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CHAPTER THREE
STATE, LOCAL, AND TRIBAL ROLES IN THE CHILD SUPPORT PROGRAM

INTRODUCTION

The child support program on the state, local, and tribal levels has evolved over the years from a program with the primary goal of securing payment of financial obligations to become one in which strategic partnerships and collaborations between child support agencies and community resources now work to improve the overall economic stability of families and strengthen family ties where children live apart from a parent. This chapter focuses on the essential role of state, local, and tribal child support programs in this work.

STATE AND LOCAL CHILD SUPPORT AGENCIES

State and local child support agencies are responsible for:

- Locating noncustodial parents.
- Establishing paternity.
- Establishing, modifying, and enforcing child support and medical support obligations.
- Monitoring payments for compliance with orders.
- Distributing and disbursing collections.
- Safeguarding confidential information.

Each state must establish or designate a "single and separate organizational unit" to administer its child support program.[1] Within that requirement, each state has flexibility in deciding how its child support program will be administered. States have chosen a range of diverse administrative structures to organize their programs. For example, some states house the program in the Department of Social Services, while others have located it in the Department of Revenue or the Attorney General's office.

States also vary in the day-to-day administration of their programs. In some states, the program is state administered, while other states' programs are more decentralized, with counties administering the programs under policies set at the state and federal level. Even in the decentralized states, certain functions must be conducted at the state level, such as the state disbursement unit (SDU),

[1] 45 C.F.R. § 302.12 (2019).

the State Parent Locator Service, and the statewide automated child support system.[2]

In addition to variances regarding the location and administration of the child support program, states vary in the type of legal system within which the program operates. States fall at different places on the "continuum" of judicial/administrative legal systems. Regardless of the legal system, child support agencies work closely with courts and law enforcement officials to accomplish program goals; often this cooperation is pursuant to cooperative arrangements.

Each state child support agency operates under a IV-D state plan approved by the federal Office of Child Support Enforcement (OCSE). This plan, based on the program standards and policies set by the federal government, provides the requirements for state child support agencies and their local counterparts to follow when they work with families to obtain support.[3] Federal law requires child support agencies to provide services to recipients of public assistance, as well as to former public assistance recipients and to individuals not receiving public assistance who apply for Title IV-D services. In 1984, 1988, 1993, 1996, 2005, and 2014, Congress enacted significant legislation relating to the child support program, providing states with additional remedies to collect child support.[4]

In particular, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) mandated that states, as a condition of receiving federal funds, enact necessary legislation to facilitate paternity establishment, income withholding, and intergovernmental case processing. It required child support agencies to seek medical support orders in all cases. PRWORA also required that child support agencies have authority to issue administrative subpoenas, access state and local government records, revoke or restrict driver's licenses, and match information with financial institutions. In 2005, Congress authorized child support agencies to match information with insurance companies on insurance claims, settlements, and awards.[5] The 2014 legislation included provisions that did the following:

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[2] 45 C.F.R. § 302.32 (2019); 45 C.F.R. § 302.35 (2019); 45 C.F.R. § 303.20(b) (2019); 45 C.F.R. Part 307 (2019).
[3] 45 C.F.R. § 301.10 (2019); 45 C.F.R. Part 302 (2019).
[4] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat.1305; Family Support Act of 1988, Pub. L. No.100-485, 102 Stat. 2343; Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105; Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No.109-8, 119 Stat. 23; Deficit Reduction Act of 2005, Pub. L. No.109-171, 120 Stat.4; and Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919, 1943.
[5] Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4. *See* also OCSE-DCL-07-31: *Implementation of Insurance Match Provisions in § 452 of the Social Security Act* (Oct. 4, 2007).

- Implemented the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Child Support Convention);
- Extended access to the Federal Parent Locator Service (FPLS) to tribal child support agencies;
- Gave tribes access to federal 1115 experimental, pilot and demonstration grants;
- Required procedures for the electronic processing of income withholding orders; and
- Required the Secretary of HHS to develop data exchange standards for interstate communications.[6]

TRIBAL CHILD SUPPORT AGENCIES

One of the most important developments in the child support arena in recent years has been the emergence of tribal child support programs. In 1996, PRWORA authorized direct federal funding to tribes and tribal organizations for the operation of these tribal child support programs.[7] PRWORA also provided that a state "that receives funding . . . and that has within its borders Indian country . . . may enter into cooperative agreements with an Indian tribe or tribal organization." As a condition for entering into a cooperative agreement, a tribe must demonstrate that it has an established tribal court system with the authority to establish paternity and to establish, modify, and enforce child support orders.[8]

The direct federal funding provisions give tribes an opportunity to administer their own IV-D programs to meet the needs of tribal children and their families. Tribal child support programs offer services to Native American families consistent with tribal values and cultures. Since tribal structure and customs vary widely from state entities, as well as from tribe to tribe, regulations governing tribal child support programs differ in some areas from those governing state agencies. Like state programs, however, tribes are required to designate a particular agency to administer the tribal child support program, and to submit a plan that demonstrates the capacity of the tribe to perform the same required functions as their state counterparts: location of custodial and noncustodial parents, establishment of legal paternity, establishment of child support orders,

[6] Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919, 1943.
[7] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 375(b), 110 Stat. 2105, 2256 (codified as amended at 42 U.S.C. § 655(f) (2018)).
[8] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 375(a), 110 Stat. 2105, 2256 (codified as amended at 42 U.S.C. § 654(33) (2018)).

and enforcement of orders.[9] Tribal programs also offer services and referrals that support families. As of 2020, more than 60 tribes operate child support programs, which include start-up and comprehensive tribal child support programs.[10]

TITLE IV-A STATE PLAN REQUIREMENTS

Before passage of PRWORA, public assistance was provided under the Aid to Families with Dependent Children (AFDC) program.[11] PRWORA changed the name of the program to Temporary Assistance for Needy Families (TANF) to better reflect the move toward state control of assistance programs through block grants and the imposition of time limits for public assistance.

