



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-039

AN ORDER to repeal and recreate chapter DWD 15, relating to child support cooperation for Wisconsin works.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

03-29-02 RECEIVED BY LEGISLATIVE COUNCIL.

04-25-02 REPORT SENT TO AGENCY.

RS:AS:tlu;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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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**

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', written in a cursive style.

Jennifer Reinert
Secretary

Scott McCallum
Governor

Jennifer Reinert
Secretary



State of Wisconsin

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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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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.

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.

Summary of Public Hearing

Proposed rules relating to Child Support Cooperation for W-2

Chapter DWD 15 CR 02-39

A public hearing was held in Madison on May 1, 2002. The record remained open until May 8 for receipt of written comments.

Comments were received from:

1. Mary Lauby, Executive Director
Wisconsin Coalition Against Domestic Violence (WCADV)
Madison
2. Pat DeLessio, Attorney at Law
Legal Action of Wisconsin, Inc. (LAW)
Milwaukee
3. Carol Medaris, Project Attorney
Wisconsin Council on Children and Families (WCCF)
Madison
4. Susan Dreyfus, Administrator
Division of Children and Family Services
Department of Health and Family Services (DHFS/DCFS)
Madison

The following individuals observed the hearing for information only:

1. Patti Seeger, Wisconsin Coalition Against Domestic Violence, Madison
2. Jacquelyn Boggess, Center on Fathers, Families, and Public Policy, Madison
3. Allison Lipscomb, Center on Fathers, Families, and Public Policy, Madison
4. Kim Waldman, Madison

Copies of the written comments are attached.

| Comments | Department response | Name of organization commenting |
|---|---------------------------|----------------------------------|
| <p>General comment From the child welfare standpoint, child support cooperation is critical because it opens up potential placement opportunities on the father's side, gives us access to medical information on both parents, and helps the financial situation in the household, which can be a big reason why the mother has difficulty keeping her kids in the home or having them returned.</p> | <p>Department agrees.</p> | <p>DHFS/DCFS</p> |
| <p>General treatment of domestic abuse We appreciate the treatment you have given domestic abuse in these rules, subject to some comments that we believe will further enhance the rules.</p> | | <p>WCADV</p> |
| <p>DWD 15.02(4) Definition of domestic abuse The definition of domestic abuse should be the same in the W-2 and food stamp cooperation rules. We support the definition in the food stamp rule.</p> <ul style="list-style-type: none"> • DWD 15.02(4)(a) should be amended to read "physical acts that result in <u>pain</u>, injury, or <u>illness</u>." This change will make this domestic abuse definition consistent with the statutory definition of domestic abuse for purposes of mandatory arrest and a restraining order. • DWD 15.02(4)(b) should be amended to add "including a caretaker relative of a dependent child being forced to engage in nonconsensual sexual acts or any sexual activity involving a dependent child." • DWD 15.02(4)(d) should be amended to add "or mental." | <p>Department agrees.</p> | <p>WCADV WCCF</p> |

