

MEMORANDUM

TO: Interested People
FROM: Paula Roberts
DATE: March 24, 1999
RE: Final Federal Regulations on IVD Case Closure

On March 10, 1999, the Office of Child Support Enforcement (OCSE) issued revised regulations on the standards for IVD case closure. 46 *Fed. Reg.* 11,810-11,818. The changes become effective on April 9, 1999. The new standards make it much easier for state child support enforcement (IVD) agencies to close cases, especially when the custodial parent does not have the noncustodial parent's address and Social Security Number (SSN). This is important to low income families for two reasons:

- Many of these families want and need child support income to supplement their wages and/or public assistance. They are unable to get child support precisely because they do not know where the noncustodial parent lives or works and they don't have a valid SSN for him/her. If the child support agency closes their cases, these families will likely never get the support they need.
- Families receiving Temporary Assistance to Needy Families (TANF), Medicaid, and-- in some states- Food Stamps¹ are subject to child support cooperation requirements.(These cases will be referred to as "public assistance cases" in this memo.) If the state closes their child support cases, these families will be unable to cooperate in pursuing support. Thus, it is important to know how case closure fits into the cooperation process.

The revised regulations, the impetus for them, and the issues they raise are discussed in more detail below. Advocates concerned about low income single parents will need to monitor these changes to make sure that states do not inappropriately close cases and that families subject to a child support cooperation requirement are not penalized when the state decides to close their cases.

PRIOR CASE CLOSURE REGULATIONS AND THE IMPETUS FOR CHANGE

In every state's child support system, there are old and duplicate cases as well as some cases in which there is too little information to proceed. Since 1989, federal regulations have required that IVD agencies have a system for closing such cases. 45 CFR Section 303.11(a). However, to insure that difficult but workable cases were not closed, the federal regulations limited agency discretion, allowing closure in only 12 specific situations. 45 CFR Section 303.11(b). Moreover, if an agency decided to close a case, in most instances. it had to notify the

¹ 7 USC Section 2015(l) gives states the option of imposing a child support cooperation requirement on households receiving Food Stamps. Idaho, Kansas, Maine, Michigan, Mississippi, Ohio, and Wisconsin have elected to do so.

custodial parent in writing of its intent to do so. It also had to give that parent 60 calendar days to provide new information which would make it possible for the IVD agency to work the case. If new information was provided, the case had to remain open. Moreover, if the case was closed and the custodial parent then obtained additional information which could lead to paternity/order establishment or enforcement, then the case had to be reopened. 45 CFR Section 303.11(c). Finally, records of closed cases had to be retained for at least 3 years. 45 CFR Section 303.11(d).

For a variety of reasons, states have sought revision of these regulations to make it easier to close cases. In part, this push was the result of automation: as states were automating their IVD systems, they were trying to clean out their unworkable cases. They felt that the case closure regulations inhibited their ability to do this.

The push for change was also motivated by the adoption of a new child support incentive payment system.² Within the next three years, this new system will provide fiscal incentives to states for their success in establishing paternity, establishing support orders, collecting current support, collecting arrears, and cost efficiency. Except for cost efficiency, incentive payments will be calculated by dividing the number of cases in which a service was successfully provided (the numerator) by the number of cases needing that service (the denominator). Thus, to earn more incentives, the agency can either raise the numerator (by improving service) or lower the denominator (by reducing the number of cases needing the service).

In the cost efficiency area, there is also a reason to seek to close difficult cases: the incentive payment is calculated on a cost per case basis. By eliminating costly, hard-to-serve cases, states can improve their cost effectiveness ratio. In other words, agencies which close difficult cases can boost the probability that they will earn large incentive payments. This reality provided additional reason for states to seek easier case closure standards.

States pushed for change through the State IVD Director's Association and OCSE's Regulation Reinvention Workgroup. See, discussion at 63 *Fed. Reg.* 9172-3, (February 24, 1998). As a result of these efforts, HHS issued proposed changes to the regulations. 63 *Fed. Reg.* 9174-9175. There was a 60 day public comment period; 31 individuals/entities submitted comments. The final rules reflect responses to many of these comments.

OVERVIEW OF THE FINAL RULES

Under the final regulations:

- states will continue to have an obligation to have a case closure system.
- all of the current case closure criteria will remain in effect. However, as described below, it will be easier for IVD agencies to close certain cases. This includes cases where 1) paternity needs to be established but the identity of the father is unknown; 2) the identity of the noncustodial parent is known, but there is insufficient information to locate him/her; and 3) the state is unable to contact the custodial parent and the family is not

²The Child Support Performance and Incentive Act of 1998, to be codified at 42 USC Section 658A.

receiving Temporary Assistance to Needy Families (TANF). States will also find it easier to close interstate cases where the initiating state has not followed up with additional information when requested to do so by the responding state.