Historically, assistance cases comprised the majority of the Title IV-D caseload. Gradually, however, the number of cases from nonpublic assistance applications for services and former assistance cases began to surpass the number of current public assistance cases. As of 2019, never assisted and former assistance cases account for over 90% of the total IV-D caseload.[12] To understand the child support program, it is helpful to understand its evolution.

The child support program initially served public assistance families in order to recoup federal funds expended on public assistance. In 1984 the program began providing services to nonpublic assistance families. When PRWORA was enacted in 1996, it not only reformed welfare but also transformed the role of the child support program. PRWORA placed time limits on the receipt of public assistance. The emphasis shifted from providing financial assistance to families to assisting families achieve self-sufficiency through job preparation, work, and support services. The child support program plays a critical role in helping families achieve self-sufficiency. In addition to its core services, the program now connects participants to supportive family services such as fatherhood programs, job training, prisoner reentry initiatives, and parenting time services.

Each state's welfare agency administers the TANF program, under an approved state plan, pursuant to federal requirements at 45 C.F.R. §§ 201 through 299. The administering agency is commonly known as the IV-A agency, since Title IV-A of the Social Security Act establishes the programs that provide financial assistance to families.

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[9] 45 C.F.R. § 309.15(a)(4) (2019).

[10] 45 C.F.R. Part 309 (2019). For tribal child support agency contacts, *see* https://www.acf.hhs.gov/css/training-technical-assistance/tribal-child-support-agency-contacts. For more information about tribal child support case processing, *see* Chapter Thirteen: Intergovernmental Child Support Cases.

[11] Formerly 42 U.S.C. § 602(a)(11) (1996), *repealed by* the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, § 402, 110 Stat. 2105, 2113.

[12] Office of Child Support Enforcement, Preliminary Data Report FY 2019 (June 2020), Tables P-52, P-55-57.

An applicant for, or recipient of, TANF must meet the following two child support-related conditions:

- Cooperation in obtaining child support; and
- Assignment of rights to child support.

Cooperation in Obtaining Support

PRWORA made several important changes affecting the cooperation/ good cause determination. First, the authority to determine whether an applicant or recipient is cooperating "in good faith" with the IV-D agency was transferred from the IV-A agency to the IV-D agency.[13] Second, the law allows the IV-D agency to define what constitutes "cooperation in good faith" for providing the state child support agency the name of the noncustodial parent and other information. Third, PRWORA allows the state to determine which agency – child support, public assistance, or Medicaid – will define what constitutes "good cause" for not having to cooperate with the child support agency, and for applying the "good cause exception" to the cooperation requirement.

In determining an applicant's eligibility for assistance, each state must develop its own rules for determining cooperation by the applicant for benefits and for determining good cause for refusing to cooperate. States may define cooperation to include any of the following:

- Identifying and locating the parent of a child for whom aid is claimed;
- Establishing the paternity of a child born to unmarried parents for whom aid is claimed;
- Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and
- Obtaining any other payments or property due the applicant, recipient, or child.

Further, cooperation on the state level can include any of the following actions by the custodial parent that the state determines to be relevant to, or necessary for, achievement of the above objectives:

- Appearing at an office of the state or local IV-A, IV-E,[14] Medicaid, Supplemental Nutrition Assistance Program (SNAP),[15] or IV-D agency

[13] 42 U.S.C. § 654(29) (2018).
[14] The IV-E program refers to the federal foster care program established as Title IV, Part E of the Social Security Act by the Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, § 101, 94 Stat. 500, 501.
[15] 42 U.S.C. § 654(29) (2018).

as necessary to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by, the applicant or recipient;

- Appearing as a witness at judicial or other hearings or proceedings;
- Providing information or attesting to the lack of information under penalty of perjury; and
- Forwarding to the child support agency any child support payments received directly from the noncustodial parent after the custodial parent has signed an assignment of support rights.

With adoption of PRWORA and the block granting of assistance programs, states have broad authority and discretion to set standards for what constitutes good cause and cooperation. Should a IV-D attorney experience difficulties with an applicant or a recipient who has been referred by the IV-A, IV-E, Medicaid, or SNAP agency, state laws provide a process to address these difficulties. Once the IV-D agency notifies the state or local agency of evidence of failure to cooperate, the assistance agency will act on that information to enforce these eligibility requirements.

Good Cause for Noncooperation

Block grants have removed the federal regulatory mandates with respect to good cause. The states must develop a way to advise the applicant or recipient of TANF benefits how to request a good cause exception. Each state must determine what type of notice it will give to the applicant or recipient regarding the procedures and sanctions for noncompliance. It is helpful for states to notify recipients of the following:

- The potential benefits that the child may derive from establishing paternity and securing medical and financial support;
- The requirement for cooperation in establishing paternity and securing support;
- The sanctions for refusing to cooperate without good cause; and
- The criteria for establishing good cause and how to claim it, and the exemption from the cooperation requirement if the agency administering the assistance program determines that there is good cause (such as a risk of domestic violence).

