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Proposed Rule LSA Document #16-54

Summary/Response to Comments from Comment Period

DCS requested public comment from June 22, 2016 to July 21, 2016 on the proposed rule and received comments from the following parties during the public comment period:

- Office of the 69th Judicial Circuit, Child Support Division, Decatur County, Indiana (Decatur County)
- David Powell, Indiana Prosecuting Attorneys Council (Powell)
- Karla Mantia, Indiana Prosecuting Attorneys Council (Mantia)

Following is a summary of the comments received and DCS' responses thereto:

Comments regarding the Proposed Rule

Comment: The definition of "child support services" under 465 IAC 1-1-1 should include a reference to Ind. Code § 31-25-4-13.1, specifically the language describing the role of prosecuting attorneys operating under cooperative agreements (Decatur County, Powell, Mantia).

Response: The definition of "child support services" in this section is a general definition and is not intended to specify the division of responsibilities between prosecutors and DCS. The division of responsibilities between the parties to a cooperative agreement is referenced in the final rule under the definition of the term "county child support office" and properly addressed by Ind. Code § 31-25-4-13.1 and through the cooperative agreements.

Comment: The term "county child support office" as used in 465 IAC-1-1-2 and 465 IAC 1-1-12 should reference the Prosecuting Attorney and Ind. Code § 31-25-4-13.1 (Powell).

Response: DCS agrees with the suggestion that this term be defined within the rule, and pursuant to Ind. Code § 4-22-2-29, has added a definition of "county child support office" to 465 IAC 1-1-1 in the final rule. DCS believes that the statutory reference to Ind. Code § 31-25-4-13.1 provides the appropriate guidance as to the Prosecuting



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Attorney's role when operating under a cooperative agreement with DCS pursuant to that statute.

Comment: The definition of the term "costs" in this rule is overly broad and should reference DCS' limitations on the collection of costs (Decatur County, Powell, Mantia).

Response: Having considered this comment, DCS is removing the term "costs" and references thereto within these rules. Such removal is in accordance with the principles set forth under Ind. Code § 4-22-2-29, Ind. Code § 4-22-2-19.5 and Executive Order 13-03. Because the costs actually collected by CSB are authorized by statute, Ind. Code § 31-16-6-4; Ind. Code § 31-15-10-1; Ind. Code § 33-37-5-6; Ind. Code § 31-25-4-19; and 31-25-4-19.5, further regulations are not necessary.

Comment: DCS should consider adding a definition for the term "overpayment" to this rule (Decatur County, Mantia).

Response: DCS agrees with this suggestion and has added and defined the term "overpayment" in 465 IAC 1-1-1 in the final rule.

Comment: The definition of "fees" in this rule appears to conflict with statutory language in Ind. Code § 31-25-4-17(g) and Ind. Code § 31-14-6-4 (Decatur County, Powell, Mantia).

Response: Having considered this comment DCS is removing the term "fees" and references thereto within this rule. Such removal is in accordance with the principles set forth under Ind. Code § 4-22-2-29, Ind. Code § 4-22-2-19.5 and Executive Order 13-03. Because the fees actually collected by CSB are authorized by statute, Ind. Code § 31-16-6-4; Ind. Code § 31-15-10-1; Ind. Code § 33-37-5-6; Ind. Code § 31-25-4-19; and 31-25-4-19.5, further regulations are not necessary.

Comment: The definition of "nonpublic assistance participant" in combination with 465 IAC 1-1-3 would enable DCS to recover unlimited and unspecified costs and fees from a former public assistance recipient (Decatur County).

Comment: The definition of "nonpublic assistance participant" is inconsistent with the goal of clarifying the department's authority to waive or reduce the application fee to a nominal amount and pay it through department funds (Mantia).

Response: DCS agrees with this suggestion and pursuant to Ind. Code § 4-22-2-29, has amended the definition of "Nonpublic assistance participant" in 465 IAC 1-1-1 in the final rule.

