

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

DOJ 13-2017
CHAPTER 137
DEPARTMENT OF JUSTICE

FILED

12/29/2017 10:49 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Implementing Program polices and 2017 legislation

EFFECTIVE DATE: 01/01/2018

AGENCY APPROVED DATE: 12/29/2017

CONTACT: Lori Woltring
503-947-4367
lori.woltring@doj.state.or.us

1162 Court St NE
Salem, OR 97301

Filed By:
Lori Woltring
Rules Coordinator

RULES:

137-055-3020, 137-055-3080, 137-055-3140, 137-055-3300, 137-055-3430, 137-055-3440, 137-055-4060, 137-055-4320, 137-055-4510, 137-055-4520, 137-055-4560, 137-055-5040, 137-055-5080, 137-055-5120, 137-055-5240, 137-055-6021, 137-055-6025

AMEND: 137-055-3020

RULE TITLE: Paternity Establishment Procedures

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-3020 is amended to implement SB 512 (2017). Amendments to this rule clarify the process that will be used when parentage is already established by presumption under ORS 109.070. This rule is also amended to implement Program policy to no longer charge a fee for the cost of an initial genetic test.

RULE TEXT:

- (1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.
- (2)(a) When initiating legal proceedings to establish paternity for a child conceived in Oregon, the administrator will use ORS chapter 109 or ORS chapter 416.
- (b) Except for proceedings filed under ORS chapter 109, past support will be established as provided by ORS chapter 416 and OAR 137-055-3220.
- (3) When the administrator initiates legal proceedings to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.
- (4) The administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (5) and (6).
- (5) When parentage is established by presumption under ORS 109.070 and the birth mother names one or more persons other than the presumed parent as the biological father of the child, the administrator will provide the presumed parent with notice and an opportunity to object.
 - (a) If a written objection is received from the presumed parent within 30 days of the date of the notice, an action to determine parentage will be filed in circuit court.
 - (b) If no written objection is received from the presumed parent within 30 days of the date of the notice, the

administrator will facilitate genetic testing for the birth mother, child, and alleged father(s) prior to filing an action to determine parentage in circuit court.

(A) If all known alleged fathers are excluded by testing or testing cannot be completed, the administrator may seek support from the presumed parent.

(B) If an alleged father is included by testing, the administrator will file an action in circuit court to disestablish the parentage of the presumed parent and establish the parentage of the alleged father who was included by testing.

(6) Notwithstanding section (5) of this rule, when parentage is established by presumption under ORS 109.070, the administrator will not pursue an action to determine parentage if:

(a) The mother and presumed parent are still married, cohabiting, and do not both consent to an action to determine parentage; or

(b) The presumed parent has physical custody of the child and does not consent to an action to determine parentage.

(7) When establishing support against a presumed parent, if a party provides proof that he or she filed a petition to challenge parentage under ORS 109.070, the administrator will suspend the support action pending the resolution of the petition.

(8) Except as provided in Section (6) of this rule, when the mother states that more than one man could be the biological father of the child and genetic tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested alleged biological father, that man is constructively included as the father by virtue of the other men's exclusion as the father.

(b) If there is more than one remaining untested alleged biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain tests which either exclude or include each man.

(9) Except as provided in Section (6) of this rule, when the mother states that more than one man could be the biological father of the child and genetic tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested alleged father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(10) The Child Support Program will pay the costs of initial genetic tests to determine paternity.

(11) When a party requests additional genetic testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Oregon Health Authority; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(12) Upon receipt of a party's request for additional genetic testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.

(13) If a non-requesting party fails to appear for the additional genetic testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.

(14) If a requesting party fails to appear for the additional genetic testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(15) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 109.070, 416.430

AMEND: 137-055-3080

RULE TITLE: Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-3080 is amended to implement provisions of SB 512 (2017) regarding requests to establish paternity when a child already has two legal parents.

RULE TEXT:

(1) For purposes of this rule, self-alleged father means a man who both:

- (a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and
- (b) Wishes to have paternity legally established for the child, establishing himself as the legal father.

(2) The administrator is responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:

(a) The self-alleged father must either:

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or

(B) Complete an application for services as provided under ORS 25.080.

(b) Unless otherwise prohibited under this rule, the administrator will:

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.

(c) The administrator will not pursue action to establish paternity under this section in any case where:

(A) Adoption of the child is final; or

(B) Legal parentage for a person in addition to the birth mother already exists for the child, or;

(C) The administrator has determined that establishing paternity for the self-alleged father would not be in the best interests of the child, in accordance with section (4) of this rule.

(3)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator will send written notification by first class mail to the last known address of the mother and (if a separate party) legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator will also send written notification to the licensed private agency handling the adoption, or if none exists, to the Department of Human Services;

(b) If the mother and (if a separate party) legal guardian cannot readily be found, the enforcing agency administrator will make a diligent attempt to locate the party. A diligent attempt includes but is not limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate the mother and legal guardian within 30 days, the administrator will proceed to process the case as described in section (7) of this rule without the notice described in this section;

(c) The written notification must state the following:

(A) That the self-alleged father has asked the administrator for establishment of paternity services;

(B) That if legal proceedings for adoption of the child are pending, or if the child's mother (or legal guardian if a separate party) alleges that the child was conceived due to rape or incest, the Child Support Program director will determine whether establishing paternity is in the best interests of the child, on the basis of the responses the Program director receives to the written notification;

(C) That a copy of any response to the notification the Program director receives will be sent to the self-alleged father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator will ensure that the address of the mother and/or guardian is deleted from any written material it sends to the self-alleged father;

(D) The factors the Program director will consider, set out in section (4) of this rule, in determining whether establishing paternity would be in the best interest of the child;

(E) That the mother, legal guardian, and adoption agency or the Department of Human Services child welfare program if

appropriate under this rule, has 15 days to respond in writing to the written notification;

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the Program director;

(G) That if any of the parties listed in paragraph (E) or (F) of this subsection does not respond to the written notice or allegation within 15 days, the Program director will make a determination based on the responses received;

(H) That if the Program director determines that establishing paternity would not be in the best interests of the child, this decision:

(i) Means only that the administrator will not pursue action to establish paternity; and

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.

