MEMORANDUM

TO: **Interested People**

FROM: **Paula Roberts**

DATE: **March 25, 1999**

RE: **Final Regulations on Voluntary Acknowledgment of Paternity**

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended by the Balanced Budget Act of 1997 (BBA), states must make a variety of changes in their voluntary paternity acknowledgment programs. These include 1) expanding the number of places where parents can go to voluntarily establish paternity; and 2) providing specific explanatory materials to parents before they sign paternity acknowledgment forms. 42 USC Section 666(a)(5)(C). [1]

In January 1998, proposed rules governing these changes were published. 63 *Fed. Reg*. 187-193 (January 5, 1998). The rules have now been finalized. 64 Fed. Reg. 11802- 11809.(March 10, 1999). These regulations :

- require that voluntary paternity establishment services be available at all public and private birthing hospitals in the state as well as at the State birth record agencies.[2] 45 CFR Section 303.5(g)(1)(i) and (ii).

- allow states broad discretion to decide what other entities (if any) should be allowed to offer voluntary paternity establishment services. The state could include 1) health care providers such as public health clinics, WIC and MCH clinics, private obstetricians, gynecologists, pediatricians and midwives; 2) public assistance agencies such as IVA, IVD and Food Stamp offices; 3) child care providers, including Head Start, child care agencies, and individual providers; 4) Community Action Agencies and Community Action programs; 5) secondary schools; 6) legal services programs and the offices of private attorneys; and 7) any similar public or private health, welfare or social services organization. 45 CFR Section 303.5(g)(1)(ii)(A)-(G).

- specify that all of the entities providing voluntary paternity establishment services must receive forms and materials from the state. Moreover, the state would have to provide all of them with the same training, guidance and written instructions, and subject them all to the same yearly assessment protocols. 45 CFR Sections 303.5(g)(6) and (g)(7).

[1] PRWORA also required the Secretary of HHS to specify the minimum data requirements for a paternity acknowledgment form. 42 USC Section 652(a)(7). This was done via Action Transmittal 98-02 (January 23, 1998). State acknowledgment forms should now contain these data elements and states should be giving give full faith and credit to forms signed in other states which contain these elements. 42 USC Section 666(a)(5)(C)(iv).

[2] In some states, there are also local birth records agencies. These agencies are *not* mandatory participants in the voluntary paternity acknowledgment program. However, a state can designate them as sites which offer voluntary paternity establishment services if it wishes to do so. 64 *Fed. Reg*. 11805 (2d col., middle).

- provide that Federal Financial Participation (FFP) is available to defray the costs to the state of developing and disseminating the required materials, as well as reasonable and essential short-term training costs associated with the program. 45 CFR Sections 304.20(b)(2)(vii) and (b)(2)(viii). In addition, FFP is available to pay up to $20 for each voluntary acknowledgment obtained by a hospital, birth records agency or other entity participating in the states voluntary paternity establishment program. 45 CFR Section 304.20(b)(2)(vi).

In addition, the following guidance is provided:

- all of the entities participating in the state's voluntary paternity establishment program must provide to the mother and alleged father (if he is present) written materials about paternity establishment; any necessary forms; a written explanation *and* either an oral or an audio/video presentation about the rights, responsibilities, legal consequences of, and alternatives to acknowledging paternity; and the opportunity to speak (either in person or by phone) with a trained person to answer any questions or clarify the information. If state law provides any particular protections to minor parents, the explanatory materials must include this information. 45 CFR Section 303.5(g)(2)(i)(A)-(D).

- the voluntary acknowledgment form must be signed by both parents and their signatures must be authenticated by a notary or witness(es).[3] 45 CFR Section 303.5(g)(4).

- the state can decide where the signed, original acknowledgments are to be filed. However, if it chooses an entity other than the state registry of birth records, then the entity which obtains the acknowledgment must also file a copy with the state registry of birth records. 45 CFR Sections 303.5(g)(2)(iv) and 303.5(g)(8).

- an entity designated by the state will record information from the acknowledgments into a statewide database. This database must be made available to the IVD agency. Id.

These regulations provide a minimal framework for states in running their voluntary paternity establishment programs. However, the new regulations do not address a number of serious concerns about the operation of the program. These concerns are described below.

ISSUES OF CONCERN

Lack of Specificity About the Content of the Statement of Rights and Responsibilities to be Given to Parents. The statement of rights and responsibilities required by federal law is a very important part of the process for insuring that parents know the significance of the paternity acknowledgment form they are signing. Since providing the parents with such a statement is required by federal law, it would be helpful if federal regulations provided minimum standards for such statements.

