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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2001-02**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Children and Families (AC-CF)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
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**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

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(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
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- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

TO: Members of the Children and Families Committee  
FROM: Representative Steve Kestell, Chair  
DATE: May 29, 2002  
RE: **Clearinghouse Rule 02-039**

On May 28, 2002 the following clearinghouse rule was referred to the Assembly Children and Families Committee:

**Clearinghouse Rule 02-039**, an order to repeal and recreate chapter DWD 15, relating to child support cooperation for Wisconsin Works.

The proposed rules specify the child support cooperation requirements and the good cause exemptions for custodial and non-custodial parents under the W-2 program, pursuant to s. 49.145 (2)(f), Stats. The rule has no significant fiscal effect.

The deadline for committee action on this rule is **June 27, 2002**. If you are interested in obtaining a hard copy of the rule or requesting a hearing, please do so prior to the deadline date. You may also access a copy of this rule in Folio under the Clearinghouse Rule section.

Steve Kestell  
Chair

SK:drm



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Clearinghouse Director*

**Richard Sweet**  
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**Terry C. Anderson**  
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*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 02-039

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. In s. DWD 15.03 (2) (a) (intro.), it appears that the phrase “all of” should be inserted after the word “including.” The entire rule should be reviewed for the appropriate insertion of phrases such as “all of” or “any of” in introductory material. The use of these phrases will make clear to the reader whether all of the conditions, or any of the conditions, following the introductory material need be met.

b. In s. DWD 15.03 (8), the word “must” should be replaced by the word “shall.”

c. Section DWD 15.08 (3) should be numbered as sub. (2) and the subsequent subsections should be renumbered.

d. In s. DWD 15.08 (5), the introductory paragraph should be numbered par. (a) as it does not contain text introducing the subsequent paragraphs and the remaining paragraphs should be renumbered accordingly.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. In the notes to s. DWD 15.02 (2), (5), (8), (9), (10), (11) and (12), the sentence should begin with “Section” instead of “Sec.”

b. In s. DWD 15.03 (3) (c), the notation "ss." should be replaced by the notation "s." since the disjunctive word "or" is used in the citation.

c. The rule refers to a good cause claim form. The department should ensure that the requirements of s. 227.14 (3), Stats., are met.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the notes to s. DWD 15.02 (2), (5), (8) and (9), in order to accurately quote the statutes cited, the word being defined should be capitalized or the initial quotation mark should be placed later in the sentence.

b. In s. DWD 15.02 (4), "the individual or child would be subject" should be replaced with "subjecting an individual or child."

c. In s. DWD 15.02 (7), "it" should be replaced with "is."

d. In s. DWD 15.03 (1) (b) 2., "Obtaining" is somewhat confusing. It may be clearer to state that the person must cooperate in fulfilling any support obligation he or she may have.

e. In s. DWD 15.03 (2) (a) 5., would it be more accurate if "after" were replaced with "if"?

f. In s. DWD 15.03 (2), why are there differences in the lists of acts of cooperation for a custodial parent and a noncustodial parent? For example, why must a custodial parent sign an affidavit when the noncustodial parent need not? Also, why must a custodial parent attend interviews and respond to written requests for information when the noncustodial parent need not? [See also s. DWD 15.03 (4).]

g. In s. DWD 15.04 (3), will it be clear to the reader what is meant by "Upon initial contact"?

h. Section DWD 15.05 (intro.) provides that a parent may request a good cause exemption when the W-2 agency determines it is in the best interest of the child and parent. However, s. DWD 15.06 (1) states that the W-2 agency must provide a good cause claim form to anyone upon request. It appears that s. DWD 15.05 should simply permit a parent to request a good cause exemption.

i. Section DWD 15.05 (1) uses the phrase "illegal child kidnapping or domestic abuse." The use of the word "illegal" implies that there may be permissible forms of child kidnapping or domestic abuse. The word "illegal" probably should be deleted.

j. In s. DWD 15.05 (5), the phrase "discussions have not gone on for more than 3 months" seems vague. Perhaps it would be clearer to state that the parent sought the assistance of the social services agency not more than three months ago.

k. In s. DWD 15.06 (3), the applicant must submit corroborative evidence within 20 days after the claim was made. In s. DWD 15.08 (4), the W-2 agency is required to make a good cause determination within 45 days after the claim was signed. It would be helpful to use a consistent verb regarding when to begin counting for these time limits.

l. Section DWD 15.06 (4) (f) refers to a statement sworn or affirmed to be true under penalty of false swearing under s. 946.32, Stats., and signed in the presence of a W-2 agency worker. The department should ensure that a W-2 agency worker who is not also a notary public has the authority to administer an oath that will be recognized as a prerequisite for a criminal prosecution under s. 946.32, Stats. Also, in sub. (4) (g), the rule should be clear as to what conduct the other parent has allegedly perpetrated.

m. In s. DWD 15.07, "benefits" should be inserted after "Wisconsin Works."