- the words "absent parent" will be replaced with the words "noncustodial parent" in appropriate places throughout the regulation to reflect the fact that not all noncustodial parents are absent.
- similarly, the words "custodial parent" will be replaced with the phrase "recipient of services" to reflect the fact that in some paternity and support order modification cases, noncustodial parents (rather than custodial parents) may be the recipients of IVD services.
- revised notice requirements will be in place. The exact nature of the requirements will vary depending on the reason for case closure.
- IVD records will still have to be retained for at least 3 years.

CASE CLOSURE CRITERIA

When There is No Current Support Order and Minimal Arrears Are Owed. In the past, there were two separate provisions allowing closure of cases in which there was no current support order. The first allowed case closure when the child had reached the age of majority, there was no current support order, and arrears owed were less than \$500 or were unenforceable under state law. The second allowed case closure under the same circumstances when the child was still a minor. The new regulation combines these two sections into one **allowing case closure any time there is no longer a current support order and arrearages are either under \$500 or unenforceable under state law.** 45 CFR Section 303.11(b)(1). When this is the reason for case closure, the family which requested services must be notified in writing 60 days prior to case closure and be given an opportunity to provide information which demonstrates that the case does not meet these criteria and can be worked. 45 CFR Section 303.11(c).

Closure of Unworkable Paternity Cases. Revised 45 CFR Section 303.11(b)(3) deals with closure of paternity cases.³ As under the old regulation, it allows case closure where paternity cannot be established because i) the child is at least 18 and is barred by the statute of limitations from establishing paternity; or ii) the putative father has been excluded from paternity by a genetic test or court/administrative hearing and no other putative father can be identified; or iii) conception was the result of forcible rape or incest or the child is being placed for adoption. The revised regulations, however, add a new subsection which allows a case to be closed when the **identity of the biological father is unknown and cannot be ascertained after diligent efforts.**⁴

³ Since the first change deletes an existing section, the remaining case closure criteria are renumbered. Thus, this change is to old 45 CFR Section 303.11(b)(4) which-- because of the numbering change-- is now 45 CFR Section 303.11(b)(3).

⁴ In addition to its effect in helping states obtain incentive payments for their paternity establishment efforts as discussed above, and for the same reason, this change will help many states avoid a fiscal penalty for failing to achieve their Paternity Establishment Percentage (PEP). 42 USC Section 652(g)(2).

- The regulation itself does not define “identity” but the Response to Comments says “identity” means “name”. Thus, a case may be closed under this criteria only when the name of the father is unknown. 64 *Fed. Reg.* 11814 (1st col., bottom).
- The regulation also does not define “diligent efforts”. However, the Response to Comments suggests that if the state has any information, it must make a serious and meaningful attempt to obtain the father’s name using that information. For example, if the mother provides a last known address or name of an employer for the father, the agency must pursue that lead. 64 *Fed. Reg.* 11814 (2d col., middle)

In addition, if lack of the father’s name is invoked as a reason for case closure, *the IVD agency*⁵ must conduct at least one *interview* with the mother. 45 CFR Section 303.11(b)(3)(iv). The IVD interview may be face-to-face or it may be conducted by telephone. The latter option is made available to accommodate working parents and those living far away from the IVD agency’s office. 64 *Fed. Reg.* 11813 (d. col., bottom) - 11814 (1st col., top). If the interview does not produce any further leads, the agency must send the mother written notice that the case will be closed and it must provide her 60 days in which to come up with additional information which could lead to paternity establishment. 45 CFR Section 303.11(c).

When There is No Address or Social Security Number for the Noncustodial Parent. The most significant and troubling change in the regulations is in 45 CFR Section 303.11(b)(5) which is redrafted and redesignated as 45 CFR Section 303.11(b)(4). This regulation governs case closure when the noncustodial parent's **location is unknown**.

Under the old regulation, states were allowed to close cases when the missing parent could not be located. However, before closing such cases, the state had to make *regular* attempts to locate the missing parent using *multiple sources* for at least *3 years*. Only if those efforts were unsuccessful, could the IVD agency close the case. Moreover, the old regulations did not define “the location of the noncustodial parent”, creating the sense that if there was some information about his/her whereabouts, income or assets, the case could not be closed.

The revised and renumbered regulation seemingly keeps this basic scheme but it makes two changes which dramatically alter its applicability. *First*, while not contained in the regulation itself, the Response to comments defines “location of the noncustodial parent” to be his/her residence or employment address. 64 *Fed. Reg.* 11814 (d. col., middle). Thus, any case entering (or presently in) the IVD system without a valid home or work address for the noncustodial parent would be amenable to closure under this section even if there is other information available (e.g., location of property, a bank account) which could lead to action on the case.