(4) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the Program director is responsible for determining whether action to establish paternity would be in the best interests of the child.

(a) If the Program director determines that action to establish paternity would not be in the best interests of the child, the administrator will take no further action to establish paternity for the self- alleged father;

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest, is sufficient reason for the Program director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:

(A) If the self-alleged father does not respond to the copy of the allegation or response the Program director receives as provided in subsections (3)(a) through (3)(c) of this rule, the Program director will make a determination by default based on the mother's or legal guardian's statement;

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the Program director must determine that establishing paternity would not be in the best interests of the child;

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the Program director will decide whether to pursue action to establish paternity. The Program director will consider factors including, but not limited to:

(i) Whether a police report was filed;

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;

(iii) Whether other persons have information that the child was conceived due to rape or incest;

(iv) Any other factors known or provided to the Program director that would support or refute the veracity of the rape or incest allegation;

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;

(vi) The Program director's decision in this matter is limited to only whether the administrator will pursue action to establish paternity, and is in no way to be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;

(c) When the Program director finds that legal proceedings for adoption of the child are pending, the Program director will consider the following factors in determining whether establishing paternity would be in the best interests of the child:

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;

(B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;

(C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the child. This determination may consider the nature and extent of such support, and if such support

would continue or increase in the future;

(D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceedings;

(E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.

(5) Absent judicial review, the decision of the Program director is final with regard to any responsibility of the administrator to pursue establishment of paternity.

(6) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(7) If the Program director determines (when a determination by the Program director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the Program director under this rule, the administrator will proceed on the case as follows:

(a) The administrator will make diligent efforts to provide the mother of the child, unless she is deceased, with actual notice of the action to establish paternity. Notice must be by personal service upon the mother. Diligent efforts include mailing of the notice or petition and summons by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;

(b) Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section may be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children;

(c) If the mother of the child or children cannot be served with notice of the action or if the mother is deceased, the enforcing agency will not take an order establishing paternity unless genetic tests to determine paternity have been completed which fail to exclude the self-alleged father, and have a cumulative paternity index of at least 99;

(d) In any action to establish paternity in which the administrator cannot serve the child's mother, or when the mother is deceased, the administrator will request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose;

(e) When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator will mail a copy of the final order to the mother by first class mail to the most recent contact addresses in the case record, and to any address provided by the Oregon Department of Human Services or by the Oregon Driver and Motor Vehicle Services marked please forward, address correction requested. In addition to such mailing, the administrator will, for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.

(8) All other provisions of this rule notwithstanding, the administrator cannot require the child's mother (or other custodial adult) to cooperate with efforts to establish paternity, and the administrator will not assess a penalty for not cooperating, in any case where a finding that the child's mother (or other custodial adult) is exempt from cooperating due to good cause, pursuant to federal law at 42 U.S.C. 654(29) and 42 U.S.C.666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

STATUTES/OTHER IMPLEMENTED: ORS 25.080

AMEND: 137-055-3140

RULE TITLE: Reopening of Paternity Cases

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-3140 is amended to implement Program policy to no longer charge a fee for the cost of an initial genetic test.

RULE TEXT:

- (1) When a party claims that a man established as the father of a child in fact is not the biological father of the child, the administrator will open or reopen the issue of paternity when all of the provisions of subsections (a) through (e) apply:
- (a) The administrator initiated the action administratively which established paternity or paternity was established by a signed voluntary acknowledgment in Oregon;
 - (b) Parentage tests have not been conducted;
 - (c) The order was entered with the circuit court one year ago or less, or the voluntary acknowledgment as described in ORS 432.287 was filed with the Center for Health Statistics one year ago or less;
 - (d) The party applying has completed and returned to the administrator a request for reopening and, if required, a signed application for services, prior to expiration of the one year period;
 - (e) The administrator has jurisdiction over the parties.
- (2) If at any point during the process, the administrator obtains information and verifies that the criteria in subsections (1)(a), (b), (d) or (e) are no longer met, the administrator will make a determination and will send the affected parties written notification within 10 days of verifying the information.
- (3) An order establishing paternity will not be vacated, dismissed or set aside under this rule unless parentage tests exclude the male party in question as the father of the child, or a party fails to comply and the issue of paternity is resolved against that party. The administrator will not submit for the court's approval, any order granting relief which requires repayment to the debtor of money paid by that debtor under the order.
- (4) If a reopening initiated by the administrator results in an order of non-paternity, the administrator will satisfy any state debt owing on the case and file credit arrears owed to any other party.
- (5) Any judgment of non-paternity under this rule will be by circuit court order.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 190.070, 416.443

AMEND: 137-055-3300

RULE TITLE: Incarcerated Obligor

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-3300 is amended to implement SB 682 (2017) regarding the process for suspending and reinstating child support for an obligor who is, or is expected to be, confined in a correctional facility for at least 180 consecutive days on or after 1/1/18.

RULE TEXT:

(1) For purposes of this rule and OAR 137-055-3430:

(a) "Correctional facility":

(A) Means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility as provided in ORS 162.135.

(B) Applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370.

(C) Includes alternative forms of confinement, such as transitional leave, house arrest, or confinement, where an obligor is still in the custody of the Department of Corrections.

(b) "Incarcerated obligor" means an obligor who is, or is expected to be, confined in a correctional facility for at least 180 consecutive days. The 180 days shall not include any time prior to January 1, 2018.

(c) "Release from incarceration" means release from confinement in a correctional facility for at least 180 consecutive days.

(2) An incarcerated obligor is presumed unable to pay child support and a child support obligation does not accrue for the duration of the incarceration unless the presumption is rebutted.

(3) Within 30 days of identifying an "incarcerated obligor" who is ordered to pay ongoing support, the administrator will provide notice pursuant to SB 682 (2017), Section 2, of the administrator's intent to suspend support.

(4) If an objection is received, the administrator shall cause the case to be set for a hearing before a court or an administrative law judge to determine whether the presumption has been rebutted.