n. In s. DWD 15.085 (1) (a), "in addition" should be replaced with "and." Also, the section should specify what the applicant's or participant's statement should include since the statement is not described. Note that the word "applicant" should be replaced by the word "applicant's."

o. In s. DWD 15.08 (1) (b), "does" in the first sentence should be replaced with "do." Also, "basis for" should perhaps be replaced with "information to make."

p. In s. DWD 15.08 (5) (b), "shall" should be replaced with "may."

q. In s. DWD 15.08 (6), in the introductory paragraph, "the W-2 agency shall do all of the following" should be inserted at the end of the sentence and "The W-2 agency shall" should be deleted from the beginning of each paragraph's text.

r. In s. DWD 15.10 (4), "the hearing" should be replaced with a phrase such as "a hearing decision for food stamp eligibility."

Scott McCallum  
Governor

Jennifer Reinert  
Secretary



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**State of Wisconsin  
Department of Workforce Development**

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May 22, 2002

President of the Senate  
220 South, State Capitol  
Madison, Wisconsin 53702

Speaker of the Assembly  
211 West, State Capitol  
Madison, Wisconsin 53702

**Notice of Administrative Rules in Final Draft Form**

Clearinghouse rule number: 02-039

Rule number: DWD 15

Relating to: Child support cooperation for W-2

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennifer Reinert'. The signature is written in a cursive, flowing style.

Jennifer Reinert  
Secretary

Scott McCallum  
Governor

Jennifer Reinert  
Secretary



State of Wisconsin

Department of Workforce Development

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**Rule Analysis for Legislative Review**

**Proposed rules relating to child support cooperation for Wisconsin Works  
Chapter DWD 15  
CR 02-039**

**Need for rules**

The proposed rules specify the child support cooperation requirements and good cause exemptions for custodial and noncustodial parents under the W-2 program, pursuant to s. 49.145(2)(f), Stats.

**Public hearing response**

A public hearing was held in Madison on May 1, 2002. A summary of the comments and the department's response is attached.

**Response to Legislative Council staff recommendations**

The department's response is attached.

**Final regulatory flexibility analysis**

Privately-run W-2 agencies will be affected by the rule change, but the rule will not have a significant economic impact because there is no material change from current procedures.

**Fiscal effect**

The proposed rule has no significant fiscal effect.

**Department contacts**

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266-0988

**State of Wisconsin**  
**Department of Workforce Development**  
**Chapter DWD 15**  
**CHILD SUPPORT COOPERATION FOR W-2**

The Wisconsin Department of Workforce Development proposes an order to repeal and recreate chapter DWD 15, relating to child support cooperation for Wisconsin works.

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**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 49.145(2)(f), and 227.11, Stats.

**Statute interpreted:** Section 49.145(2)(f), Stats.

**Relevant federal law:** 42 USC 654(29); 45 CFR 264.30 and 264.31

Section 49.145(2)(f), Stats., requires that every parent in a Wisconsin Works (W-2) group fully cooperates in good faith with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible, regardless of whether the parent is the custodial or noncustodial parent of the minor child. Cooperation may not be required if the parent has good cause for failing to cooperate, as determined by the Department in accordance with federal law.

The current chapter DWD 15 contains obsolete information on the cooperation requirements and good cause exemptions for custodial parents under the Aid to Families with Dependent Children program. The proposed chapter DWD 15 specifies the cooperation requirements and good cause exemptions for custodial and noncustodial parents under the W-2 program.

The proposed rule provides that a custodial parent who is a member of a W-2 group must cooperate with efforts directed at identifying and locating an absent parent of a minor child of the custodial parent, establishing the paternity of any child of that parent, and obtaining any support payments or any other payments or property to which that parent may have rights. A custodial parent must cooperate in any action that is relevant to those purposes including the following:

- Providing verbal information, written information, or other evidence that the custodial parent knows, possesses, or might reasonably obtain or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.
- Attending interviews and responding to written requests for information by the child support agency.
- Appearing as a witness at hearings or other legal proceedings.
- Attending genetic tests pursuant to judicial or administrative order.

- Paying to the Department or its designee any court-ordered child support payments received directly from the absent parent after an assignment under s. 49.145(2)(s), Stats., has been made.

The proposed rule provides that a noncustodial parent who is a member of a W-2 group must cooperate in good faith with efforts directed at establishing the paternity of an alleged child of that parent and obtaining any support payments or any other payments or property for which that parent may be responsible. A noncustodial parent must cooperate in any action that is relevant to those purposes including the following:

- Providing verbal information, written information, or other evidence that the noncustodial parent knows, possesses, or might reasonably obtain.
- Appearing at hearings or other legal proceedings.
- Attending genetic tests pursuant to judicial order.
- Paying court-ordered child support to the Department or its designee.

Acts of cooperation for custodial and noncustodial parents do not include involuntary participation in a polygraph, a requirement to sign a voluntary statement of paternity, relinquishment of the right to request a genetic test, or a requirement to sign a stipulation for a child support, physical placement, or custody order.