Generally, the child support agency will not attempt to establish paternity and/or collect support in those cases where the applicant or recipient of TANF, IV-E foster care, Medicaid, or SNAP benefits is determined to have good cause

for refusing to cooperate. However, the child support agency could attempt to establish paternity and collect support in cases where the agency determines that such activity can be done without risk to the applicant or recipient. If the assistance agency excuses noncooperation, but determines that the IV-D agency can proceed safely with child support efforts, the agency may notify the applicant or recipient. This will enable the applicant to withdraw the application, or the recipient to close the case, if desired.[16]

TITLE IV-D STATE AND TRIBAL PLAN REQUIREMENTS AND PROGRAM OPERATIONS STANDARDS

The state plan requirements and standards for program operations for state IV-D agencies are found in 45 C.F.R. Parts 302 and 303, respectively. Requirements and standards apply both to types of cases served and the functions performed in processing a child support case. Plan requirements for tribal child support programs are found in 45 C.F.R. Part 309, Subpart C.

Types of Cases Served by State and Local Child Support Programs

Cases come to state and local child support agencies by different routes. The reason a particular case enters the child support caseload determines its type and can affect its servicing.

TANF families and other applicants. Since inception of the child support program in 1975, IV-D agencies have been required to provide equal services to both assistance and non-assistance families. In 1984, Congress reemphasized this responsibility by requiring specifically "that assistance in obtaining support will be made available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested."[17]

Title IV-E foster care children. In 1980, Congress transferred the TANF foster care program from Title IV-A of the Social Security Act to a new Title IV-E. Because the foster care program was no longer funded or administered under Title IV-A, the provision for assignment of support rights by TANF recipients no longer applied to foster care cases. This meant that Title IV-D services were not available for Title IV-E cases except as non-TANF cases. To receive child support services as a non-TANF case, the child's parent, legal guardian, or entity given custody of the foster child by the courts had to apply to the child support agency pursuant to 42 U.S.C. § 654(6).

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[16] *See* 42 U.S.C. § 608(a)(2) (2018) (cooperation is determined by the IV-D agency) and 42 U.S.C. § 654(29) (2018) (good cause is defined by the agency administering either the TANF, Medicaid, or IV-E foster care case). For SNAP, good cause is defined by the Food and Nutrition Act of 2008, Pub. L. No. 110-246, § 4001, 122 Stat. 1651, 1853 (codified as amended at 7 U.S.C. § 2015(l)(2) (2018)).

[17] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 2, 98 Stat. 1305, 1306.

To remedy this situation, in 1984 Congress added 42 U.S.C. § 671(a)(17) to require states to take steps, where appropriate, to secure an assignment of support rights on behalf of children receiving foster care maintenance payments under Title IV-E. It also amended 42 U.S.C. §§ 654(4)(B), 656(a), and 657(e) to require child support agencies to collect and distribute child support for IV-E foster care maintenance cases.

Previous public assistance families. Since 1984, child support agencies have been required to continue to provide Title IV-D services to persons no longer eligible for public assistance.[18] When it receives notice that the family is no longer eligible for assistance, current regulations require the child support agency to notify the family within five working days that services will be continued unless the family advises the child support agency to the contrary. The notice must inform the family of the consequences of the continuation of Title IV-D services, including the available services, state fees, cost recovery, and distribution policies.[19] As a result of the issuance of the Final Rule on Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, the requirement to continue provision of child support services is also applicable "when a child is no longer eligible for IV-E foster care, but only in those cases that the IV-D agency determines that such services and notice would be appropriate."[20]

Medical assistance families. Child support agencies must provide Title IV-D services to families who have assigned their rights to medical support as a condition of receipt of medical assistance approved under Title XIX of the Social Security Act.[21] Child support agencies must provide all appropriate services in these cases, without an application or application fee, unless the recipient notifies the agency that only services related to securing medical support are wanted, and unless the Title XIX agency determines it is against the best interests of the child to do so.[22] When a family is no longer eligible for Medicaid assistance, the child support agency must continue to provide services as with previous public assistance families and must provide proper notice of the continuing service.

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[18] Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 7, 98 Stat. 1305, 1315.
[19] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 301(b), 110 Stat. 2105, 2200.
[20] Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93,561 (Dec. 20, 2016) (to be codified at 42 C.F.R. pt. 433 (a)(4)).
[21] 42 U.S.C. § 1396(k) (2018).
[22] 45 C.F.R. § 302.33(a)(5) (2019). It is important to note that some referrals from Medicaid resulting from applications for medical insurance through the Healthcare Marketplace may be inappropriate. For more information, *see* OCSE-IM-14-01: *Medicaid Referrals to the IV-D Agency* (Mar. 13, 2014) and Chapter Ten: Establishment of Child Support and Medical Support Obligations; and Chapter Eleven: Enforcement of Child Support Obligations, herein.

Application for Services Provided by State Child Support Agencies

Applications from individuals in other jurisdictions. Child support agencies must provide Title IV-D services to families who reside in other U.S. states. There is no residency requirement as a precondition for services.[23] There may be instances when it may be difficult for a child support agency to provide services to a nonresident. In such cases, child support agencies must still accept applications for services.