Comment: DCS should consider adding definitions for the terms "program participant", "federal tax", "subsequent support payment", "state tax", and "administrative offset" to the rule (Decatur County, Mantia).

Comment: DCS should consider adding a definition for the term "nonpublic assistance child support cases" (Decatur County).

Response: Having considered all comments received regarding the use of these terms in the proposed rule, DCS believes that the use of these terms within the context of the



amended final rule are accurate and provide adequate information for interpretation and implementation.

Comment: If DCS intends to recover application fees from the noncustodial parent, language in 465 IAC 1-1-2 should reflect this (Decatur County).

Comment: The definition of "Nonpublic assistance participant" should be amended to include persons for whom the application fee has been waived and paid by DCS (Powell).

Comment: DCS should consider adding language to 465 IAC 1-1-2 to make clear that the application fee may be waived and paid by DCS, and that it also may be recouped from the noncustodial parent (Mantia).

Response: While federal regulation permits the application fee to be paid by the applicant, by the state, or recovered from the absent parent, DCS does not intend to recover application fees from the absent/noncustodial parent. DCS has also deleted 465 IAC 1-1-3 from the final rule regarding Recovery of Costs and Fees in Nonpublic Assistance Support Cases.

Comment: Regarding 465 IAC 1-1-3 Recovery of costs and fees in nonpublic assistance child support cases, several provisions are problematic in that the rule appears to conflate costs and fees, is overly broad, and exceeds statutory authority (Decatur County, Powell, Mantia).

Response: Having considered this comment, DCS is removing this section of the rule.

Such removal is in accordance with the principles set forth under Ind. Code § 4-22-2-29, Ind. Code § 4-22-2-19.5 and Executive Order 13-03. Because the costs and fees actually collected by CSB are authorized by statute, further regulations are not necessary. Ind. Code § 31-16-6-4; Ind. Code § 31-15-10-1; Ind. Code § 33-37-5-6; Ind. Code § 31-25-4-19.5; 31-25-4-19.

Comment: Rather than deleting 465 IAC 1-1-4 Safeguarding, this section of the rule should be amended to reflect Federal regulations (Powell, Mantia).

Response: DCS notes that the rule expresses prior federal guidance that is now outdated. This section of the rule is unnecessarily duplicative, as Indiana Code § 31-25-4-21 addresses confidential information and references federal regulations. The removal of this section of the rule is in accordance with the principles set forth under Indiana Code § 4-22-2-19.5 and Executive Order 13-03.

Comment: Regarding 465 IAC 1-1-7 Date of collection; individual; this section should remain in effect because issues arise in arrearage calculations, especially at the end of a year (Powell, Mantia).

Response: DCS notes that the "date of collection" is defined in 42 U.S.C. 654b(c)(1), and that this section is unnecessarily duplicative of existing federal regulations. The removal of this section is in accordance with the principles set forth under Ind. Code § 4-22-2-29, Ind. Code § 4-22-2-19.5 and Executive Order 13-03.



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Comment: Regarding 465 IAC 1-1-9 Distribution; this section should not be deleted and should remain in effect. Federal distribution rules are not referenced in Indiana Code and should be referenced here (Powell, Mantia).

Response: DCS notes that distribution procedures are defined in Ind. Code § 31-25-4-17. The removal of this section of the rule is in accordance with the principles set forth under Ind. Code § 4-22-2-29, Ind. Code § 4-22-2-19.5 and Executive Order 13-03.

Comment: Regarding 465 IAC 1-1-11 Recoupment of an overpayment of child support collections; this section appears to exceed statutory authority, conflicts with Ind. Code § 31-25-4-17(c), does not provide due process for affected individuals subject to recoupment, and does not delineate the roles of the Courts in the process (Decatur County, Powell, Mantia).

Response: Having considered this comment and pursuant to Ind. Code § 4-22-2-29, DCS agrees that this section should be amended and has revised this section in the final rule to clarify the recoupment process and describe due process requirements as suggested under federal Office of Child Support Enforcement guidance contained in AT 97-13, PIQ 02-01, and PIQ 03-02.



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