(5) If no objection is received or if the court or administrative law judge upholds the suspension over an objection, the administrator shall:

(a) Discontinue billing monthly support to the obligor, beginning with the first day of the first month following the date of the obligor's incarceration or January 1, 2018, whichever is later; and

(b) File the notice of suspension and any order of the court or administrative law judge in the circuit court of the county where the support order is filed.

(6) Unless already modified, the support order is reinstated by operation of law at 50% of the previously ordered support amount on the first day of the first month obligor has been released for at least 120 days.

(a) Within 30 days following reinstatement of the order, the administrator will issue notice of the reinstatement to all parties pursuant to SB 682 (2017), Section 2 (7).

(b) The administrator will file the notice in the circuit court of the county where the support order is filed, together with a money award showing that support has been reinstated at 50%.

(c) Within 60 days following reinstatement of the order, the administrator shall review the support order for the purpose of modifying support under OAR 137-055-3430.

(7) Upon receiving proof that obligor qualified as an "incarcerated obligor," unless the presumption of inability to pay has been rebutted, the administrator will allow a credit and satisfaction against child support arrearages. Credit shall begin with the first day of the first month following the date of the obligor's incarceration and continue through the end of the month in which the number of days obligor has been released from a qualifying period of incarceration equals 120; and

(a) The administrator will provide notice pursuant to SB 682 (2017), Section 2, of the administrator's intent to credit and satisfy child support arrearages.

(b) If an objection is received, the administrator shall cause the case to be set for a hearing before a court or an administrative law judge to determine whether the presumption has been rebutted.

(c) If no objection is received or if the court or administrative law judge upholds the credit over an objection, the administrator shall allow a credit and satisfaction against child support arrearages.

(8) Orders modified to zero due to incarceration prior to January 1, 2018 are not subject to suspension and reinstatement under this rule.

(9) An action to modify support to zero due to incarceration that is pending on December 31, 2017 continues to be governed by the law in effect prior to January 1, 2018.

(10) This rule applies only to child support judgments and orders originally entered in Oregon or which Oregon modified and assumed continuing, exclusive jurisdiction over pursuant to ORS chapter 110.

STATUTORY/OTHER AUTHORITY: ORS 180.345, 416.455, SB 682 (2017)

STATUTES/OTHER IMPLEMENTED: ORS 416.425, SB 682 (2017)

AMEND: 137-055-3430

RULE TITLE: Substantial Change in Circumstance Modification of Child Support Order Amounts

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-3430 is amended to implement SB 682 (2017). The amendments clarify that for the purposes of modifying a child support order, incarceration or release from incarceration, as defined in OAR 137-055-3300, qualifies as a change in circumstances.

RULE TEXT:

(1) For purposes of this rule: "Substantial compliance" means that the difference between the existing support order and the amount calculated using current guidelines is not greater than \$50 or 15% of the current guideline amount, whichever is less.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.

(3) The administrator will conduct a review based on a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator:

(A) Receives a request for modification based on a change of circumstance and at least 60 days have passed from the date the existing support order was entered. For those cases where a review is requested pursuant to paragraphs

(3)(c)(I), (J), or (K), there is no need for 60 days to have passed; or

(B) Determines that a modification should be initiated based on the administrator's motion; and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(D) Veterans benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) The needs of the child(ren) have changed;

(G) Since the date of the last order or January 1, 2018, whichever is later, the obligor was incarcerated for at least 180 consecutive days or was released from incarceration as defined in OAR 137-055-3300;

(H) The support order has been suspended and reinstated under OAR 137-055-3300 and qualifies for a review pursuant to SB 682 (2017), Section 2;

(I) There is a need to add or change medical support provisions for a child;

(J) A change in the physical custody of a minor child has taken place;

(K) An order is being modified to add or remove a child of the parties;

(L) A child who is 18 years of age or older and under 21 years of age does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions will be added, removed, or changed. Tiered order has the meaning given in OAR 137-055-1020.

(d) And the requesting party (if other than the administrator) submits the following information, or its equivalent:

(A) A written request for modification based on a substantial change of circumstance;

(B) Appropriate information for the criteria in subsection (3)(c) showing that a substantial change of circumstance has occurred; and

(C) A completed Uniform Income and Expense Statement or Uniform Support Declaration.

(4) Upon receipt of a request for modification, or at the administrator's initiative, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information that may affect the support calculation.

(5) A request for modification will be granted:

(a) If the order is not in substantial compliance with the guidelines and the request was due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(F).

(b) Whether or not the order is in substantial compliance with the guidelines, so long as:

(A) The request was due to one of the criteria in paragraphs (3)(c)(G) through (3)(c)(L), or

(B) The new calculation:

(i) Includes consent by the parties as provided in OAR 137-050-0765;

(ii) Includes compelling factors as provided in OAR 137-050-0750;

(iii) Includes application of rebuttals, as provided in OAR 137-050-0760; or

(iv) Is for a modification to consider receipt of Social Security or Veterans benefits as provided in paragraphs (3)(c)(C) or (D).

(6) If the request for modification is granted, the administrator will advise the parties of the guideline child support obligation. Notification may be by motion for modification and will include a request for hearing form. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(7) If a request under this rule is denied, the administrator will notify the requesting party in writing within 30 days of the denial and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will provide the party with information on how to obtain the Oregon Judicial Department packet that has been developed for this purpose.

(8) No provision of this rule prevents the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order.

(9) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

STATUTORY/OTHER AUTHORITY: ORS 180.345, 416.455, SB 682 (2017)

STATUTES/OTHER IMPLEMENTED: ORS 25.080, 25.287, 25.321 to 25.343, 107.108, 107.135, 416.425, SB 682 (2017)

AMEND: 137-055-3440

RULE TITLE: Effective Date of Modification Under ORS 416.425

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-3440 is amended to implement SB 516 (2017). The amendments clarify that orders for the payment of child support shall specify an initial due date and year for payment that is on first day of a calendar month, with subsequent payments due on the first day of each subsequent month.

RULE TEXT:

(1) In any proceeding to modify a support order under ORS 416.425, the modification shall take effect as of the first day of any month following service of the original motion to modify the judgment on the last nonrequesting party.