For international cases, federal law allows states two alternatives, which are reflected in UIFSA (2008). If a state enacts Alternative A of UIFSA Section 307(a), it must provide child support services to any petitioner requesting services, regardless of the individual's residence.[24] If a state enacts Alternative B, it must provide child support services to a petitioner requesting services through a Central Authority of a foreign country, as defined by UIFSA Section 102(5)(A) or (D) (which means a country that is a signatory to the Hague Child Support Convention[25] or a foreign reciprocating country under a federal bilateral agreement[26]), but has discretion regarding whether to provide services to a requesting petitioner residing in other foreign nations.[27] As of January 15, 2021, the Convention is in force between the United States and 37 countries.[28] Additionally, four countries and 12 Canadian provinces and territories are designated foreign reciprocating countries (FRCs) with the United States.[29]

Applications from tribal child support programs. Due to the differences between state and tribal child support program requirements, a tribal child support agency may find it necessary to refer a case to a state child support agency. When such a referral is received, states are required to cooperate with the tribal program in order to achieve the best outcome for the children.[30]

Applications for non-IV-D services. State child support programs receive Federal Financial Participation (FFP) reimbursement for expenditures relating to required child support activities.[31] Some states, however, also accept applications for services that are related to the child support program, but not

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[23] 42 U.S.C. § 654(6)(a) (2018).
[24] Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919, 1943-1944; Unif. Interstate Family Support Act § 307(a) Alternative A (2008).
[25] *See* the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, https://assets.hcch.net/docs/14e71887-0090-47a3-9c49-d438eb601b47.pdf.
[26] *See* 42 U.S.C. § 659a (2018).
[27] Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919, 1943-1944; Unif. Interstate Family Support Act § 307(a) Alternative B (2008).
[28] The United States objected to the accession of Guyana and the Republic of Kazakhstan to the Hague Child Support Convention.
[29] *See* https://www.acf.hhs.gov/programs/css/international. For more information, *see* Chapter Thirteen: Intergovernmental Child Support Cases.
[30] 45 C.F.R. § 302.36(a)(2) (2019).
[31] *See* 45 C.F.R. § 304.20 (2019).

required under federal law. Because these services are not eligible to receive FFP, cases resulting from these applications are referred to as "non-IV-D cases." Activities that fall into this category include enforcement of spousal-only support obligations, and certain enforcement of medical support obligations.[32] Because the acceptance of these applications varies widely under state laws, attorneys should refer to their particular state law and regulations regarding these applications.

Types of Cases Served by Tribal Child Support Programs

In order to operate a tribal child support program, each tribe must develop and submit a tribal child support plan that identifies how the tribe or tribal organization will perform all of the administrative and fiscal responsibilities of the child support program. The plan must also describe the capacity of the tribe or tribal organization to operate a child support program that meets the objectives of Title IV-D of the Social Security Act, including establishment of paternity; establishment, modification, and enforcement of support orders; and location of noncustodial parents.[33]

Similar to state child support programs, tribal child support programs are required to accept all applications for Title IV-D services and promptly provide those services required by law and regulation.[34] Further, a tribal child support agency must extend the full range of services available under its child support plan to respond to all requests from, and cooperate with, state and other tribal child support agencies.[35] In some circumstances, it may become necessary for a tribe to refer a case to a state child support agency. For example, a tribal IV-D agency may have an open case but lack jurisdiction over the noncustodial parent. As another example, an applicant or recipient of services, who is both a tribal member and citizen of a state, may opt to have the state, rather than the tribe, provide IV-D services. When this occurs, state agencies must communicate with the tribe to achieve the most effective outcome for the children involved. Similarly, when the circumstances in the foregoing examples are reversed, it may be appropriate for a state agency to transfer a case to a tribal IV-D agency. When this happens, the Final Rule effective January 2017 provides that states may close such cases if specific requirements are met.[36]

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[32] *See* 45 C.F.R. § 304.23(g) (2019). The enforcement of spousal support obligations, and the enforcement of medical support that is not required under 45 C.F.R § 303.30, 303.31, or 303.32, are not required IV-D activities and are therefore not eligible for FFP. The enforcement of a spousal support order, when the case also includes a child support order, is a required IV-D activity eligible for FFP reimbursement. *See* 45 C.F.R. § 302.31(a)(2) (2019).
[33] 45 C.F.R. § 309.15(a)(4) (2019).
[34] 45 C.F.R. § 309.65(a)(2) (2019).
[35] 45 C.F.R. § 309.120(a) (2019).
[36] Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93,492 (Dec. 20, 2016) (to be codified at 42 C.F.R. pt. 433). *See specifically* 45 C.F.R § 303.11(b)(21) (2019).

PROCESSING A CHILD SUPPORT CASE

This section provides an overview of child support case processing for both state and tribal cases. Although attorneys are not involved in all aspects of a case, it is important to understand how a case progresses through the steps of case initiation, intake, locate, paternity establishment, support order establishment or modification, monitoring and enforcement, maintenance of records, security procedures for safeguarding information, and payment processing.

Processing a State Child Support Case

Initiation of in-state cases. State child support cases begin with a referral or application for services. Any individual who needs help to establish paternity; establish, enforce, or modify a child support obligation; or establish or enforce a medical support obligation can apply for services. Either parent can request that the child support agency review the child support order at least once every three years, or whenever there is a substantial change of circumstances, to ensure that the order remains fair. Cases reach a state child support agency in one of three ways: (1) referral from the Title IV-A, IV-E, or XIX agency; (2) application for services from a nonpublic assistance recipient as stated above; and (3) referral from another state, jurisdiction, or tribe.

The Title IV-A, IV-E, or XIX agency determines whether a public assistance applicant is eligible for TANF, foster care, or medical assistance. For Title IV-A and XIX cases, the assistance agency must refer the case to the Title IV-D agency if:

- The applicant is determined eligible;
- The noncustodial parent has a duty to pay child support; and
- The establishment of paternity and/or child support is needed, or an existing support order requires enforcement or modification.[37]

For Medicaid cases, as a result of the passage of the Patient Protection and Affordable Care Act of 2010, states may receive inappropriate referrals. Child support agencies are encouraged to work with their Medicaid counterparts to define referral criteria to minimize inappropriate referrals.[38] Title IV-E foster

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[37] *See* 42 U.S.C. § 654(29) (2018). Applicants for medical assistance under Title XIX must cooperate with the IV-D agency to establish paternity or to establish, enforce, or modify support. *See* 42 U.S.C. § 1396k(a)(1)(B) (2018). It is important to note, however, that some referrals from Medicaid to the IV-D agency, resulting from applications for medical insurance through the Healthcare Marketplace, may be inappropriate.