Second, IVD cases are divided into two types: those in which there is sufficient information to initiate an automated locate effort and those in which there is not sufficient

⁵ The IVD agency can contract with another agency to do the interview on its behalf. In the absence of such a contract, another agency (e.g., the TANF or Medicaid) agency would not be sufficient. 64 *Fed. Reg.* 11813 (d. col., bottom)

information to do so.

- When there is sufficient information to initiate an automated locate, the scheme laid out in the current regulations would be followed: before closing a case, the state would have to make *diligent* efforts,⁶ using multiple sources, for at least 3 years.
- However, in cases in which there is insufficient information to initiate an automated locate, the state would only have to make such efforts for 1 year before closing the case.

The Response to Comments explains that “sufficient information to conduct an automated locate effort” means the missing person’s **name and Social Security number**. 64 *Fed. Reg.* 11814 (2d col., bottom). This narrow definition is very problematic. Parents and caretakers lacking a work/residence address and who also don’t already have a valid Social Security Number (SSN) for the missing parent may receive scant help and then have their cases closed after one year. While this will change somewhat over time as more marriage, birth, and divorce records do contain SSNs for both parties,⁷ it will remain a problem in cases where there are no such documents (e.g., contested paternities) and in situations where the missing parent has used an invalid SSN .

Unfortunately, --as discussed above-- the new incentive formula gives state’s every reason to want to aggressively implement these changes. States will see the potential financial rewards for closing cases in which there is no residence/business address and no SSN and it will be difficult for them to avoid the temptation to do so.

Recognizing that this is a problem, OCSE takes great pains, in the Response to Comments, to explain that this is not its intent and to suggest that states should make use of the federal Enumeration Verification System (which can help obtain missing or incomplete SSNs). It also notes:”diligent efforts to obtain the data elements critical for an automated search must occur and be unsuccessful before a State may consider closing the case...” 64 *Fed. Reg.* 11814. However, since OCSE has repealed its audit regulations,⁸ it is unclear whether anyone will monitor the states to see that this is done. In the absence of any oversight, it is unlikely that careful attention will be paid to this Response to Comments advice.

When the state wants to close a case because automated locate is not possible and one year has passed, it must notify the family in writing. The family then has 60 days to supply the SSN and keep the case open. 45 CFR Section 303.11(c). If it does not supply the information (or something that would lead to the SSN), the case can be closed.

When the Family Receiving Services Loses Touch With the IVD Agency. The revised regulation also alters the ability of states to close cases when they cannot get in touch with the family receiving services. (This can happen when a custodial parent moves and does not immediately inform the IVD agency of her/his new address.) The old regulation allowed states to close non-AFDC cases when it **could not contact** the custodial parent within a 30 calendar day period despite attempts by phone and at least one certified letter. 45 CFR Section 303.11(b)(11). As amended and renumbered 45 CFR Section 303.11(b)(10), allows non-IVA cases to be closed

⁶Diligent efforts are those meeting the requirements of 45 CFR Section 303.3 which includes using all appropriate state locate sources, the Federal parent Locate Service (FPLS), and other state locate sources. If the initial attempt is unsuccessful, repeat efforts must be made quarterly or whenever new information which might aid in locating the missing parent becomes available. 64 *Fed. Reg.* 11815 (1st col., middle)

⁷ Federal law now requires states to obtain parents’ social security numbers as part of the paternity acknowledgment process, 42 USC Sections 652(a)(7) and 666(a)(5)(C)(iv) as well as placing them on all child support/divorce orders, 42 USC Section 666(a)(13)(B). Thus, in the future, families with marital or acknowledged children will have greater access to this information.

⁸ See 64 *Fed. Reg.* 6253 (February 9, 1999).

if the IVD agency is unable to contact the family receiving services for 60 calendar days despite an attempt by at least one first class letter to the family's last known address.⁹ At the end of the 60 day period, the agency will have to send another first class letter to the family informing them that their case is going to be closed.¹⁰ If there is no response to that second letter, after 60 days, the IVD agency can close the case. If contact is re-established during the second 60 day period, the case cannot be closed. 45 CFR Section 303.11(c),

Interstate Cases Where the Initiating State is Not Cooperating with the Receiving State. A new 45 CFR Section 303.11(b)(12) is created to allow closure of interstate cases when **the initiating state fails to take an action which is essential for the next step in providing services.** For example, a responding state might request that the initiating state provide it with a copy of the payment records in a case so that arrears can be documented and then enforced. If the initiating state does not provide the documents, and, as a result, the responding state is unable to act, then the responding state can close the case. When a case is proposed to be closed for this reason, the affected family does not have to be provided with written notice, but the initiating state does. If, in the next 60 days, the initiating state provides the necessary information, the case cannot be closed. 45 CFR Section 303.11(c)

The failure to require notice to families with interstate cases that the responding state plans to close their case could raise problems. Families may think they have an open, active case in another state when they do not because someone in the initiating state failed to respond to the notice of case closure. Since the family would be unaware of the problem, it would be unable to press the initiating state for action.