(2) If a motion to modify a judgment is served on more than one nonrequesting party, the modification shall take effect as of the first day of any month following service of the original motion on the last nonrequesting party.

(3)(a) For purposes of this rule a nonrequesting party is an individual obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, or an obligor under the child support order.

(b) An adult child, as defined in OAR 137-055-5110, who has sent a written request to the administrator to be a party to the modification is not a nonrequesting party for purposes of determining the effective date of a modification.

STATUTORY/OTHER AUTHORITY: ORS 107.135, 180.345, 416.455

STATUTES/OTHER IMPLEMENTED: ORS 416.425, SB 516 (2017)

AMEND: 137-055-4060

RULE TITLE: Income Withholding — General Provisions, Requirements and Definitions

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-4060 is amended to implement SB 516 (2017). The amendments clarify that for the purposes of support enforcement, any support payment that becomes due and payable on a day other than the first day of the month in which the payment is due shall be enforceable by income withholding as of the first day of that month.

RULE TEXT:

(1) OARs 137-055-4060 to 137-055-4080 provide for collection of support by means of income withholding, in accordance with ORS 25.372 to ORS 25.427 and all other applicable Oregon law, on all support cases being enforced by the administrator.

(2) For purposes of OARs 137-055-4060 to 137-055-4080 and as used in ORS 25.372 to ORS 25.427, the following definitions apply:

(a) "Alternative payment method" means the methods of paying support described in OAR 137-055-4080;

(b) "Best interests of the child" means the method of payment likely to produce consistent support that will reach the child(ren) in the most expedited manner.

(c) "Disposable income" means the part of an individual's income that remains after the deduction of any amounts required to be withheld by law, except as provided in paragraphs (B) or (C) of this subsection.

(A) Amounts required to be withheld by law include, but are not limited to, required withholding for taxes and social security;

(B) Any amounts withheld for the following will not be deducted from the obligor's income when computing disposable income, even if such withholding is required by law or by judicial or administrative order:

(i) Health insurance premiums;

(ii) Spousal or child support.

(C) An obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proving such claims and must therefore furnish verifiable business records or documents to support any offsets claimed. The obligor also has the burden of furnishing such records or documents in a timely manner, and the Child Support Program will not refund to the obligor, on the basis of such claims, any amounts withheld that the administrator has already disbursed to the obligee or to any child attending school under ORS 107.108 and OAR 137-055-5110;

(d) "Electronic Funds Transfer" (EFT) has the definition given in OAR 137-055-5035, and includes but is not limited to payment by Electronic Payment Withdrawal (EPW) and by debit or credit system or card.

(e) "Electronic Payment Withdrawal" (EPW) means an automatic withdrawal of support from the person's bank account.

(f) "Good cause" for not withholding means a situation that exists when:

(A) A court or the administrator makes a written determination that, and a written explanation in the official record of why, immediate income withholding would not be in the best interests of the child; and

(B) If the case involves the modification of an existing support order, there is proof of timely payment of previously-ordered support and there are no arrears. Timely payment is indicated when the obligor has not previously become subject to initiated income withholding under the existing order.

(g) Periodic recurring income as used in calculating withholding from a lump sum payment or benefit pursuant to ORS 25.414(4), means income that is intended as a monthly or more frequent payment that includes, but is not limited to, a teachers lump sum payment for summer months.

(3) All support orders issued or modified by the administrator will include a provision requiring the parties to keep the administrator informed of:

(a) The name and address of the party's current employer;

(b) Whether or not the party has access to appropriate health care coverage, and if so, the health care coverage policy information.

(4) For purposes of support enforcement, any support payment that becomes due and payable on a day other than the first day of the month in which the payment is due shall be enforceable by income withholding as of the first day of that month.

STATUTORY/OTHER AUTHORITY: ORS 25.396, 180.345, 25.427

STATUTES/OTHER IMPLEMENTED: ORS 25.372, 25.427, 656.234, 657.780, 657.855, SB 516 (2017)

AMEND: 137-055-4320

RULE TITLE: Collection of Delinquent Support Obligations Through the Oregon Department of Revenue

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-4320 is amended to implement SB 514 (2017), removing the requirement to send notice to an obligee of the intent to claim an obligor's tax refund and apply it to the obligor's past due support balance.

RULE TEXT:

(1) The administrator may claim Oregon tax refunds otherwise due to be paid to an obligor, to collect:

(a) Support arrears;

(b) Unpaid award amounts from any judgment entered against the obligor for birth expenses or for the cost of parentage tests to establish a child's paternity.

(2) The Department of Justice will file such claims with the Oregon Department of Revenue according to rules and procedures established by the Oregon Department of Revenue.

(3) Referral of arrears will be a liquidated claim, debt, or account established by a court or administrative order.

(4) The administrator will not refer any case where the case record indicates that one or more of the following is applicable:

(a) The arrears are less than \$25;

(b) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) The administrator will distribute and, as appropriate, disburse tax refunds recovered by this process as set out in OARs 137-055-2360, 137-055-2380 and 137-055-6021 to 137-055-6024.

(6) The administrator will send an advance written notice to the obligor of the intent to claim the tax refund and apply it to the obligor's account. The notice will advise of the obligor's right to an administrative review of the proposed action.

The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.610, 293.250

ADOPT: 137-055-4510

RULE TITLE: Financial Institution Data Matches – Insurance Claims

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-4510 is adopted to implement SB 510 (2017). This rule provides the process for insurance companies to conduct data matches with the Child Support Program to satisfy reporting requirements pursuant to ORS 25.643.

RULE TEXT:

(1) Insurance companies can satisfy the requirements of ORS 25.643 to conduct data matches for pending insurance claims by:

(a) Entering into agreements with the Oregon Department of Justice to develop and operate a data match system using automated data exchanges; or

(b) Participating in the data match process administered by the federal Office of Child Support Enforcement.

(2) Pursuant to agreements under section (1)(a) of this rule, an insurance company shall provide, at least once per calendar quarter, the name, address, Social Security number or other taxpayer identification number, and other identifying information for:

(a) Every "claimant" as defined by ORS 25.640(2) who has a pending claim with the insurance company; or

(b) Only those "claimants" as defined by ORS 25.643(2) who have pending claims with the insurance company and have been identified by the Department of Justice as owing past due support.