[38] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010). For more information, *see* OCSE-IM-14-01: *Medicaid Referrals to the IV-D Agency* (Mar. 13, 2014), and Chapter Ten: Establishment of Child Support and Medical Support Obligations and Chapter Eleven: Enforcement of Child Support Obligations, herein.

care agencies, however, have more discretion and may refer cases to the IV-D agency where appropriate.[39] The referral must contain an Assignment of Support Rights in addition to other pertinent information discussed below "Intake." The public assistance applicant does not have to apply for child support services and does not have to pay a fee.

Anyone living in the United States who is not receiving public assistance can apply for Title IV-D services by filling out an application. Availability of services is not limited to residents of the state.[40] There are no income eligibility or citizenship requirements. The application is a written or online document provided by the state and signed by the applicant indicating that the individual is applying for child support services.[41] Deeming all child support cases to be Title IV-D cases by operation of law is contrary to the federal "application" requirement because it does not permit the individual applicant the option of choosing whether to apply for child support services. In an intergovernmental case, only the initiating state child support agency can require an application.

The state child support agency must charge an application fee of up to $25 for nonpublic assistance services. The agency can charge this fee to the applicant or pay the fee out of state funds. Either way, the state can seek to recover the fee from the noncustodial parent in order to repay the applicant or itself.[42] States must publicize the availability of child support services, including any application fees that might be imposed in non-TANF cases. The state child support agency must make applications for child support services readily accessible to the public.[43]

The state child support agency must provide an application on the day of an in-person request for services, or mail one within five working days of a written or telephone request. The application must be accompanied by information describing child support services, the individual's rights and responsibilities, and the state's fees, cost recovery, and distribution policies. This information must also be provided to TANF, Medicaid, and foster care recipients

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[39] 42 U.S.C. § 671(a)(17) (2018).

[40] Although there are no residency requirements for individuals who reside in a U.S. state, states that enact Alternative B of UIFSA § 307(a) (2008) may require international applications to be filed through the Central Authority in the applicant's country of residence. *See* Uniform. Interstate Family Support Act § 307 (2008).

[41] Federal regulations require that the individual applying for child support services must sign the application. 45 C.F.R. § 303.2(a)(3) (2019). Previously OCSE had interpreted this rule strictly as requiring the application to be a paper copy with a written signature. In light of advances in technology and legal trends exemplified by federal laws such as the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000) and the Government Paperwork Elimination Act, Pub. L. No. 105-227, 112 Stat. 2681 (1998), OCSE issued guidance in 2009 that states may accept electronic signatures on applications for services. However, states must determine if this practice is allowable under state law. *See* OCSE PIQ-09-02: *Use of Electronic Signatures on Applications for IV-D Services* (Aug. 25, 2009).

[42] 45 C.F.R. § 302.33(c) (2019).

[43] 42 U.S.C. § 654(23) (2018).

within five working days of case referral. The IV-D agency must accept an application as filed on the day it and the application fee are received.

Initiation of intergovernmental cases. Persons living in another state within the United States or within Indian country may apply for services through the state or tribal child support agency where they reside, or they may file for services directly to the child support agency in another jurisdiction as described above.

Similarly, states that have enacted Alternative A of UIFSA Section 307(a) must accept direct applications from individuals living in other countries.[44] A person who applies for services directly may be required to pay a fee or may be subject to cost recovery. If a state has enacted Alternative B of UIFSA Section 307(a),[45] it can limit services to persons living in a foreign reciprocating country (FRC)[46] or a Hague Child Support Convention country[47] who have applied through the Central Authority in their country of residence. If the applicant for services lives in an FRC or a Hague Convention country and applies through the country's Central Authority, the child support agency is prohibited from recovering costs from the FRC, the Hague Convention country, or the applicant.[48]

The state child support agency must establish a central registry to receive, distribute, and respond to inquiries on all incoming intergovernmental child support cases.

Intake. Once the child support agency receives the appropriate forms from the referring agency or applicant, the agency must open the case by establishing a case record. This must occur within 20 calendar days of the agency's receiving the case referral or the individual's filing an application for services. Based on an assessment, the agency must determine what action is necessary and start collecting and verifying information. Attorneys are usually not involved with the intake process.

The intake function consists of compiling the data received from the above sources along with other information available to the child support agency. States have designed and implemented automated computer interfaces to augment the information available to the child support worker during the intake process.

Preparation of an accurate and complete case record is crucial to the child support process. Future action on the case depends on information collected at

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[44] *See* Unif. Interstate Family Support Act § 307(a) (2008).
[45] *See* Unif. Interstate Family Support Act § 307(a) (2008).
[46] *See* 42 U.S.C. § 659a (2018). For more information, *see* Chapter Thirteen: Intergovernmental Child Support Cases.
[47] *See* the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, https://assets.hcch.net/docs/14e71887-0090-47a3-9c49-d438eb601b47.pdf.
[48] *See* 42 U.S.C. 654(32)(C) (2018); 45 C.F.R. § 303.7(e)(2) (2019).

the initial stages in the case processing sequence. In addition, a well-prepared case establishes a verifiable audit trail.

