



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

MICHAEL P. HEIN
Commissioner

BARBARA C. GUINN
Executive Deputy Commissioner

July 31, 2020

Michael Ginns, Regional Program Manager
Office of Child Support Enforcement
Administration for Children and Families, U.S. Department of Health and Human Services
JFK Federal Building, Room 2025
Boston, MA 02203

VIA EMAIL

Re: Request for Stafford Act Flexibilities During COVID-19 Pandemic (DCL-20-04)

Dear Mr. Ginns:

The nation continues to face a public health and economic emergency of unprecedented proportions. In this unconventional time, the New York State Office of Temporary and Disability Assistance Division of Child Support Services (NYS DCSS) remains committed to providing essential child support services to families. We appreciate the acknowledgment by the Federal Office of Child Support Enforcement (OCSE) that states may require relief from certain program requirements, including timeframe requirements, as set forth in Title IV-D of the Social Security Act and 45 CFR 301-310 to assist with ensuring safety of staff and the public, and to address operational capacity and safety measures resulting from the emergency.

As a result of the COVID-19 pandemic national health emergency impacts on operational capacity and social distancing requirements intended to slow the spread of the virus, NYS DCSS requests the following modifications to State Plan and other administrative timeframes for Title IV-D program operations:

- **State Plan:** An extension of the time to review the child support guidelines as required by 45 CFR §302.56(e). NYS DCSS requests a **one (1) year extension** of time for the review of New York's child support guidelines in order to have sufficient operational capacity and conditions to properly plan, coordinate with stakeholders, procure, and conduct the review. New York State's next quadrennial review is to take place in 2022. However, while NYS DCSS commenced the pre-contract process prior to the COVID-19 emergency, progress on this project has been delayed by the pandemic and associated emergent circumstances and programmatic needs. NYS DCSS requests this one-year extension to allow sufficient time for the state procurement process, engagement with stakeholders, and access to certain data sets that must be obtained or coordinated with external entities and with the courts. Access to necessary resources and hard-copy case files stored in the courthouse will be constrained during the emergency and subsequent restoration phase.

- **Paternity and Support:** An extension of the timeframe to establish a support order or complete service of process necessary to commence proceedings to establish support and, if necessary, paternity (or document unsuccessful attempts to serve process). We request the current 90 calendar day requirement established by 45 CFR §303.4(d) be temporarily extended due to court closures across the State from March through May of this year. **New York requests an extension to within 300 calendar days of locating the alleged father or noncustodial parent.** Even with courts attempting a phased reopening, significant backlogs combined with social distancing measures have greatly reduced court capacity. An additional roadblock to meeting program paternity establishment standards has been the policy of not permitting visitors to the birthing units of many hospitals during the height of the pandemic, followed by a loosening of the restriction to only one (1) visitor, who may not have been the other parent. These safety measures have drastically reduced the volume of in-hospital paternity acknowledgments, and thus the ability to meet paternity establishment performance measure requirements. Extension of the timeframes under 45 CFR §303.4(d) is essential to address operational capacity and safety measures.
- **Enforcement:** Where service of process is not necessary, an extension of the timeframe from 30 calendar days, as required by 45 CFR §303.6(c)(2), to within **60 calendar days following return to pre-COVID court hearing capacity** of identifying a delinquency, non-compliance with the order, or location of the noncustodial parent, whichever is later, to take any appropriate enforcement action (except income withholding and federal and State income tax offset). This extension request is based upon limited numbers of child support staff that have been able to work either remotely or in the office under social distancing rules, and further by the lack of access to court-related enforcement processes both during the court closure period and as a result of capacity impacts during phased reopening. **In the alternative, New York requests an extension to within 180 calendar days of identifying a delinquency or other support-related non-compliance with the court order, or the location of the noncustodial parent, whichever is later.**
- **Enforcement:** Where service of process is necessary, an extension of the timeframe for completing service (or documenting unsuccessful attempts) and taking enforcement action (where service was completed) to within **120 calendar days following return to pre-COVID court hearing capacity.** **In the alternative, New York requests an extension to within 300 calendar days of identifying a delinquency or other support-related non-compliance with the court order, or the location of the noncustodial parent, whichever is later.** NYS DCSS requests that this timeframe be temporarily increased from the 60 calendar day timeframe for enforcement required by 45 CFR §303.6(c)(2), triggered by the identification of a delinquency or other support-related non-compliance with the order, or location of the noncustodial parent for service to be completed, whichever occurs later. This extension request is based upon the court closures and limited calendar availability during the phased reopening, exacerbated by the continuing needs for social distancing. Limited availability of sheriff staff to serve process ordered by the court has been attributed to reassignments or illness during the pandemic.
- **FMAP Increase:** An exemption for New York's Title IV-D Program, for the duration of the declared COVID-19 emergency, from the temporary increase to the Federal Medical Assistance Percentage (FMAP) rate contained in section 6008 of the Families First Coronavirus Response Act (42 USC § 1396d). The temporary increase in New York's FMAP rate by 6.2 percentage points to 56.2 %, intended to benefit state Medicaid programs to improve the State's ability to provide Medicaid services to impoverished citizens during the emergency, has negatively impacted the Child Support Program with a decrease in TANF recovery revenue by \$1.3 M for the January 1 to March 31 period, and is anticipated to result in a total loss of approximately \$3

M for the 6-month period ending June 30, 2020. This revenue is an essential part of the Child Support Program operating budget. 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 as well as an increased rate of unemployment. New York's unemployment rate was approximately 4.0% in 2019 and early 2020. Due to the COVID-19 pandemic, the rate increased to 15.3% in April 2020, and was 14.5% in May 2020.

- **UIFSA Forms:** An extension of one (1) year – **to December 31, 2021** – for implementing the revised standard intergovernmental forms, required by section 311(b) of the Uniform Interstate Family Support Act and 45 CFR §303.7(a)(4). In Action Transmittal 19-08, issued December 26, 2019, Federal OCSE noted that implementation of the revised forms would require updates to State systems. Work necessary to implement the revised forms on the State system has been delayed to permit critical work addressing issues stemming from the pandemic.
- **Federal Tax Refund Offset Collections:** An extension of the timeframe to send federal tax refund offset collections to the family from within 30 calendar days of the date of initial receipt of the collection, pursuant to 45 CFR §302.32, to **within 90 days** of initial receipt of the collection. This request is made considering the extraordinary increase in the volume of offsets stemming from the federal stimulus payments amidst a reduction in local district staff with appropriate permissions available to perform the manual adjustments necessary, while also adhering to social distancing requirements in the workplace.

The foregoing administrative flexibilities associated with 45 CFR §§ 303.4(d), 303.6(c)(2), and 302.32 are requested to be effective from March 18, 2020 through September 30, 2021 as the impact of the pandemic upon this judicial establishment state is expected to last throughout federal fiscal years 2020 and 2021. It will take substantial time to reestablish the pre-COVID levels of activity in and out of the courtrooms, while addressing the substantial backlog of establishment, modification, and enforcement petitions from the months in which filings were not accepted.

NYS DCSS is closely monitoring the effect of the pandemic upon our child support operations and is grateful to OCSE for flexibilities regarding program requirements that can be granted. We acknowledge that any extended timeframe granted will be temporary and will encourage local district staff administering the program to limit use of any flexibility granted to only situations where needed to ensure the health, safety, and/or operational needs. Thank you for considering these requests.

Very truly yours,



Eileen M. Stack
Deputy Commissioner
Division of Child Support Services