(3) Insurance companies that opt to participate in the data match process referenced in section (1)(b) must provide information according to the requirements specified by the Office of Child Support Enforcement.

(4) If an insurance company with which an obligor has a pending insurance claim has not previously provided the information required by sections (2) and (3) of this rule, the insurance company must provide the administrator with at least three business days' advance written notice before disbursing any payment to the obligor pursuant to the claim. The notice must be sent via encrypted electronic mail or secure facsimile to the Oregon Child Support Program, Special Collections Unit.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.640, ORS 25.643

AMEND: 137-055-4520

RULE TITLE: Garnishment

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-4520 is amended to implement changes made to 45 CFR 307.11, which mandates that any Supplemental Security Income (SSI) or a combination of SSI and Social Security Disability Insurance (SSDI) benefits garnished from a parent's bank account be returned to the obligor.

RULE TEXT:

- (1) The administrator may utilize garnishment proceedings in accordance with ORS chapter 18 for the purpose of collecting past due support.
- (2)(a) When the administrator receives a collection from a garnishment proceeding, the administrator will hold the collection for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages before disbursing any amounts due a party from the collection.
- (b) This requirement is to accommodate the possibility that the administrator may have to return funds from the collection to the garnishee, the obligor, or the court, as a result of the obligor or any person who has an interest in the garnished property having made a challenge to garnishment in accordance with ORS chapter 18.
- (c) The administrator will waive this requirement to hold the collection, and will apply the collection to the case for immediate distribution, in any case where the obligor provides the administrator with a signed and notarized statement expressly waiving the right to make a challenge to garnishment and requesting that the administrator apply, distribute and, as appropriate, disburse the payment immediately.
- (3) Upon notice of a challenge to garnishment from the clerk of the court, the administrator will file a response to the challenge to garnishment, attaching copies of the writ of garnishment, garnishee response, debt calculation and any supporting documentation necessary or helpful to the court in making a determination of the challenge to garnishment.
- (4) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, notice of a challenge to garnishment is received and the administrator files the response required by section (3), the administrator will include copies of all judgments for which the writ is issued and a debt calculation for each referenced judgment.
- (5) When the contents of a bank account are garnished and the obligor makes a timely challenge to garnishment that claims that all or some portion of the contents of the account came from lump sum payments identified in ORS 18.345, the administrator may return to the obligor the exempt portion of such lump sum payments received from that account, as appropriate.
- (6) When the garnishee is a credit union, the credit union may retain the par value of the garnished account, defined as the face value of an individual credit union share necessary to maintain a customer's membership.
- (7) Notwithstanding any other provision of this rule, if the administrator determines that funds garnished from an account include Supplemental Security Income or a combination of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) benefits and the administrator is in possession of the funds, the administrator must return any SSI and SSDI benefits to the obligor within 5 business days. If the garnished funds were already sent to the court as the result of a challenge to garnishment, the administrator will advise the court that it is holding exempt funds that should be released to obligor.

STATUTORY/OTHER AUTHORITY: ORS 25.020; 180.345

STATUTES/OTHER IMPLEMENTED: ORS 18.345, 18.645, 25.020, 25.080

AMEND: 137-055-4560

RULE TITLE: Consumer Credit Reporting Agencies

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-4560 is amended to implement SB 513 (2017), removing the requirement that child support administrator provide 10 days prior notice to obligor or obligee that their consumer report will be requested. The amendments also implement SB 514 (2017), removing the requirement to send notices to obligees that the obligor's current child support balance will be reported to the consumer reporting agencies.

RULE TEXT:

(1) The Department of Justice may enter into agreements with consumer reporting agencies to disclose information under section (2) of this rule only to an entity that has furnished evidence satisfactory for the Department to determine that the entity is a consumer reporting agency as defined in ORS 25.650. Under these agreements, the Department will provide such agencies with the names of obligors who owe past due support and will indicate the specific amount each obligor owes. Under these agreements, the Department will provide such information:

- (a) Whether or not the agency has requested information on any specific obligor; and
- (b) On a recurring or periodic basis.

(2) Before issuing a periodic report to a consumer reporting agency with information on any obligor, the Department will provide the obligor with advance notice of the intent to report the obligor's support balance to the consumer reporting agencies. The notice will be sent to the obligor's last known addresses. The notice must:

- (a) Indicate the balance to be reported to the consumer reporting agencies;
- (b) Advise that the current balance will be reported to the consumer reporting agencies on a recurring basis without sending further notice to the obligor;
- (c) Advise of the obligor's right to contest the action within 30 calendar days of the date of the notice.
- (d) Explain the process for contesting and advise that objections must be in writing on the form provided with the notice;

(e) Advise that the only reasons for contesting credit reporting are:

- (A) The obligor is not the person who owes the support balance shown on the case record;
- (B) The support balance indicated in the notice is incorrect; or
- (C) The arrears are a result of past support created in an order under ORS 416.422 or ORS 109.155(4) or by an upward modification of an order.

(3) If the obligor does not contest the action within the allowed 30-day period, the Department will release the information to the consumer reporting agencies.

(4) If the obligor contests the balance indicated in the notice the administrator will conduct an administrative review on the case and mail the results of the review to the parties.

(5) Once the administrative review is complete, the Department will release the information to the consumer reporting agencies except as specified in section (12) of this rule.

(6) Parties may contest the administrator's review and determination as provided in ORS 183.484.

(7) If the obligee or child attending school, contests the balance in the notice, the obligee or child attending school, may initiate an arrears establishment request pursuant to OAR 137-055-3240.

(8) If a court or agency of appropriate jurisdiction determines the balance owing is other than previously reported, the Department will update the consumer reporting agencies with the court's or agency's findings within 10 days after receiving a copy of the final order.

(9) If at any time an obligor contacts the administrator in writing to state that the information that has been reported to the consumer reporting agency is incorrect, the administrator must, within 30 days of receiving notification of the dispute:

- (a) Provide notice to the consumer reporting agency and the parties that the information is being disputed;
- (b) Conduct an administrative review of the case; and

(c) Provide the results of the review to the parties and the consumer reporting agency.

