanding review requirements of the 2016 FEM regulation. |
| Order Establishment – establish support order (& paternity if needed) or complete service of process necessary to commence proceedings or document unsuccessful attempts to serve process  45 C.F.R. § 303.4(d) | Within 90 days of locating the alleged father or noncustodial parent | 270 days | MA is a judicial state, which requires service of process by deputy sheriff or constable. COVID-19 had an immediate and severe impact on service. All service stopped when MA declared a state of emergency in March. DOR had to establish new rules to meet COVID-19 requirements and then process servers had to confirm they still would provide services under these rules. Service is just recently resumed and the number of process servers willing to provide services has decreased. |
| Expedited processes to establish support orders in cases needing establishment  45 C.F.R. § 303.101(b)(2) | From service to disposition: 75% - 6 mos.  90% - 12 mos. | 75% - 30 mos.  90% - 36 mos. | MA is a judicial state and the impact of COVID-19 on the establishment of orders has been devastating. See COVID-19 Impact on Establishment of Orders below. |
| Operational Requirements in intergovernmental cases  45 C.F.R. § 303.7 | Various timeframes | 3 x applicable timeframe | The impact of COVID-19 is complicated in interstate cases. Every state is facing challenges but the impact and ability to deal with these challenges differs from state to state. Trying to determine what a particular state can handle at any given point of time has resulted in the need for additional contact – at a time when many states have had change the way states should contact them. |

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| **COVID-19 immediate and long-term Impact**  **on Establishment of Orders** |
| In Massachusetts, all child support orders must be established using the judicial process.  To expedite this process in IV-D cases, DOR and the Massachusetts Trial Court enter into a yearly Interagency Service Agreement (ISA). The ISA includes provisions that allow DOR to schedule IV-D cases for DOR-only sessions in all 14 divisions of the Probate and Family Court; these are referred to as DOR blocktime sessions.  The number of cases for each particular session ranges, depending on the size of the county, the number of courts within that county and the number of IV-D cases within the county. DOR is able to schedule more than 2,800 cases per month. Many cases are resolved by agreement or by representation of DOR counsel and the parties in the case.  **DOR ESTABLISHMENT PRIOR TO COVID-19**  Prior to COVID-19, establishing support orders within the required timeframes was not a problem for DOR.  Each Self-Assessment Report submitted over the last 10 years shows that more than 75% of DOR’s cases had orders established within 6 months of service of process and more than 90% of cases had orders within 12 months of service of process. DOR achieved these results due in large part to the availability of more than 2,800 monthly and 34,000 annual blocktime scheduling events under the ISA.  While not all these hearings involved establishment of support orders, the majority of blocktime events involved establishment cases in various stages of litigation.    **THE IMMEDIATE IMPACT OF COVID-19**  **ON ESTABLISHMENT OF SUPPORT ORDERS**  On March 10, 2020, Governor Baker declared a State of Emergency for the Commonwealth of Massachusetts due to the COVID-19 crisis. On March 17, 2020, the Supreme Judicial Court of the Commonwealth of Massachusetts ordered the closing of all MA courts, including Probate and Family Courts (PFC), to the public beginning March 18, 2020. Per a Standing Order issued by the Chief Justice of the Probate and Family Court, the courts remain closed to the public, except for emergency matters, until at least July 1, 2020. Although the Standing Order provided rules as to how the court would handle pending matters via videoconferencing whenever possible, DOR cases were not included in that process and DOR was asked to work out those details at the county level.  DOR had more than 8,600 cases scheduled for the first three months the courts were closed and the vast majority of these cases related to establishment cases. All these cases had to be continued and the hearings have yet to occur, which means that no child support orders were established for a quarter of this year. The Standing Order now provides for a maximum of 30 videoconference hearings for any DOR blocktime session and DOR is working with the court to schedule these, but implementation has presented many challenges that are not easily overcome. DOR is working with the Probate and Family Court to continue to improve the process but for July, DOR has been able to schedule less than 15% of the 3,210 blocktime cases that would have been scheduled without COVID-19.  