Locate. Once a case is opened, the child support agency must use available federal, intergovernmental, state, and local sources to locate the noncustodial parent or the parent's sources of income or assets. The agency must access all appropriate location sources within 75 calendar days of determining that location efforts are needed, and ensure that location information is sufficient to take the next appropriate action. The agency must repeat locate efforts over a six-month to two-year period, depending upon the type of information available, before it can close a case due to an inability to locate the noncustodial parent.[49]

Except for requests from other jurisdictions, location efforts begin at the local child support office. The request for locate services may be made by a court with jurisdiction to issue child support orders, the resident parent, the legal guardian or agent of a child not receiving public assistance, the agency seeking to collect child support payments, or other authorized person defined under 45 C.F.R. §§ 302.35(c) and 303.15.

States must have guidelines defining diligent efforts to serve legal process. These guidelines must include periodically repeating service of process attempts in cases where previous attempts have failed, but in which existing identifying and other information is adequate to attempt service of process. The actual requirements for service of process are found in state law and rules of procedure.[50] Although attorneys typically do not assist with locate, the agency may ask the attorney for legal advice regarding appropriate service of process.

Paternity establishment. Paternity establishment is an important part of the child support program. The number of children for whom paternity has been established has grown steadily from 1.1 million in FFY 1996, to almost 1.5 million in FFY 2016, thus reducing the number of children without a legally established father in their lives. Whether paternity is established administratively, judicially, through the use of a signed paternity acknowledgment, or based on a conclusive presumption due to genetic testing results, that relationship is critical for securing the financial and emotional support children deserve.[51] Further, following the U.S.

[49] *See* 45 C.F.R. § 303.11(b)(7) (2019).
[50] For more information on locating noncustodial parents, *see* Chapter Five: Location of Case Participants and Their Assets.
[51] Office of Child Support Enforcement, FY1996 Annual Report to Congress, and Office of Child Support Enforcement, Preliminary Data Report FY 2016 (April 2017). For more information, *see* Chapter Nine: Establishment of Parentage.

Supreme Court's decisions in *Obergefell v. Hodges*[52] and *Pavan v. Smith,*[53] many state programs now offer parentage establishment services for same sex parents.[54]

Support order establishment. If there is no judicial or administrative order establishing a child support obligation, the state must seek to enter such an order by a court or other legal process. Within 90 calendar days of locating the noncustodial parent, regardless of whether paternity has been established, the child support agency must establish a support order or complete service of process necessary to establish an order. In cases where a petition to establish a support order is dismissed without prejudice, the agency must determine when it would be appropriate to seek an order, and do so at that time.[55]

Modification. Because family dynamics and situations do not remain static, federal regulations have developed standards for periodic review and adjustment of child support amounts. Research shows that establishing and maintaining child support orders that are based on the parent's ability to pay results in higher compliance and increased communication between parents and children. This, in turn, contributes to the overall economic stability of the family.[56]

States must have a plan to review orders and determine when modification is appropriate. Any modification proceeding must be consistent with the jurisdictional rules under the Uniform Interstate Family Support Act (UIFSA)[57] and the Full Faith and Credit for Child Support Orders Act (FFCCSOA).[58]

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[52] 576 U.S. 644 (2015).
[53] 582 U.S. ___, 137 S. Ct. 2075 (2017).
[54] For more information on parentage establishment and same sex parents, *see* Chapter Nine: Establishment of Parentage.
[55] For more information on support order establishment, *see* Chapter Ten: Establishment of Child Support and Medical Support Obligations.
[56] *See* Elaine Sorensen, *Child Support Plays an Increasingly Important Role for Poor Custodial Families*, Urban Institute, 2010 (finding that child support represents 40% of income for poor custodial families who receive it and 63% of income for deeply poor custodial families who receive it); Carl Formoso, *Determining the Composition and Collectibility of Child Support Arrearages*, Washington Department of Social and Health Services, Division of Child Support, 2003.
[57] *See* Unif. Interstate Family Support Act (2008), https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e12481bd-ac36-07ba-7d64-7841e9db5e09&forceDialog=0. Originally developed in 1992, the National Conference of Commissioners on Uniform State Laws amended UIFSA in 1996, 2001, and 2008. In 2014, Congress mandated state enactment of UIFSA (2008) as a condition of receiving federal funds. *See* Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, § 301, 128 Stat. 1919, 1944. All states have enacted UIFSA (2008). For more information about UIFSA and modification, *see* Chapter Twelve: Modification of Child Support Obligations, and Chapter Thirteen: Intergovernmental Child Support Cases.
[58] Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994) (codified as amended at 28 U.S.C. § 1738B (2018)). For more information about FFCCSOA, *see* Chapter Twelve: Modification of Child Support Obligations, and Chapter Thirteen: Intergovernmental Child Support Cases.

Monitoring and enforcement. Accurate monitoring of child support payments can help prevent accumulation of arrearages. The child support agency must have and use an effective system to monitor compliance with the support order and identify delinquencies for the purpose of initiating enforcement techniques. Monitoring applies to all provisions of the support order, including health insurance or medical support.

Because technology is more sophisticated, federal regulations now require enforcement that is faster and far more automated than in previous decades. Statewide systems now maintain huge repositories of information on every aspect of the child support program. This information enables everything from immediate income withholding within two days of a determination of employment and automated matches with financial institutions and insurance companies; to data exchanges with the state IV-A, IV-E, and Medicaid systems; as well as communication with other states and territories through the Child Support Enforcement Network (CSENet). In short, automated processes assist states with meeting requirements of the state plan.[59] States are also using these huge repositories of data to analyze their performance and stratify their caseloads in order to meet their performance goals, maximize the support collected, and create the best outcomes for families.