(10) Notwithstanding section (9), the administrator will not conduct an administrative review of the reported information more than once in any calendar year, unless an obligor presents new supporting documentation, to the administrator, that information reported to the consumer reporting agency is incorrect.

(11) When consumer reporting agencies ask the Department for information regarding the balance an obligor owes on a support case, the Department may provide available information after complying with the requirements of sections (1) through (8) of this rule. The Department will not charge the requesting agency a fee for this information.

(12) The Department may refer to the consumer reporting agencies, the name and support balance of all obligors who meet the criteria of sections (1) or (11) of this rule unless:

(a) The obligor pays the support balance in full;

(b) The obligor is found to not be the person who owes the child support balance indicated by the case record; or

(c) The administrator determines that the obligor is not delinquent in the payment of support.

(13) When the Department has made a report to a consumer reporting agency under section (1) of this rule, the Department will promptly notify the consumer reporting agency when the case record shows that the obligor no longer owes past due support.

STATUTORY/OTHER AUTHORITY: 42 USC § 666(a)(7), ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.650

AMEND: 137-055-5040

RULE TITLE: Accrual and Due Dates

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-5040 is amended to implement SB 516 (2017) regarding accrual and payment due dates, specifically when an order does not specify a payment due date.

RULE TEXT:

- (1) As used in this rule, "payment due date" means the due date or beginning pay date of an installment of support or, if no such date is listed, the date the judgment states it is effective.
- (2) For any judgment requiring the payment in installments of child support or child and spousal support through the Child Support Program, in accordance with ORS 25.020, this rule delineates the manner in which the administrator will determine billing and accrual cycles.
- (3)(a) When a support award does not specify the payment due date the administrator will consider the payment due date to be the date listed in the administrative order or judgment document;
- (b) When a support award or specifies payments are to be made more frequently than monthly, the administrator will consider the last payment due date listed in the month to be the payment due date.
- (4) When neither the support award nor the judgment contains the payment due date:
 - (a) If the judgment modifies a support order but does not specify the due date of the first modified payment, the administrator will consider the payment due date to be the first day of the first month after the order is signed;
 - (b) If the judgment terminates a support order but does not specify the effective date of the termination, the administrator will consider the date the termination was signed as the effective date of the termination.
 - (c) If the judgment requires payment of support by a person who is not currently ordered to pay support but does not state when payment is due, the administrator will adjust the case record to show the first payment due date to be the first day of the month following the date the judgment was signed.
- (5) If the judgment modifies a support order:
 - (a) The support obligation will not be pro-rated for the month in which the payment due date falls, unless the judgment provides otherwise;
 - (b) If the modification payment due date is on or before the payment due date of the existing support order, the installment due for that month will be changed to the new amount;
 - (c) If the modification payment due date is after the payment due date of the existing order:
 - (A) If the judgment is signed prior to the payment due date of the existing support order, the installment due for that month will be changed to the new amount;
 - (B) If the judgment is signed after the payment due date of the existing support order, the installment due will be changed to the new amount effective the following month.
- (6) When suspending or terminating a support obligation for a child attending school:
 - (a) If the support obligation terminates or is suspended on or before the payment due date for the month, no installment will be due for that month.
 - (b) If the support obligation terminates or is suspended after the payment due date for the month, the entire monthly installment will be due for that month.
- (7) The Administrator will not apply any satisfaction to support that is not yet due as of the date the satisfaction is signed.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: 25.020, 25.080, ORS 18.225, SB 516 (2017)

AMEND: 137-055-5080

RULE TITLE: Adding Interest

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-5080 is amended to implement Program policy regarding the establishment of interest. The Program will continue to enforce interest established judicially or by another jurisdiction, but will no longer establish interest for a party.

RULE TEXT:

(1) The administrator will add interest to a case balance if it has been established in a judgment or order entered by a court.

(2) For a case with a controlling support order from another jurisdiction:

(a) The law of the jurisdiction that issued the controlling order governs the computation and accrual of interest under the support order.

(b) The administrator will update the account record as directed by the jurisdiction with the controlling order and will send an informational notice to the parties.

(3) Any action to establish interest initiated and served on the parties prior to 1/1/18 may be processed in accordance with the rules in effect on 12/31/17.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.167, 82.010, 416.429 , 110.611

AMEND: 137-055-5120

RULE TITLE: Child Attending School — Arrears

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-5120 is amended to implement SB 517 (2017), limiting the credit for payments made directly to a child attending school or adult child instead of to the Department of Justice, to the current balance owed to child's account at the time the credit is applied to the case. This rule is also amended to implement Program policy regarding arrears that accrue to a child attending school's account. Upon turning age 21, any arrears that accrued to the child attending school's account will continue to be owed to the child, and will no longer be re-assigned to the obligee.

RULE TEXT:

- (1) For purposes of this rule "arrears" means past due support which has accrued but does not include support for the current month even if the due date for that month has passed.
- (2) Unless otherwise provided by a support judgment, a child attending school is not a judgment creditor to the support order and the provisions of this rule apply.
- (3) Notwithstanding section (2), beginning 1/1/18, support for a child attending school that is not paid when due will accrue to a child attending school account and any arrears payment received will be distributed to that child, as outlined in OAR 137-055-6021.
- (4)(a) When an obligee requests establishment of arrears for any time period during which a child was a child attending school and services were being provided under ORS 25.080, the arrears will be established to the child's account.
(b)(A) If the child attending school is the only or last remaining child on the case, the administrator will not establish arrears for any time period when services were not being provided and support is only being paid for the child attending school. Arrears may only accrue to the child attending school account from the date the administrator begins providing child support services.
(B) Notwithstanding subsection (b)(A), the administrator may establish arrears for any time period when services were not being provided if the judicial order found that the child qualified as a child attending school during the time period for which arrears are being established.
- (5) A child attending school may not satisfy arrears but may agree to a credit for direct payment, pursuant to OAR 137-055-5240, against arrears which have accrued to the child attending school account only, not to exceed the balance owing to the child's account at the time the credit is applied to the case.