The child support agency determines if an individual is not cooperating with child support services. The child support agency may determine that a custodial parent is not cooperating if, without adequate reason, the custodial parent misses two consecutive agency appointments; misses one agency appointment and fails to respond to a written communication from the agency within a 90-day period; or fails to appear for a hearing, other legal proceeding, or a genetic test. Adequate reason includes personal or family illness or injury; family crisis; breakdown in transportation arrangements; inclement weather that causes a general breakdown in travel; failure to receive a hearing notice, appointment notice, or written request for information due to a demonstrable mail problem, address change, or extended time away from home; or other reasonable circumstances as determined by the child support agency or the department.

The child support agency may determine that a noncustodial parent is not cooperating if the noncustodial parent is the subject of a warrant relating to paternity or support, including a criminal warrant for failure to support pursuant to s. 948.22, Stats., a civil warrant for contempt of court pursuant to ch. 785, Stats., or an arrest warrant pursuant to s. 818.02(5) or (6), Stats., excluding a warrant issued for failure to effect service of process.

An individual who wants to restore cooperative status after being determined noncooperative must demonstrate cooperation by performing the act of cooperation in s. DWD 15.03(2) that the individual failed to perform and that became the basis of the noncooperation finding. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate. When a rescheduled court hearing cannot occur within 30 days, the child support agency shall either lift the noncooperation determination upon contact from the individual or make it possible for the individual to perform some other required activity within 30 days of the contact.

The W-2 agency shall provide a written notice describing the cooperation requirements and the right to good cause as an exception to the cooperation requirements to all applicants and participants of Wisconsin works. The notice shall be provided to applicants when they apply for W-2 and to participants when a child is added to the W-2 group, when a parent leaves the W-2 group, at reapplication for continued benefits, and if a participant discloses to his or her W-2 financial and employment planner that the participant is experiencing circumstances that may meet the good cause criteria.

A custodial or noncustodial parent is eligible for an exemption from the cooperation requirements in s. DWD 15.03 when the W-2 agency determines that any of the following criteria applies:

- Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of child kidnapping or domestic abuse.
- Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.
- Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.
- The child was conceived as a result of incest or sexual assault.
- The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services not more than 3 months ago.
- A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

A W-2 agency shall provide a written good cause claim form to any W-2 applicant or participant on request. The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim. An applicant or participant may file a good cause claim with the W-2 agency at any time. The applicant or participant shall specify the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or participant requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. Upon receipt of the good cause claim, the W-2 agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists. The applicant or participant may submit corroborative evidence to the W-2 agency within 20 days from the day the claim was signed. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the W-2 agency may permit the applicant or participant to submit evidence to the W-2 agency within 60 days from the date the claim was signed.

If an individual is cooperating with the W-2 agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, Wisconsin Works benefits shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

The W-2 agency shall require an applicant or participant who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or participant's statement specifying the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating. The W-2 agency shall investigate any good cause claim based on anticipated harm, including when the claim is credible without corroborative evidence and when corroborative evidence is not available. The W-2 agency may investigate any good cause claim when the applicant or participant's statement and corroborative evidence does not provide information to make a determination. The W-2 agency may contact the child support agency in the course of the investigation, but may not contact the individual alleged to have committed acts that are the basis of good cause claim based on domestic abuse, physical or emotional harm, or incest or sexual assault.

The child support agency shall be given the opportunity to review and comment on the findings of the W-2 agency prior to the final determination on good cause in all good cause claims. The W-2 agency shall determine if good cause exists within 45 days from the date the claim was signed, unless an extension to submit evidence was granted to the applicant or participant or more time is necessary for the W-2 agency to obtain evidence. If the W-2 agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency must determine if good cause exists within 85 days from the date the claim was signed.

If the W-2 agency determines that the applicant or participant does not have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W-2 agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or participant. The W-2 agency shall promptly notify the applicant or participant of the determination and the right to a review of the agency decision. The child support agency shall not proceed with child support services for 10 days from the date of the notice to the applicant or participant to allow the individual the opportunity to withdraw the application, request the case be closed, or request a review of the agency decision.

If the W-2 agency determines that the applicant or participant does have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W-2 agency shall direct the child support agency to suspend all further case activities if the applicant or participant did not request the child support agency to proceed without his or her cooperation. The W-2 agency shall notify the child support agency that it may proceed with child support services without the cooperation of the applicant or participant if the applicant or participant did request that the child support agency proceed without his or her cooperation. If good cause was granted for criteria in s. DWD 15.05(1) to (4), the child support agency shall send a notice to the individual alleged to have committed the acts that are the basis of the good cause claim that states that the agency is proceeding without the cooperation of the applicant or participant. The W-2 agency shall promptly notify the applicant or participant of the determination and the basis for the determination in writing.