As efficient and effective as this vast automation can be, states continue to rely on basic investigation and hands-on research for cases that do not lend themselves to automated solutions. Personal contact with recipients and obligors and the use of solid legal work by child support attorneys and their staff is critical to ensuring that families receive the support they need.

Maintenance of case records. The state or local child support agency (including subcontracting agencies) must keep careful records of case activity.[60] It must supplement the case record established at intake with all information and documents pertaining to the case as well as all relevant facts, dates, actions taken, contacts made, and results that occur. Much of this recordkeeping is now automated.

A child support case must be kept open and worked unless it meets case closure criteria set forth at 45 C.F.R. § 303.11 and the state closes the case in accordance with these requirements. The child support agency must retain all records for cases closed according to this section for a minimum of three years, in accordance with 45 C.F.R. § 75.361.

Safeguarding information. PRWORA created and expanded state and federal child support databases and significantly enhanced access to information for Title IV-D child support purposes. States have moved toward more integrated service delivery to better serve the families and further the mission of the child

[59] 45 C.F.R. § 307.10 (2019).
[60] For the definition of a IV-D case, *see* 45 C.F.R. § 305.1(a) (2019).

support program, while protecting confidential data. Title IV-D requires that all states have safeguards in effect to ensure the accuracy and integrity of information in its system. Federal regulations provide more detailed requirements.

There are rules about how and with whom child support information can be shared,[61] as well as rules setting forth the requirements for the release of certain information to authorized persons for an authorized purpose.[62] In general, those rules:

- Prohibit disclosure of confidential and personally identifiable information to private child support collection agencies;

- Address the release of information to IV-B and IV-E agencies to assist state child welfare agencies in carrying out their program responsibilities to locate relatives for potential placement of a child removed from parental custody in response to changes made by the Fostering Connections to Success and Increasing Adoptions Act;[63]

- Require a state Parent Locator Service (PLS) to release certain information at the request of authorized individuals, for authorized purposes. These purposes include location of custodial and noncustodial parents, nonparent relatives, or children; and location of persons sought for the unlawful taking or restraint of a child for custody or visitation purposes; and

- Allow the disclosure of information, including child support payment records, to the SNAP agency in response to changes made by the Food, Conservation and Energy Act of 2008.[64]

Payment processing.[65] It is important that families receive their child support payments as quickly as possible. Any delay can quickly and seriously threaten a family's budget. For this reason, states are required to distribute most child support payments within two days of their receipt. When two states are involved, each one must send payments out within two days.

States are required to establish a payment processing center, called a state disbursement unit (SDU).[66] The SDU is a single unit to receive and disburse payments for child support. Payments under support orders in all IV-D

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[61] *See* 75 Fed. Reg. 81,894 (Dec. 29, 2010).
[62] 45 C.F.R. § 302.35 (2019).
[63] Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.
[64] Food, Conservation and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651.
[65] For a detailed discussion of redirection of payments and changes of payees, see Chapter Eleven: Enforcement of Child Support Obligations.
[66] 45 C.F.R. § 302.32 (2019).

child support cases, and payments in all cases with orders entered on or after January 1, 1994, that are subject to income withholding, must go through the SDU.[67] The SDU is intended to get payments out with a minimum of turnaround time. It has the additional advantage of providing a single place in the state to which employers can send child support payments collected from their employees. The SDU is responsible for:

- Receipt and disbursement of all payments;
- Accurate identification of payments;
- Prompt disbursement of the custodial parent's share of any payment;
- Furnishing to any parent, upon request, timely information on the current status of payments under a support order; and
- Maintaining a statewide record of support orders.

Distribution. Families who receive public assistance under the TANF program must "assign," or sign over, their right to unpaid child support to the state. The Deficit Reduction Act of 2005 created different options that states may choose when distributing child support collections. Some states "pass through" all or some portion of child support collections to families who receive TANF without reducing the assistance payment. Other states retain collections to repay TANF benefits received by the family.[68]

After the family leaves the assistance program, federal law requires that the total current support collection goes to the family. Amounts collected beyond the amount ordered as current support are considered to be payments toward arrearages owed either to the family or to the state or both. Under current laws, families are entitled to receive their share of post-assistance arrears before the state is permitted to retain its portion to repay the federal government for the assistance payments, unless the collection is from a federal tax refund offset.[69]

If a family has never received public assistance, all monies collected as support, both current and arrears, are paid to the family.

Processing a Tribal Child Support Case

Initiation of tribal cases. Tribal child support agencies are required to accept all applications for child support services and promptly provide those

[67] 42 U.S.C. § 654b(a)(1) (2018).
[68] Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7301, 120 Stat. 4, 141.
[69] Under the Deficit Reduction Act of 2005, states have an option to retain or pay to the family any remaining state share of the arrears, after paying the family all unassigned arrears and paying the federal share of the arrears. Pub. L. No. 109-171, § 7301(b)(2)(B), 120 Stat. 4, 142.

services required by federal law and regulation.[70] Tribal IV-D agencies that receive child support applications may charge an application fee of $25.00, which must be uniformly applied. Tribal child support agencies may not charge a fee in an intergovernmental case referred to them. Similar to state child support agencies, tribal child support agencies may not charge a fee to an individual receiving services under titles IV-A, IV-E foster care maintenance assistance, or Medicaid.[71] Tribal child support agencies may also recover costs in excess of the fee.[72]

Initiation of intergovernmental cases. Persons living in another state within the United States or within Indian country may apply for services through the state or tribal child support agency where they reside, or they may file for services directly to the child support agency in another jurisdiction as described above.