STATUTORY/OTHER AUTHORITY: ORS 25.020, 180.345

STATUTES/OTHER IMPLEMENTED: ORS 107.108, SB 517 (2017)

AMEND: 137-055-5240

RULE TITLE: Credit for Support Payments not made to the Department of Justice

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-5240 is amended to implement SB 517 (2017), limiting the credit for payments made directly to the obligee instead of the Department of Justice, to the current balance owed to obligee's account at the time the credit is applied to the case.

RULE TEXT:

- (1) In accordance with ORS 25.020, in any support case where the obligor is required to pay support through the Department of Justice, the administrator will not credit the obligor's support account for any payment not made through the Department of Justice, except as provided in ORS 25.020 and this rule.
- (2) The other provisions of this rule notwithstanding, in any case where an order of another jurisdiction is registered in Oregon under ORS Chapter 110 for enforcement only, and either the issuing jurisdiction or the jurisdiction in which the obligee resides has an active child support accounting case open, the administrator does not have authority to give credit for payments not paid through the Department of Justice. In any such case, the obligor seeking credit must request credit from the jurisdiction with the active child support accounting case. The administrator will adjust its records to reflect credit for such payments only upon receiving notification from the other jurisdiction, in a record, by telephone, or by court order, that specified payments will be credited.
- (3) Except as provided in OAR 137-055-3240, the administrator will credit the obligor's support account for payments not made to the Department of Justice when:
 - (a) Credit for the payments would not apply to support assigned to the State of Oregon or to another jurisdiction, and
 - (A) The obligor and obligee agree in writing that specific payments were made and should be credited to support owed to the obligee; or
 - (B) The obligor and the current or former child attending school to whom arrears are owed, as defined in ORS 107.108 and OAR 137-055-5110, agree in writing that specific payments were made and should be credited to support owed to the child.
 - (b) The administrator is enforcing the case at the request of another jurisdiction, credit would not apply to support assigned to the State of Oregon, and the requesting jurisdiction verifies that payments not paid to the Department of Justice were received by the other jurisdiction or by the obligee directly. Such verification may be in a record, by telephone, or by court order; or
 - (c) An order of an administrative law judge, or an order from a court of appropriate jurisdiction, so specifies.
- (4)(a) The administrator will deny the amount of the credit agreed to by the parties or found in an order to the extent the credit exceeds the balance owed to the party who received the direct payments at the time the administrator processes the credit.
 - (b) If additional arrears become owed to the party that received the direct payments, and the administrator had denied credit under subsection (4)(a) of this rule, the obligor may, no more often than once per year, make a request to have any unapplied credit that was agreed by the parties or found in an order applied to the subsequently accrued arrears.
- (5) To receive credit for payments not made to the Department of Justice, the obligor may apply directly to the administrator for credit, by providing a signed statement from the recipient or verification from another state that direct payments were made and intended as support.
- (6) Except as provided in section (2) of this rule if the obligee, the current or former child attending school to whom arrears are owed, or other jurisdiction does not agree that payments were made or does not make a sworn written statement the obligor may make a written request to the administrator for a hearing.
 - (a) Prior notice of the hearing and of the right to object will be served upon the obligee in accordance with ORS 25.085 and upon any current or former child attending school to whom arrears are owed.
 - (b) Prior notice of the hearing and of the right to object may be served upon the obligor by regular mail to the address provided by the obligor when applying for credit.

(c) A hearing conducted under this rule is a contested case hearing in accordance with ORS 183.413 through ORS 183.470. Any party may also seek a hearing de novo in the Oregon circuit court.

(d) The other provisions of this section notwithstanding, an administrative law judge does not have jurisdiction under this section in cases where the administrator is enforcing another jurisdiction's order.

STATUTORY/OTHER AUTHORITY: ORS 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.020, 25.085, SB 517 (2017)

AMEND: 137-055-6021

RULE TITLE: Distribution and Disbursement: General Provisions

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-6021 is amended to implement SB 765 (2017), removing the provision that the Department of Justice may disburse support payments to a private collection agency.

RULE TEXT:

The terms used in this rule have the meanings set out in OAR 137-055-1020 and 137-055-6010.

(1) The Department of Justice (DOJ) will disburse support payments within two business days after receipt if sufficient information identifying the payee is provided, except:

(a) Support payments received as a result of tax refund intercepts will be distributed and, as appropriate, disbursed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund;

(b) Support payments received from a garnishment will be disbursed as provided in OAR 137-055-4520;

(c) Support payments for future support will be distributed and, as appropriate, disbursed as provided in section (13) of this rule;

(d) Support payments for less than five dollars:

(A) May be delayed until a future payment is received which increases the payment amount due the family to at least five dollars; or

(B) Will be retained by DOJ if case circumstances are such that there is no possibility of a future payment, unless the obligee:

(i) Has direct deposit;

(ii) Receives ReliaCard payments; or

(iii) Requests issuance of a check, if the obligee does not have direct deposit or has an exemption from receiving ReliaCard payments.

(e) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(2) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(3)(a) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren) if physical custody has changed from the obligee to the other person or entity; however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such disbursement.

(c) DOJ will redirect payments for the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 only in accordance with OAR 137-055-5110.

(4) Child support and spousal support have equal priority in the distribution of payments.

(5) Current child support and cash medical support will be distributed and disbursed on a prorated basis. To calculate the prorated distribution for each case, the administrator will determine the amount designated as child support and the amount designated as cash medical support, and divide each by the total support obligation. For example: the total support obligation is \$400, of which \$300 is child support and \$100 is cash medical support; a payment of \$300 is received. In this example, the child support is 75 percent of the total support obligation so \$225 would be distributed and disbursed to child support; cash medical support is 25 percent of the total support obligation so \$75 would be distributed and disbursed to cash medical support.

(6)(a) For Oregon support orders or modifications, a prorated share (unless otherwise ordered) of current support payments received within the month due will be disbursed directly to the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110.