[3] The Response to Comments notes that the signatures need not be on the same document. There could be two separate documents which establish paternity so long as each parent has signed and the signature has been authenticated or witnessed. 64 *Fed. Reg*. 11806 (3d col., middle).

Unfortunately, the Office of Child Support Enforcement (OCSE) has declined to do this. 64 *Fed. Reg*. 11803 (2d col., bottom) and 64 *Fed. Reg*. 11804 (2d col., top). The Response to Comments does discuss what OCSE would like to see in the notice, but this language is not incorporated into the regulations themselves. The Response says:

> We encourage states to place the explanation of rights and responsibilities in writing on the acknowledgment form itself. However, consistent with past policy, we are not mandating detailed Federal due process requirements. The explanation of rights and responsibilities should describe the rights and responsibilities, including the duty to support the child financially, that each party will assume as a result of signing the acknowledgment. It should also describe the rights each party may be giving up by signing the acknowledgment (e.g., right to genetic testing). 64 *Fed. Reg* 11803 (2d col., bottom to 3d col., top)

At a later point, the Response to Comments also encourages state to inform parents about the custody and visitation implications of signing an acknowledgment in the rights and responsibilities materials. 64 *Fed. Reg*. 11806 (2d col., middle).

Advocates may be able to use this language to persuade their state to develop a comprehensive statement and place it in the acknowledgment form itself, but clearly the federal government will not insist that states do so.

Failure to Require That States Provide Materials at the Appropriate Literacy Level and in Languages Other than English or Develop Materials for the Visually or Hearing Impaired. The regulations describe a variety of materials which must be made available to both parents before they sign an acknowledgment form. Since this paternity acknowledgment effort is to reach *all* parents with non-marital children, there will be significant numbers of people who come in contact with this program whose primary language is not English, whose literacy level is low, and for whom otherwise acceptable oral or written presentations will not suffice because they have vision or hearing constraints. Yet, there is no mention in the regulation of states' obligations to make materials available to non-English speaking, low literacy, or sight/hearing impaired individuals. The Response to Comments acknowledges the issue, but, once again, OCSE declines to specify what the states should do. 64 *Fed. Reg*. 11803 (3d col., bottom) and 64 *Fed. Reg*.11808 (2d col., middle).

It does "...encourage and expect States to address the special circumstances of individuals with limited understanding of English and to prepare materials geared to the general population in language and at reading levels appropriate to them." 64 *Fed. Reg*. 11808 (2d col., middle). This statement might be helpful to advocates in convincing states that they have an obligation in this regard.

Failure to Provide Guidance on the Structure of the Relationship Between the State and the Various Entities Participating in the Voluntary Paternity Establishment Program. States are now able to expand the number and variety of sites at which voluntary paternity establishment may be accomplished. Many states will choose to do this, especially in light of the federal fiscal penalty for failure to increase the state's paternity establishment rate. Many entities will be eager to participate for programmatic as well as fiscal reasons (remember the regulation makes clear that states can get FFP for paternity establishment bonuses). 45 CFR Section 304.20(b)(2)(vi).

In the first few years of such expansion, it is likely that there will be problems with entities that are either too aggressive or not aggressive enough in carrying out their responsibilities. Given this, it would seem wise to require states to enter into contracts with entities participating in the voluntary paternity establishment program. Such contracts should lay out the obligations of the state and the participating entities in clear terms and describe what will happen if the entity fails to meet its obligations under the contract. Yet, this is another area in which OCSE declined to regulate. 64 *Fed Reg*. 11808 (2d col., middle).

Failure to Provide Guidance on the Recission Process. Either parent can revoke a voluntary acknowledgment at any time during the 60 day period after the signing. If neither does so during that time period, the acknowledgment becomes the equivalent of a judgment by operation of law.[4] This right of recission is meaningless, however, unless the parent wishing to revoke the acknowledgment knows where and how to do so. Not only do the new regulations fail to address the recission process, they also fail to even require the states to tell the parents what the recision process is ! This is another area in which OCSE declined to provide a regulatory framework, instead promising to provide technical assistance to states wanting help and to disseminate best practices materials. 64 *Fed. Reg*. 11805 (2d col., bottom to 3d col., top)

[4] The time period may be shortened if there is a judicial or administrative hearing relating to the child to which the parent is a party and the hearing occurs during the 60 day period after signing. Unless a parent revokes the acknowledgment at that hearing, the acknowledgment is binding as of the date of the hearing. 42 USC Section 666(a)(5)(D)(ii)(II).