Because tribes are sovereign nations, federal law does not require tribes to enact UIFSA. However, tribes will recognize and enforce child support orders issued by other tribes and tribal organizations, and by states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act.[73]

Because UIFSA (2008) is the implementing legislation in the United States for the Hague Child Support Convention and tribes are not required to enact UIFSA, OCSE has not designated tribal IV-D agencies as Central Authorities under the Convention. However, tribal programs may receive and transmit cases with other foreign countries, depending upon tribal law.

Tribes are not required to establish a central registry for incoming intergovernmental child support cases.

Intake. Similar to the requirements for state IV-D programs, tribal IV-D programs must have "procedures for accepting all applications for IV-D services and promptly providing IV-D services as required by law and regulation."[74]

Locate. Once a case is opened, a tribal child support agency "must use all sources of information and records reasonably available to the Tribe or Tribal organization to locate custodial or noncustodial parents and their sources of income and assets."[75] One notable difference from the requirements for state child support agencies is that there is not a 75-day time frame for a tribe to undertake locate actions once the need for locating a parent or the parent's assets is identified. The tribal requirement is more generally stated: "The tribal IV-D agency must attempt to locate custodial or noncustodial parents or sources

[70] 45 C.F.R. § 309.65(a)(2) (2019).
[71] 45 C.F.R. § 309.75(e)(3) (2019).
[72] 45 C.F.R. § 309.75(e) (2019).
[73] 45 C.F.R. § 309.120(b) (2019).
[74] 45 C.F.R. § 309.65(a)(2) (2019).
[75] 45 C.F.R. § 309.95(b) (2019).

of income and/or assets when location is required to take necessary action in a case."[76]

Tribes are not required to maintain a parent locator service. However, the Preventing Sex Trafficking and Strengthening Families Act of 2014 authorized tribal IV-D programs to access the Federal Parent Locator Service (FPLS).[77]

Paternity establishment. Like state child support agencies, tribal IV-D agencies must have procedures for establishing paternity. Tribal procedures must provide for efforts to "establish paternity by the process established under Tribal law, code, and/or custom."[78] Tribal procedures must provide for a voluntary paternity acknowledgment process and must require parties to submit to genetic testing in cases of contested paternity, unless otherwise barred by tribal law.

It is important to note that establishment of paternity by a tribal IV-D agency is not determinative of tribal enrollment or membership.

Support order establishment. As with state IV-D programs, tribal IV-D programs must have procedures for establishing support obligations and must have in place a single set of numerical guidelines for setting support. Tribal support guidelines must be reviewed and revised, if appropriate, at least once every four years.[79]

Federal regulations provide that tribal guidelines must indicate whether non-cash payments may be allowed in satisfaction of a support order. If non-cash payments are allowed, the guidelines must specify the types of non-cash payments that may be used to satisfy the dollar amount of a support order. However, non-cash payments may not be permitted to satisfy assigned support obligations.

There is no requirement that tribal IV-D programs establish medical support.

Modification. In addition to procedures for establishing support orders, tribal IV-D plans must include procedures for modifying support orders.[80] Unlike state plan requirements, federal regulations do not require tribal IV-D programs to review support orders at least once every three years at the request of either party.

Monitoring and enforcement. Income withholding is as important a tool to collect support for tribal IV-D agencies as for state agencies. As a consequence, tribal IV-D plans must include procedures for income

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[76] 45 C.F.R. § 309.95(a) (2019).
[77] Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. No. 113-183, 128 Stat. 1919, 1945. OCSE-TDCL-16-01 (Feb. 22, 2016) and OCSE-IM-16-03 (July 26, 2016) provide information about tribal access the FPLS.
[78] 45 C.F.R. § 309.100 (2019).
[79] 45 C.F.R. § 309.105 (2019).
[80] 45 C.F.R. § 309.90(a)(2) (2019).

withholding.[81] Required procedures are similar to those required of states.[82] The tribal IV-D agency is responsible for receiving and processing income withholding orders from states, tribes, and other entities, and ensuring orders are properly and promptly served on employers within the tribe's jurisdiction.

Maintenance of case records. The requirements for maintenance of case records in tribal cases is similar to those for state IV-D agencies, including retention and access requirements at 45 C.F.R. §§ 75.361 through 75.370.

Safeguarding information. Tribal IV-D agencies are subject to similar rules for safeguarding information that apply to state IV-D agencies.

Payment processing. Currently, there are no requirements for tribal child support programs to establish an SDU or to process payments electronically. Although federal regulations do not specify time frames for processing payments, tribes are required to process payments "in a timely manner."

Distribution. Distribution rules for tribal programs are similar to the distribution requirements for states. For example, tribes are required to apply collections to current obligations first, and to pay all support collections to the family unless the family is receiving or formerly received assistance from the tribal TANF program and there is an assignment of support rights to the TANF agency.[83] In some cases, a tribe may receive a request for assistance in collecting support on behalf of a state or another tribe. In such a case, the tribal child support agency has the option of contacting the requesting state or tribal agency to determine appropriate distribution, and distributing collections as directed by the other agency.[84]

Regulations governing tribal cases are silent with respect to Medicaid and IV-E cases.

CONCLUSION

This chapter has provided a basic overview of state and tribal responsibilities in the child support program. More detailed information follows in subsequent chapters of this book.

[81] 45 C.F.R. § 309.65(a)(11) (2019).
[82] 45 C.F.R. § 309.110 (2019).
[83] 45 C.F.R. § 309.115(a) (2019).
[84] 45 C.F.R. § 309.115(f) (2019).

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