- (b) Any payment received on arrears will be disbursed in equal shares to the obligee and to the child if the arrears accrued while the child was a child attending school.
- (7) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance statuses and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed and, as appropriate, disbursed as provided in OAR 137-055-6022.
- (8) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute and, as appropriate, disburse the balance as provided in OAR 137-055-6022.
- (9) Unless a federal tax refund intercept collection is disbursed to assigned support, DOJ will retain the fee charged by the Secretary. Despite the fee, DOJ will credit the obligor's case for the full amount of the collection. If the collection is disbursed to assigned support, DOJ will pay the fee.
- (10) Unless a state tax refund intercept collection is disbursed to assigned support, DOJ will retain the fee charged by the Department of Revenue. Despite the fee, DOJ will credit the obligor's case for the full amount of the collection. If the collection is disbursed to assigned support, DOJ will pay the fee.
- (11) Within each arrears type in the sequence of payment distribution and disbursement in OAR 137-055-6022, 137-055-6023 or 137-055-6024, DOJ will apply the support payment to the oldest debt in each arrears type.
- (12) Any excess funds remaining after arrears are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (13) of this rule.
- (13) DOJ will distribute and, as appropriate, disburse support payments representing future support on a monthly basis when each such payment actually becomes due. No amounts may be applied to future months unless current support and all arrears have been paid in full.

STATUTORY/OTHER AUTHORITY: ORS 25.020, 25.610, 180.345

STATUTES/OTHER IMPLEMENTED: ORS 18.645, 25.020, 25.610, SB 765 (2017)

REPEAL: 137-055-6025

REPEAL: Temporary 137-055-6025 from DOJ 5-2017(TEMP)

RULE TITLE: Distribution of Support Payments to Private Collection Agencies

NOTICE FILED DATE: 11/08/2017

RULE SUMMARY: 137-055-6025 is repealed to implement SB 765 (2017). SB 765 removed authorization for the Department of Justice to disburse child support payments to a private collection agency.

RULE TEXT:

(1) For purposes of this rule, the following definitions apply:

(a) "Collection agency" means a collection agency as defined by ORS 697.005;

(b) "Enforcement action" means any action taken by a collection agency to ensure payment of support by an obligor, including but not limited to contact for the purposes of discussing payments by the collection agency in person or through mail, e-mail or telephone with the obligor, members of the obligor's household or the obligor's employer. "Enforcement action" does not mean investigative and locate services provided by a collection agency.

(c) "Legally entitled to" means support payments which the Division of Child Support (DCS) is required to disburse to the obligee pursuant to OAR 137-055-6010, but does not include support payments that DCS is required to disburse to the child attending school pursuant to ORS 107.108 and OAR 137-055-5110.

(2) When the Oregon Child Support Program (CSP) is notified by a collection agency or an obligee that the obligee has entered into an agreement with a collection agency, the administrator will send to the obligee an authorization form developed pursuant to section (7) of this rule.

(3) Before DCS may adjust the payment records and begin forwarding support payments to the collection agency pursuant to section (4) of this rule, the obligee must submit a signed and notarized authorization form to the CSP with the following information:

(a) The child support case number;

(b) The obligee's and obligor's full names;

(c) The names of the children on the child support case for whom the obligee is entitled to receive support; and

(d) The name and address of the collection agency to which payments should be sent.

(4) Upon receipt of a completed authorization form DCS will:

(a) Adjust the child support case record for disbursement of support payments to the collection agency. If support payments are currently being disbursed to a different collection agency, DCS will adjust the child support case record for disbursement of support payments to the collection agency for which the obligee has most recently provided authorization;

(b) Send the notice developed pursuant to subsection (7)(b) of this rule to the other parties;

(c) Credit the obligor's account for the full amount of each support payment received by DCS; and

(d) Disburse support payments received, to which the obligee is legally entitled, to the collection agency.

(5)(a) DCS may stop disbursing support payments to a collection agency and reinstate disbursements to the obligee if:

(A) The obligee notifies the CSP that the agreement with the collection agency has been terminated;

(B) The obligee requests that the CSP stop disbursing support payments to the collection agency;

(C) The administrator is made aware that the collection agency is not in compliance with the provisions of section (8) of this rule; or

(D) The Department of Consumer and Business Services (DCBS) notifies the Department of Justice that the collection agency is in violation of its rules.

(b) DCS will stop disbursing child support payments to the collection agency only after the child support case record has been adjusted following the date that notification from the obligee was received or the date the administrator is otherwise made aware that the collection agency is not in compliance with section (8) of this rule or rules adopted by DCBS. DCS will, at no time, be responsible for returning support payments to the obligee that were disbursed to the collection agency prior to the child support case record having been adjusted following the date that notification from

the obligee was received.

(6) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(7) The CSP will develop:

(a) An authorization form to be sent to an obligee when the obligee or the collection agency notifies CSP that the obligee has entered into an agreement with a collection agency. The form will include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the CSP without paying the interest or fee that is typically charged by a collection agency; and

(b) A form to be sent to the other parties to the case when DCS has been given authorization by the obligee to disburse support payments to a collection agency.

(8) A collection agency to which the obligee has provided authorization for DCS to disburse support payments:

(a) May only provide investigative and locate services to the obligee unless written authorization is received from the administrator as provided in section (9) of this rule;

(b) May disclose relevant information from services provided under subsection (a) of this section to the administrator for purposes of providing support enforcement services under ORS 25.080;

(c) May not charge interest or a fee for services exceeding 29 percent of each support payment received by the collection agency to which the obligee is legally entitled unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(d) Will include in the agreement with the obligee a notice that provides information on the fees, penalties, termination and duration of the agreement; and

(e) Will report in writing to DCS the full amount of any payment collected as a result of an enforcement action taken within ten days of disbursing the payment to the obligee.

(9) Upon request, the administrator may provide written authorization to the collection agency to initiate enforcement action to collect the support award. The authorization may:

(a) Authorize a specific enforcement action only; or

(b) Authorize any enforcement action until further notice from the administrator.

(10) A power of attorney given to a collection agency by an obligee does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020 or this rule.

(11) The administrator will not disclose any information from a child support record to a collection agency except as permitted in OAR 137-055-1140.

STATUTORY/OTHER AUTHORITY: ORS 25.020; 180.345

STATUTES/OTHER IMPLEMENTED: ORS 25.020