Public Assistance Cases In Which The State Has Decided Not To Pursue Support. As noted above, families receiving public assistance are generally required to cooperate with the state in pursuing child support. For many years, federal law has allowed states to grant "good cause" exceptions to these cooperation requirements. When such exceptions are granted (primarily in domestic violence cases), states can either proceed without the parent's cooperation or (if there is a risk of harm to the parents or their children) drop the matter.

In the latter situation, the case closure regulations have always allowed the IVD agency to close the child support case (if one has been opened). The revised and renumbered regulation retains this basic framework. However, in recognition of changes made by Congress in 1996, the new regulation acknowledges 1) the various agencies (including the food stamp agency and IVD agency itself) which may be involved in granting exceptions to the cooperation requirement; and 2) the fact that some states grant "other exceptions" (beyond traditional "good cause") to the cooperation requirement. 45 CFR Section 303.11(b)(9).

When a child support case is closed under this provision of the regulations, the family does not have to be notified. Presumably this is because the agency granting the exemption and making the decision not to proceed would have already informed the family of this decision. However, as there are no TANF, Food Stamp or IVE regulations in this area at the present time, this presumption may be unwarranted.

Reapplication for Services after case Closure. If a case is closed pursuant to one of the 12 allowable reasons, the family may reapply for services if there is a change in circumstances (e.g., new information becomes available). However, the family will have to complete a new application and pay any application fee the state assesses. 45 CFR Section 303.11(c).

RELATIONSHIP BETWEEN CASE CLOSURE AND CHILD SUPPORT COOPERATION REQUIREMENTS

⁹ The 60 day period begins on the date that the letter is mailed to the family. 64 *Fed. Reg.* 11815 (last col., middle)

¹⁰ For a discussion of the applicability of both notice provisions, see 64 *Fed. Reg.* 11815 (middle col., bottom).

Paternity Cases: As noted above, under the new regulations, states will be able to close paternity cases when the father's name is unknown. This includes cases in which the family is receiving public assistance. However, as also noted above, families receiving such assistance have a statutory obligation to cooperate with the IVD agency in establishing paternity and can be sanctioned if they fail to do so.¹¹ This cooperation requirement includes making a good faith effort to provide the name of the father. 42 USC Section 654(29). What happens to the child support cooperation requirement if the IVD agency closes the case because the father's identity is unknown?

This important concern is not addressed in the regulation itself. However, the Response to Comments does recognize that this is an issue and provides some limited guidance. It begins by saying: "Clearly, not every TANF recipient will be able to provide the IVD agency with sufficient information about the biological father to allow the IVD agency to proceed with an action to establish paternity."⁶⁴ *Fed. Reg.* 11814 (1st col., middle). In other words, inability to provide the father's name which leads to case closure is not noncooperation *per se*.

This being so "should the state close a IVD case in accordance with paragraph (b)(3) [the section allowing closure when the father's identity is unknown] *IVD case closure alone may not be used to determine noncooperation.*" *Id.*(emphasis added) Presumably, then, if the state chooses to close a case because the father's identity is unknown, and it has no independent reason for concluding that the mother knows who the father is, she has fulfilled her cooperation obligation.

Case Closure When the Public Assistance Recipient Lacks an Address or Social Security Number. As also noted above, the state can now close public assistance cases where the recipient lacks an address and SSN for the noncustodial parent. Since public assistance recipients also have an obligation to cooperate with the state in establishing and enforcing support obligations, case closure has implications here as well. If the state chooses to close a case, how can the recipient cooperate?

Once again there is nothing in the regulations which is helpful, but the Response to Comments does state that "should the State close a IVD case...because the location of the individual being sought is unknown, IVD case closure alone may not be used to determine noncooperation by a TANF recipient." ⁶⁴ *Fed. Reg.* 11814.

While these snippets are useful, a much more nuanced discussion of the effect of case closure on the recipient's cooperation obligation, a clear delineation of the recipient's responsibility, and standards for state IVD agencies to use in making the cooperation determination in these cases are sorely needed.

¹¹ For TANF, see 42 USC Section 608(a)(2); for Medicaid, see 42 USC Section 1396k(a)(1)(B)(i); for Food Stamps, see 7 USC Section 2015(1)(1)(A).