To meet the requirement of establishing child support orders within 6 months of service of process in 75% of its cases, DOR scheduled 2,865 hearings each month, which totals more than 17,000 hearings over any 6-month period prior to COVID-19. In the first three months of the COVID-19 crisis, Massachusetts courts were closed, and all scheduled hearings were cancelled. DOR is presently scheduling only 15% of its pre-COVID hearings, with the hope that this number increases to 25% at some point.  Below are the number of available hearings for each month of 2020 and how it is now impossible for DOR to establish orders in 75% of its cases for any 6-month period in 2020. The 1st quarter of 2020 is coded green and represents full blocktime schedules of 2,865 hearings per month; the 2nd quarter is red to represent no hearings per month, the 3rd quarter is yellow to represent the current scheduling of 15% of pre-COVID hearing numbers and the 4th quarter is orange to represent 25% of pre-COVID hearings, though getting to even this number will be difficult. Compare the total for any 6-month block below with the pre-COVID total of more than 17,000 hearings.   |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC | | 2865 | 2865 | 2865 | 0 | 0 | 0 |  |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  | 0 | 0 | 0 | 430 | 430 | 430 |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  |  |  |  | 430 | 430 | 430 | 715 | 715 | 715 |   **THE LONG-TERM IMPACT OF COVID-19**  **ON ESTABLISHMENT OF SUPPORT ORDERS**  Last month, the Chief Justices of the Supreme Judicial Court, the Appeals Court and the Trial Court issued a letter entitled “Path Forward During the Pandemic” that made it clear even as courthouses reopen in limited stages over the next few months, “the days when our Trial Court welcomed approximately 40,000 persons a day into our courthouses are over, at least for the duration of the pandemic.” Most matters will continue to be done virtually whenever possible which mean it will be quite some time before DOR has the ability to schedule large volumes of hearings for DOR blocktime sessions.  Below shows the impact if blocktime sessions are decreased to 25% of the ISA numbers beginning with October 2020. The number of cases that would have been scheduled in October now must be spread over October, November, December and January. Those cases that used to be scheduled in November are now scheduled from February through May and December cases are moved to June through September for a total of 8,595 hearings. Those hearings that would have been scheduled over three months, now take up all available schedule slots for an entire year, which means that DOR does not have the ability to schedule 25,785 cases (9 mos. x 2,865) that would have been scheduled prior to the restrictions resulting from COVID-19.   |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | | OCT | OCT | OCT | OCT | NOV | NOV | NOV | NOV | DEC | DEC | DEC | DEC | |  |  |  |  |  |  |  |  |  |  |  |  | | Cases | Not | Sched. | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | |  |  |  | 2865 | 2865 | 2865 | 2865 | 2865 | 2865 | 2865 | 2865 | 2865 |   While DOR acknowledges that it is requesting a significant modification to the timeframes relating to order establishment, we are also working very hard to try to minimize the devastating impact set out above.  DOR is exploring ways to bring legal actions to resolution through the use of quasi-judicial resources (“hearing officers”) who may be able to handle a portion of the DOR caseload that would otherwise be assigned for a judicial hearing. DOR is also exploring options to implement DOR “negotiation sessions” that would allow DOR team members to conference cases to point of support agreement/stipulation and present the agreements to the appropriate Probate and Family Court for approval. While DOR is in the early stages of exploring these alternatives with the Court, we remain hopeful that these and other processes, if approved for use, will provide DOR with additional options to bring child support matters to resolution without the need for a formal court hearing. |

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| **REQUEST FOR MODIFICATION OF PROGRAM TIMEFRAMES**  **NOTICING REQUIREMENTS** |