A Wisconsin Works group that includes an applicant or participant who fails to cooperate with the child support agency without good cause is ineligible to receive Wisconsin Works

benefits until cooperation with the child support agency occurs. An individual who is a member of a W-2 group that fails 3 times to meet the cooperation requirements without good cause remains ineligible until all of the members of the W-2 group cooperate or for a period of 6 months, whichever is later. A custodial parent with a child under 60 days old is exempt from sanction for refusing to cooperate with requirements for that child.

A Wisconsin Works applicant or participant who is denied a good cause exemption from the requirement of cooperation with the child support agency or who disputes any decision by the W-2 agency may petition the W-2 agency for a review of the agency decision. A Wisconsin works applicant or participant who is found noncooperative may seek a review of the agency decision from the child support agency. The procedures of s. DWD 12.22 apply to the review, except that the applicant or participant may submit a request for review to the child support agency, the child support agency will conduct the fact-finding procedure, and the applicant or participant or a representative may appear for the fact-finding via telephone conference if the child support agency is in a different county than the applicant or participant's current residence. The child support agency shall be given reasonable notice and may participate in any fact-finding or hearing resulting from a good cause investigation or good cause determination.

The W-2 agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility or upon new evidence. Good cause determinations based on permanent circumstances need not be reviewed. If the W-2 agency determines that good cause for noncooperation no longer exists, the parent shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed or request an agency review.

**SECTION 1. Chapter DWD 15 is repealed and recreated to read:**

**Chapter DWD 15**

**CHILD SUPPORT COOPERATION FOR W-2**

**DWD 15.01 Authority and purpose.** This chapter is adopted pursuant to s. 49.145(2)(f), Stats., for the purpose of administering the requirement that each parent in a Wisconsin works group cooperate with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible, unless the parent has good cause for failing to cooperate.

**DWD 15.02 Definitions.** In this chapter:

(1) "Child support agency" means a county or tribal office, officer, board, department, or agency designated by the county board or elected tribal council to administer the child support, spousal support, and establishment of paternity program on behalf of the department pursuant to s. 59.53(5), Stats., or a cooperative agreement with the department.

(2) "Custodial parent" has the meaning given in s. 49.141 (1)(b), Stats.

**Note:** Section 49.141 (1)(b), Stats., provides that "'Custodial parent' means, with respect to a dependent child, a parent who resides with that child and, if there has been a determination of legal custody with respect to the dependent child, has legal custody of that child. For the purposes of this paragraph, 'legal custody' has the meaning given in s. 767.001 (2)(a)."

(3) "Department" means the department of workforce development.

(4) "Domestic abuse" means subjecting an individual or child to any of the following:

(a) Physical acts that result in pain, illness, or injury.

(b) Sexual abuse or sexual assault, including a caretaker relative of a dependent child, (such as a guardian, custodian, or parent) being forced to engage in nonconsensual sexual acts or any sexual activity involving a dependent child.

(c) Threats of, or attempts at, physical or sexual abuse.

(d) Emotional or mental abuse.

(e) Verbal abuse.

(f) Deprivation or destruction of physical or economic resources.

(g) Neglect or deprivation of medical care.

(h) Forced isolation.

(i) Stalking or harassment.

(5) "Genetic test" has the meaning given in s. 767.001(1m), Stats.

**Note:** Section 767.001 (1m), Stats. provides that "'Genetic test' means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability of an alleged father's paternity."

(6) "Good cause" means the criteria set forth in s. DWD 15.05, which permit a parent in a W-2 group to fail to cooperate, without sanction, with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which that parent may be responsible.

(7) "Mental health professional" means an individual with experience and training in the field of mental health, and includes, but is not limited to, a psychiatrist, a psychologist, and a social worker certified or licensed to provide psychotherapy.

(8) "Noncustodial parent" has the meaning given in s. 49.141 (1) (h), Stats.

**Note:** Section 49.141 (1) (h), Stats., provides that "'Noncustodial parent' means, with respect to a dependent child, a parent who is not the custodial parent."

(9) "Parent" has the meaning given in s. 49.141 (1)(j), Stats.

**Note:** Section 49.141 (1)(j), Stats., provides that "'Parent' means any of the following:

1. A biological parent.
2. A person who has consented to the artificial insemination of his wife under s. 891.40.
3. A parent by adoption.
4. A man adjudged in a judicial proceeding to be the biological father of a child if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60.
5. A man who has signed and filed with the state registrar under s. 69.15 (3)(b)3. a statement acknowledging paternity."

(10) "Wisconsin works" or "W-2" has the meaning given in s. 49.141 (1) (p), Stats.

**Note:** Section 49.141 (1) (p), Stats. provides that "'Wisconsin works' means the assistance program for families with dependent children, administered under ss. 49.141 to 49.161."

(11) "Wisconsin works agency" or "W-2 agency" has the meaning given in s. DWD 12.03 (38).

