



DEPARTMENT OF HEALTH & HUMAN SERVICES

APR 28 2011

ADMINISTRATION FOR CHILDREN AND FAMILIES

370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Dear Tribal Leader:

The Office of Child Support Enforcement (OCSE) is committed to drafting regulations and policy that may impact tribes on a government-to-government relationship in keeping with the Department of Health and Human Services' Tribal Consultation Policy. This letter is an invitation to tribal leaders to engage in written consultation concerning case closure regulations for *state* child support programs. We are requesting specific input to these regulations found in 45 CFR 303.11 which will be addressed in a Notice of Proposed Rulemaking (NPRM) later this year. The information below will help inform your feedback.

BACKGROUND

The national Child Support Enforcement Program was initially established in 1975 under title IV-D of the Social Security Act (the Act) as a joint federal/state partnership. The goal of the program is to ensure that all parents financially support their children. The program (also known as the title IV-D program) locates noncustodial parents, establishes paternity, establishes and enforces support orders and collects child support payments from parents who are legally obligated to pay. Section 455(f) of the Act, as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, authorized direct funding of tribal child support enforcement programs. This direct funding provision provides tribes with an opportunity to administer culturally appropriate child support programs meeting the needs of children and their families.

OCSE embarked on a lengthy consultation process before drafting the regulations for tribal child support enforcement programs. Those regulations were published in the Federal Register on March 30, 2004 [69 FR 16638]. The regulations that govern tribal child support enforcement programs are found in 45 CFR Parts 309 - 310. The regulations that govern state child support enforcement programs are found in 45 CFR Parts 300-308. While the program requirements are not identical, the child support enforcement programs must be administered under a basic national framework to ensure that cases can be enforced across jurisdictional lines and the other objectives of title IV-D are successfully implemented.

THE ISSUE

OCSE originally promulgated regulations in 1989 which established criteria for states to follow in determining whether and how to close child support cases. The goal of the case closure regulations was not to mandate that cases be closed, but rather to clarify

Dear Tribal Leader Letter - page 2

conditions under which cases may be closed. The regulations allowed states to close cases that were not likely to result in any collection and to concentrate their efforts on the cases that presented a likelihood of collection. The regulations were updated in 2011 to add three new case closure criteria for intergovernmental cases. However, OCSE has determined that these state case closure rules should be updated once again to reflect the current level of automation and program operations.

One of the reasons why OCSE plans to update case closure rules is to encourage efficient case transfers to tribal programs and otherwise facilitate interaction between states and tribes for the effective delivery of child support services to families. When case closure regulations were initially written, there were no tribal child support enforcement programs and therefore no consideration of case closure or case transfer between states and tribes. However, now there are 41 tribes operating tribal child support enforcement programs.

In recent years, OCSE received a number of inquiries asking whether a state child support enforcement agency may close a case that has been transferred to a tribal child support enforcement program and under what circumstances. OCSE responded to those inquiries in PIQT 05-01, "Transfers of Cases to Tribal IV-D Agencies and Case Closure Criteria" (<http://www.acf.hhs.gov/programs/cse/pol/PIQT/2005/piqt-05-01.htm>).

In PIQT 05-01, OCSE clarified that a state may transfer a case to a tribal child support enforcement program if the custodial parent wishes to receive services from the tribal child support agency rather than from the state child support agency and requests that the case be transferred or consents to the transfer. Such transfers, at the request of or, with the consent of the custodial parent, may be appropriate if there are no assignments to the state and no requirement for the custodial parent to cooperate with the state in order to receive food stamps. The PIQT went on to say that the state case could be closed when the non-TANF recipient of services requests that the case be closed and there is no assignment of support to the state.

Currently, §303.11(b)(8) allows states to close a case if the individual who applied for child support services under §302.33 requested closure, and if there is no assignment to the state of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order. However, there is no provision that allows states to automatically and immediately close cases. This uncertainty about the legal basis for case closure has hampered effective case transfers from state to tribal programs, resulting in states and tribes maintaining multiple cases for a family.

In order to clarify case closure rules in instances where cases have been transferred from state child support agencies to tribal child support agencies at the request of or with the consent of the custodial parent, we believe that it may be appropriate to include language in 45 CFR 303.11(b)(8), which currently reads:

Dear Tribal Leader Letter - page 3

In order to be eligible for closure, the case must meet at least one of the following criteria:

(8) The non-IV-A recipient of services requests closure of a case and there is no assignment to the State of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order.

Adding the phrase “automatically and immediately”, after “requests closure of a case” would allow states to close cases after completing the specific service requested by the noncustodial parent without waiting for the noncustodial parent to request case closure. We are specifically seeking input on how this would impact tribal programs and request any recommendations that you may have.

The regulation at §303.11(b)(8), now references 42 CFR 433.146 which requires an assignment of rights for medical care support. The regulatory language at 42 CFR 433.146 says:

(a) Except as specified in paragraph (b) of this section, the agency must require the individual to assign to the State—

(1) His own rights to any medical care support available under an order of a court or an administrative agency, and any third party payments for medical care; and

(2) The rights of any other individual eligible under the plan, for whom he can legally make an assignment.

(b) Assignment of rights to benefits may not include assignment of rights to Medicare benefits.

(c) If assignment of rights to benefits is automatic because of State law, the agency may substitute such an assignment for an individual executed assignment, as long as the agency informs the individual of the terms and consequences of the State law.

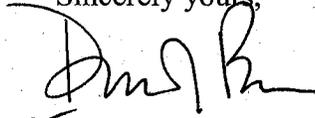
We recently held a series of conversations with tribal child support program directors to discuss medical child support for tribal children. During those conversations some participants told us that when tribal members apply for Medicaid, they are referred directly to the state child support agency, which can result in establishment of ineffective and inappropriate child support cases and assignment of medical support. We are specifically seeking comments on whether case closure criteria in the regulations at §303.11 would be helpful and how a change would impact the tribal child support enforcement programs and tribal children.

I am committed to effective and meaningful consultation with tribes. For this initial round of written consultation, please send your written recommendations to Paige Hausburg at the address below, or via email to OCSETribalConsultation@acf.hhs.gov by June 10, 2011. Your input will support our consultation process to ensure that program policies that impact tribal programs are developed in accordance with consultation policy.

Dear Tribal Leader Letter - page 4

Thank you for the important work that you do. I look forward to working with you as we move to strengthen child support programs in tribal communities and across the nation.

Sincerely yours,



 Vicki Turetsky
Commissioner
Office of Child Support Enforcement

cc: Tribal IV-D Directors
ACF/OCSE Regional Program Managers

Address for written comments:

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