| The Massachusetts Information and Technology Center (MITC) located in Chelsea, MA handles DOR’s central printing and mailing of all COMETS HD generated forms. In April, DOR was notified of the possible emergency shut-down of MITC for 2 weeks due to a COVID-19 issue. The possible emergency shutdown also impacted our disaster recovery option. While the emergency shut-down was avoided, it required DOR to assess the impact a closure would have on our business and to develop a plan should a shut-down be required in the future.  DOR has prioritized the printing/mailing done at MITC, taking into consideration the importance of the document, the volume and the impact of any delay. For any printing deemed mission critical, DOR established a plan to ensure these continue to the fullest extent possible. These include printing and mailing of child support payment checks (the number one priority), income withholding orders, annual notices that trigger automated enforcement and initial welcome letters when IV-D services begin. Where timeframes are triggered by optional activities (e.g. case closing – not required to close but required to send 60-day letter before closing), DOR will refrain from taking the action until able to print the forms. DOR will delay printing of forms which serve to give notice of some action but do not have a substantive impact (e.g. The notice of continuing services under 45 C.F.R. § 302.33(a)(4) gives the parent the option of terminating services; DOR must continue to provide services).  While DOR has taken steps to minimize the negative impact on any MITC shutdown, it is impossible to replicate all the work done at MITC. It is inevitable that DOR will fail to meet some of the required timeframes in the event of a shutdown. DOR asks OCSE to give approval of the following timeframe modifications set out below.   |  |  |  | | --- | --- | --- | | **CRITERIA DESCRIPTION (w/citations)** | **CURRENT REQUIREMENT** | **MODIFICATION REQUEST** | | *Disbursement of Support Payments*  *45 C.F.R. § 302.32(b)* | *Within 2 business days of SDU receipt of payment* | *4 business days* | | *Issuing IWO notices*  *45 C.F.R. § 303.100(e)* | *Within 2 business days of receipt of* | *4 business days* | | *Notice of continuing services to individuals no longer receiving IV-A services*  *45 C.F.R. § 302.33(a)(4)* | *Within 5 working days of notification of noneligibility* | *20 working days* | | *Notice to custodial noncustodial parents of request for services or referral from DTA*  *45 C.F.R. § 303.2(a)(2)* | *Within 5 working days of request or referral* | *10 working days* | | *Transfer of National Medical Support Notice to employer*  *45 C.F.R. § 303.32(c)(2)* | *Within 2 business days after entry of the employee in State Directory of New Hires* | *15 business days* | |

**ADDITIONAL REQUESTS FOR MODIFICATION OR WAIVER OF PROGRAM REQUIREMENTS**

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| PROGRAM REQUIREMENT (w/citations) | CURRENT REQUIREMENT | REQUEST |
| Determination of Applicable Percentages based on Performance Levels  42 U.S.C. § 652  45 C.F.R. § 305.33(a) | Annual Report | Financial penalties for failure to meet program performance measures (including the additional PEP penalty) in Federal Fiscal Years 2020 and 2021 be waived. |
| Self-Assessment Report  45 C.F.R. § 308.1 et seq. | Annual Report | Next Self-Assessment Report due by 2022.  The purpose of self-assessment is “to give a State the opportunity to assess whether it is meeting Federal requirements for providing child support services and providing the best services possible…. It is to be used as a management tool, to help a State evaluate its program and assess its performance.” 2000 Final Rule on State Self-Assessment. Given the modification requests of these federal requirements and the unique circumstances, it does not make sense to require a self-assessment report during this time period. |
| Use of the renewed Hague Convention forms  45 C.F.R. § 303.7(a)(4)  AT-20-05 | By May 1, 2020 | By May 1, 2021 |
| Use of revised NMSN form  AT-19-06 | By August 31, 2020 | By August 31, 2021 |
| Include SSA Retirement (SSR) when referring to concurrent SSI benefits  45 C.F.R. § 307.11(c) | By February 4, 2021 | Be February 4, 2022 |
| Submit Revised State Plan Page 3.8-3  45 C.F.R. § 302.33 | By February 4, 2021 | By February 4 ,2022 |
| Implement NDNH and Quarterly Wage reporting change made in Technical Corrections Final Rule  45 C.F.R. § 303.108(c)  AT-20-07 | By June 9, 2021 | By June 9, 2022 |
| Use of Revised OCSE-157 Data Report  AT-20-06 | By October 1, 2021 | By October 1, 2022 |