**Note:** Section DWD 12.03 (38) provides that "'Wisconsin works agency' or 'W-2 agency' means a person, county agency, tribal governing body, or a private agency contracted under s. 49.143, Stats., by the department to administer the Wisconsin works program under ss. 49.141 to

49.161, Stats., and this chapter. If no contract is awarded under s. 49.143, Stats., 'Wisconsin works agency' means the department."

(12) "Wisconsin works group" or "W-2 group" has the meaning given in s. 49.141 (1) (s), Stats.

**Note:** Section 49.141 (1) (s) provides that "'Wisconsin works group' means an individual who is a custodial parent, all dependent children with respect to whom the individual is a custodial parent and all dependent children with respect to whom the individual's dependent child is a custodial parent. 'Wisconsin works group' includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent. 'Wisconsin works group' does not include any person who is receiving benefits under s. 49.027 (3) (b)."

**DWD 15.03 Cooperation as a condition of eligibility. (1) COOPERATION**

**REQUIREMENTS.** (a) *Custodial parent.* Unless the W-2 agency determines that a good cause exemption applies, each custodial parent who is a member of a Wisconsin works group shall cooperate in good faith with efforts directed at all of the following for any minor child of that parent:

1. Identifying and locating an absent parent.
2. Establishing the paternity of any child of the custodial parent.
3. Obtaining any support payments or any other payments or property to which that parent and any minor child of that parent may have rights.

(b) *Noncustodial parent.* Unless the W-2 agency determines that a good cause exemption applies, each noncustodial parent who is a member of a Wisconsin works group shall cooperate in good faith with efforts directed at all of the following for any minor child of that parent:

1. Establishing the paternity of an alleged child of that parent.
2. Obtaining any support payments or any other payments or property for which that parent may be responsible.

**(2) ACTS OF COOPERATION.** (a) *Custodial parent.* Acts of cooperation for a custodial parent include any action that is relevant to achieve the purposes in par. (1)(a) including all of the following:

1. Providing verbal information, written information, or other evidence that the custodial parent knows, possesses, or might reasonably obtain or signing an affidavit declaring a lack of information, subject to penalty of false swearing pursuant to s. 946.32, Stats.

2. Attending interviews and responding to written requests for information by the child support agency.

3. Appearing as a witness at hearings or other legal proceedings.

4. Submitting to genetic tests pursuant to judicial or administrative order.

5. Paying to the department or its designee any court-ordered child support payments received directly from the absent parent after an assignment under s. 49.145(2)(s), Stats., has been made.

(b) *Noncustodial parent.* Acts of cooperation for a noncustodial parent include any action that is relevant to achieve the purposes in par. (1)(b) including the following:

1. Providing verbal information, written information, or other evidence that the noncustodial parent knows, possesses, or might reasonably obtain.

2. Appearing at hearings or other legal proceedings.

3. Submitting to genetic tests pursuant to judicial order.

4. Paying court-ordered child support to the department or its designee.

(3) **EXCLUSIONS.** Acts of cooperation for custodial and noncustodial parents do not include the following:

(a) Involuntary participation in a polygraph examination. The results of a voluntary polygraph examination may be used only to impeach or substantiate other evidence and may not serve as conclusive evidence.

(b) A requirement to sign a voluntary statement of paternity under s. 69.15, Stats.

(c) Relinquishment of the right to request a genetic test under s. 49.225, 767.458, 767.48, or 767.62, Stats.

(d) A requirement to sign a stipulation for a child support, physical placement, or custody order.

(4) **NONCOOPERATION.** The child support agency shall determine whether a parent is not cooperating with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which the parent may be responsible as follows:

(a) *Custodial parent.* The child support agency may determine that a custodial parent is not cooperating if the custodial parent does any of the following without adequate reason:

1. Misses two consecutive agency appointments.

2. Misses one agency appointment and fails to respond to a written communication from the agency within a 90-day period.

3. Fails to appear for a hearing, other legal proceeding, or genetic test.

(b) *Noncustodial parent.* The child support agency may determine that a noncustodial parent is not cooperating if the noncustodial parent is the subject of a warrant relating to paternity or support, including a criminal warrant for failure to support pursuant to s. 948.22, Stats., a civil warrant for contempt of court pursuant to ch. 785, Stats., or an arrest warrant pursuant to s. 818.02(5) or (6), Stats., excluding a warrant issued for failure to effect service of process.

(5) ADEQUATE REASON. (a) Adequate reason for a custodial parent's failure to respond to a written communication or failure to attend an appointment, genetic test, or hearing or other legal proceeding includes any of the following:

1. Personal or family illness or injury.
2. Family crisis.
3. Breakdown in transportation arrangements.
4. Inclement weather that causes a general breakdown in travel.
5. Failure to receive a hearing notice, appointment notice, or written request for information due to a demonstrable mail problem, address change, or extended time away from home.
6. Other reasonable circumstances as determined by the child support agency or the department.

(b) The child support agency may request evidence verifying adequate reason if there are repeated instances of failure to respond based on reasons in paragraph (a).

(6) AFFIDAVIT ATTESTING TO FULL COOPERATION. If a custodial parent has signed an affidavit attesting to full cooperation and there is no substantial independent evidence or verifiable information that suggests that the custodial parent is not cooperating, the child support agency shall conclude that an alleged failure to cooperate was, in fact, a case of cooperation.

(7) NONCOOPERATION NOTIFICATION. If a child support agency makes a determination of noncooperation under sub. (4), the child support agency shall promptly notify the individual and the W-2 agency of its decision and the basis for the decision. The notice to the individual shall be in writing. The W-2 agency shall apply sanctions pursuant to s. DWD 15.09 upon receipt of the noncooperation notification from the child support agency.

(8) REMEDYING NONCOOPERATION. An individual who wants to restore cooperative status after being determined noncooperative shall demonstrate cooperation by performing the act of cooperation in s. DWD 15.03(2) that the individual failed to perform and that became the basis of the noncooperation finding. The child support agency shall provide the individual who has been found noncooperative with the opportunity to resume cooperation within 30 days of contacting the child support agency to express an intent to cooperate. When a rescheduled court hearing cannot occur within 30 days, the child support agency shall either lift the noncooperation determination upon contact from the individual or make it possible for the individual to perform some other required activity within 30 days of the contact.

**DWD 15.04 Cooperation and good cause notice.** (1) The W-2 agency shall provide a written notice describing the cooperation requirement and the right to good cause as an exception to the cooperation requirement to all applicants and participants of Wisconsin works. The notice shall be provided to applicants when they apply for W-2 and to participants when a child is added to the W-2 group, when a parent leaves the W-2 group, at reapplication for continued benefits, and if a participant discloses to his or her W-2 financial and employment planner that the participant is experiencing circumstances that may meet the good cause criteria in s. DWD 15.05.

(2) The notice shall include all of the following information:

(a) The potential benefits the child may derive from establishing paternity and securing support.

(b) Cooperation with efforts directed at establishing paternity and obtaining support payments or any other payments or property to which that parent and any minor child of that parent may have rights or for which the parent may be responsible is a condition of eligibility for the Wisconsin works program, ss. 49.141 to 49.161, Stats., unless the parent has good cause for failing to cooperate.

(c) A failure to cooperate is allowed when the W-2 agency determines that one of the good cause criteria apply.

(d) The good cause criteria in s. DWD 15.05.

(e) A good cause claim form is available from the W-2 agency upon request. The good cause claim form provides additional details on the process for claiming good cause as an exception to the cooperation requirement.

(f) The good cause claim form may be submitted to the W-2 agency at any time.

(3) At the child support agency's initial meeting with the custodial parent, the agency shall ask the parent if a good cause notice has been received. If the custodial parent has not received a good cause notice, the child support agency shall provide one. A custodial parent who expresses intent to file a good cause claim shall be referred to the W-2 agency. If the custodial parent informs the child support agency of an intent to file a good cause claim, the child support agency shall cease further action for a minimum of 15 days to allow the custodial parent to file a good cause claim with the W-2 agency.

**Note:** A copy of the good cause notice may be obtained by contacting the Department of Workforce Development, Division of Workforce Solutions, P.O. Box 7972, Madison, WI 53707-7972.

**DWD 15.05 Good cause criteria.** A custodial or noncustodial parent is eligible for an exemption from the cooperation requirements in s. DWD 15.03 when the W-2 agency determines that any of the following criteria applies:

(1) Cooperation is reasonably anticipated to result in either physical or emotional harm to the child, including threats of domestic abuse or child kidnapping.

(2) Cooperation is reasonably anticipated to result in either physical or emotional harm to the parent, including domestic abuse.

(3) Cooperating with the child support agency would make it more difficult for the individual to escape domestic abuse or unfairly penalize the individual who is or has been victimized by such abuse, or the individual who is at risk of further domestic abuse.

(4) The child was conceived as a result of incest or sexual assault.

(5) The parent is considering whether to terminate parental rights and sought the assistance of a public or licensed private social services agency not more than 3 months ago.

(6) A petition for the adoption of the child has been filed with a court, except this does not apply as a good cause exemption from the responsibility to make payments under an existing court order.

**DWD 15.06 Good cause claim.** (1) CLAIM FORM. The W-2 agency shall provide a written good cause claim form to any applicant or participant of Wisconsin works on request.

The claim form shall describe the good cause criteria and appropriate documentation to corroborate a good cause claim.

**(2) FILING A CLAIM.** An applicant or participant may file a good cause claim with the W-2 agency at any time. The applicant or participant shall specify the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating and shall indicate whether the applicant or participant requests that the child support agency proceed without his or her cooperation if good cause is granted, if that is possible. The applicant or participant shall swear or affirm under penalty of false swearing pursuant to s. 946.32, Stats., that the statements in the claim are true and shall sign the claim form in the presence of a notary public. Upon receipt of the good cause claim, the W-2 agency shall notify the child support agency within 2 days that no further action may be taken until it is determined whether good cause exists.

**(3) SUBMITTING CORROBORATIVE EVIDENCE.** The W-2 agency shall encourage the applicant or participant to submit as many types of corroborative evidence as possible. The W-2 agency worker shall advise the applicant or participant that if assistance is needed in obtaining evidence, the worker will assist him or her. The applicant or participant may submit corroborative evidence to the W-2 agency within 20 days from the date the claim was signed. A W-2 worker may, with supervisory approval, determine that more time is needed due to difficulty in obtaining corroborative evidence. If the good cause claim is based on domestic abuse and no corroborative evidence is currently available, the W-2 agency may permit the applicant or participant to submit evidence to the W-2 agency within 60 days from the date the claim was signed.

**(4) TYPES OF CORROBORATIVE EVIDENCE.** A good cause claim may be corroborated with any of the following types of evidence:

(a) Court, medical, criminal, child protective services, social services, psychological, school, or law enforcement records regarding domestic abuse or physical or emotional harm to the parent or child.

(b) Medical records or written statements from a mental health professional that pertain to the emotional health history, present emotional health status, or prognosis of the parent or child.

(c) Birth certificates, medical records, or law enforcement records that indicate that the child may have been conceived as a result of incest or sexual assault.

(d) Court documents or other records that indicate that a petition for the adoption of the child has been filed with a court.

(e) A written statement from a public or private social services agency that the parent is being assisted by the agency in deciding whether to terminate parental rights.

(f) Written and signed statements from others with knowledge of the circumstances on which the good cause claim is based, including, but not limited to, statements from neighbors, friends, family, or clergy.

(g) An identification by the screening process under s. DWD 12.15 as an individual or parent of a child who is or has been a victim of domestic abuse or is at risk of further domestic abuse and the alleged perpetrator is the other parent.

(h) Any other supporting or corroborative evidence.

**Note:** A copy of the good cause claim form may be obtained by contacting the Department of Workforce Development, Division of Workforce Solutions, P.O. Box 7972, Madison, WI 53707-7972.

**DWD 15.07 Approving or continuing benefits.** If an individual is cooperating with the W-2 agency in furnishing evidence and information to be used in determining the good cause claim and other eligibility criteria are met, Wisconsin works benefits shall not be denied, delayed, reduced, or discontinued pending the determination of a good cause claim.

**DWD 15.08 Good cause determination. (1) EVALUATING A GOOD CAUSE CLAIM.**

(a) The W-2 agency shall require an applicant or participant who requests a good cause exemption to submit at least one document of corroborative evidence and the applicant's or participant's statement specifying the circumstances that the applicant or participant believes provide sufficient good cause for not cooperating. If an applicant or participant does not submit sufficient evidence to substantiate the good cause claim, the W-2 agency shall notify the individual that additional evidence is required and shall outline the types of evidence that may be used as provided in s. DWD 15.06(4). The W-2 agency shall make a reasonable effort to obtain specific documents or information that the individual is having difficulty obtaining.

(b) The W-2 agency shall investigate any good cause claim based on anticipated harm, including when the claim is credible without corroborative evidence and when corroborative evidence is not available. Good cause shall be found when the applicant's or participant's statement and the investigation satisfy the W-2 agency that good cause exists.

(c) The W-2 agency may investigate any good cause claim when the applicant's or participant's statement and corroborative evidence do not provide sufficient information to make a determination. The applicant or participant shall cooperate with the investigation by the W-2 agency.

(d) In the course of any investigation under paragraphs (b) or (c), the W-2 agency may contact the child support agency, but may not contact the individual alleged to have committed acts that are the basis of a good cause claim based on criteria in s. DWD 15.05(1) to (4).

**(2) RECOMMENDATION OF THE CHILD SUPPORT AGENCY.** The child support agency shall be given the opportunity to review and comment on the findings of the W-2 agency prior to the final determination on good cause by the W-2 agency. The W-2 agency shall consider any recommendations from the child support agency.

**(3) DETERMINATION DEADLINE.** The W-2 agency shall determine if good cause exists within 45 days from the date the claim was signed, unless an extension to submit evidence was granted to the applicant or participant who is claiming good cause or more time is necessary for the W-2 agency to obtain evidence. If the W-2 agency allowed up to 60 days to submit evidence for a claim of domestic abuse, the agency shall determine if good cause exists within 85 days from the date the claim was signed.

**(4) IF GOOD CAUSE DOES NOT EXIST.** (a) If the W-2 agency determines that the applicant or participant does not have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W-2 agency shall notify the child support agency that it may proceed with child support services and require the cooperation of the applicant or participant.

(b) The W-2 agency shall promptly notify the applicant or participant of the determination and the right to a review of the agency decision under s. DWD 15.10.

(c) The child support agency may not proceed with child support services for 10 days from the date of the notice to the applicant or participant to allow the individual the opportunity to withdraw the application, request the case be closed, or request a review of the agency decision pursuant to s. DWD 15.10.

(d) If the applicant or participant requests a review of the agency decision, the W-2 agency shall instruct the child support agency to suspend child support services during the review process.

(5) IF GOOD CAUSE DOES EXIST. If the W-2 agency determines that the applicant or participant does have good cause for failing to cooperate with efforts directed at establishing paternity and obtaining support payments, the W-2 agency shall:

(a) Direct the child support agency to suspend all further case activities if the applicant or participant did not request the child support agency to proceed without his or her cooperation.

(b) Notify the child support agency that it may proceed with child support services without the cooperation of the applicant or participant if the applicant or participant did request that the child support agency proceed without his or her cooperation. If good cause is granted for criteria in s. DWD 15.04(1) to (4), the child support agency shall send a notice to the individual alleged to have caused harm that states that the agency is proceeding without the cooperation of the applicant or participant.

(c) Promptly notify the applicant or participant of the determination and the basis for the determination in writing.

**DWD 15.09 Sanction for failure to cooperate. (1)** A Wisconsin works group that includes an applicant or participant who fails to cooperate with the child support agency without good cause is ineligible to receive Wisconsin works until cooperation with the child support agency occurs.

(2) An individual who is a member of a W-2 group that fails 3 times to meet the cooperation requirements in s. DWD 15.03 without good cause remains ineligible until all of the members of the W-2 group cooperate or for a period of 6 months, whichever is later.

(3) A custodial parent with a child under 60 days old is exempt from sanction for refusing to cooperate with requirements in s. DWD 15.03 for that child.

**DWD 15.10 Review of agency decisions (1) REVIEW OF GOOD CAUSE DETERMINATIONS OR OTHER W-2 AGENCY DECISIONS.** A Wisconsin works applicant or participant who is denied a good cause exemption from the requirement of cooperation with the child support agency or who disputes any decision by the W-2 agency may petition the Wisconsin works agency for a review of the agency decision pursuant to s. DWD 12.22.

(2) REVIEW OF NONCOOPERATION DETERMINATIONS. Noncooperation determinations shall be reviewed by the child support agency. An individual who has been

determined noncooperative by a child support agency may petition the child support agency for review of the agency decision. The procedures of s. DWD 12.22 apply to the review, except that the applicant or participant may submit a request for review to the child support agency, the child support agency will conduct the fact-finding procedure, and the applicant or participant or a representative may appear for the fact-finding via telephone conference if the child support agency is in a different county than the applicant's or participant's current residence.

(3) **PARTICIPATION OF THE CHILD SUPPORT AGENCY.** The child support agency shall be given reasonable notice and may participate in any fact-finding or hearing resulting from a good cause investigation or good cause determination.

(4) **HEARING DECISION IS CONTROLLING.** If a Wisconsin works review pursuant to s. DWD 12.22 and a fair hearing are based on the same issues and facts, the fair hearing decision shall be controlling in the Wisconsin works review.

**DWD 15.11 Review of good cause exemptions.** The W-2 agency shall review good cause exemptions that are based on circumstances subject to change at each redetermination of eligibility or upon new evidence. Good cause determinations based on permanent circumstances need not be reviewed. If the W-2 agency determines that good cause for noncooperation no longer exists, the parent shall be allowed 10 days before cooperation requirements are imposed to request that the case be closed or request an agency review.

**EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

## Response to Legislative Council Comments

DWD 15  
CR 02-039

### Proposed rules relating to child support cooperation for W-2

Comment 5d: No change. This language is based on the statutory provision. The suggested language does not flow from the introductory paragraph.

Comment 5e: No change. This provision is based on federal and state statutes that require that a TANF/W-2 participant assign child support to the state. The state currently does have a federal waiver concerning payment of support to TANF recipients. Most W-2 participants are receiving the full child support payment.

Comment 5f: The department set the noncooperation standard for an alleged father or noncustodial parent as issuance of a warrant because the department believes that, as the respondent in the child support case, the noncustodial parent is entitled to judicial due process before noncooperation is determined. Under this standard, the noncustodial parent is not determined to be noncooperative based on failure to appear for interviews with the agency or failure to respond to written requests for information from the agency.

A custodial parent is not required to sign an affidavit attesting to full cooperation. It is an option that is available if a custodial parent is unsure of the identity of the father or does not know information that the child support agency requests to assist the agency locate the alleged father or noncustodial parent. The opportunity to sign an affidavit attesting to full cooperation as currently applied in Wisconsin is a policy based on case law. In *Duffy v. Duffy*, (N.D. Illinois, 1988), a 7th Circuit case that applied directly to Wisconsin, the court based its ruling on the applicant's right to attest to completeness and accuracy, and indicated that the state's policy (in Illinois) must require workers to have substantial independent evidence to overcome this attestation. The Ninth District US Court of Appeals had a similar case where the right to attest was upheld. This type of affidavit is not relevant for an alleged father or noncustodial parent.

Other comments were accepted.