| Comments | Department response | Name of organization commenting |
|---|---|---------------------------------|
| <p>DWD 15.03(2)(a)(1) Cooperating by signing affidavit alleging lack of knowledge under penalty of false swearing a. Current law requiring that a simple affidavit be signed under penalty of perjury should be maintained.</p> <p>b. A notarized statement, which is the current practice, should be sufficient.</p> | <p>No change. The change is a technical correction. The “perjury” language that has been in the AFDC rule since the mid-1970s was based on a federal regulation and is not the proper reference in Wisconsin. Under state law, false swearing penalties apply to written statements under s. 946.32, Stats., and perjury penalties apply to oral statements under s. 946.31, Stats. The department believes it is only fair to inform the parent of the significance of signing an affidavit. It is possible that she will later be asked to testify in a related legal proceeding and should be aware of the importance of providing consistent and truthful statements under oath.</p> <p>The opportunity to sign an affidavit attesting to full cooperation, as currently applied in Wisconsin, is a policy based on case law. In <i>Duffy v. Duffy</i>, (N.D. Illinois, 1988), a 7th Circuit case which 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 upheld the right to attest in a similar case.</p> | <p>a. WCCF</p> <p>b. LAW</p> |
| <p>DWD 15.03(2)(a)5. Custodial parent cooperating by paying court-ordered child support to the department or designee after an assignment This does not seem necessary now that child support is passing through to the custodial parent even when assigned to the department.</p> | <p>No change. Federal and state statutes do still require that a TANF/W-2 participant assign child support and maintenance to the state. The state currently has a federal waiver concerning payment of support to TANF recipients. Most participants are receiving the full child support payment after receipt has been documented in the centralized receipt and disbursement system. Section 767.29, Stats., requires that <i>all</i> noncustodial parents’ payments be processed through the centralized system so there is documentation that payment has been made.</p> | <p>WCCF</p> |

| Comments | Department response | Name of organization commenting |
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| <p>DWD 15.03(2)(b)4. Noncustodial parent cooperating by paying court-ordered support This should be modified by adding “if within the noncustodial parent’s ability to pay.” State and federal statutes both require that the person cooperate in “good faith.” The cooperation requirements must never exceed an individual’s ability to comply and there will be times when a court-ordered support amount is beyond what a noncustodial parent is able to pay.</p> | <p>No change. This provision is based on the statutory requirement that noncustodial parents cooperate with efforts directed at obtaining any support payments for which that parent may be responsible. The implementation of the requirement by finding noncooperation only when a warrant is issued limits noncooperation findings to fairly egregious behavior and recognizes the good faith issue.</p> | <p>WCCF</p> |
| <p>DWD 15.03(4) Ability to cooperate Before the child support agency makes a finding of noncooperation, it should be required to determine that the parent understands the request and had the ability to comply. A cognitive, affective, or other disorder should be taken into account.</p> | <p>The department is working to ensure that W-2 participants are not expected to comply with eligibility requirements beyond their ability.</p> | <p>LAW</p> |
| <p>DWD 15.03(4)(b) Noncooperation by noncustodial parents who are subjects of certain warrants The notice to subjects of these warrants should inform them that they may cure their noncooperation by contacting the child support office. They often don’t know these warrants exist and may be unsure how to respond if they do know.</p> | <p>Department agrees. The notice should inform the participant that he or she is being terminated for noncooperation with the child support agency and should contact the child support agency. Warrants issued for failure to effect service of process are excluded from the noncooperation standard.</p> | <p>WCCF</p> |
| <p>DWD 15.03(5) Adequate reason for noncustodial parents A section should be added specifying good cause for a failure to comply by the noncustodial parent that is not a refusal to comply.</p> | <p>No change. The definition of noncooperation as the issuance of a warrant means that the noncustodial parent has already failed to respond to the child support agency and failed to appear for a legal proceeding in response to a summons or court order. If the judge determines that the parent or alleged father had good cause for not complying, a warrant would not be issued and there would not be a noncooperation finding.</p> | <p>LAW</p> |
| <p>DWD 15.03(5)(a)5. Mail problems as adequate reason The actual “adequate reason” for a parent not responding is failure to receive notices or requests. The provision should be written more broadly and include mail problem as an example as well as other reasons, such as address change, a person being out of town or in the hospital, or other cause.</p> | <p>Department agrees.</p> | <p>WCCF</p> |

| Comments | Department response | Name of organization commenting |
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| <p>DWD 15.03(5)(a)6. Adequate reason by department The other reasonable circumstances should read “as determined by the child support agency or the department.”</p> | <p>Department agrees.</p> | <p>LAW</p> |
| <p>DWD 15.03(5)(b) Verifying adequate reason DWD 15.03(5) allows a parent to provide “adequate reason” for missing a appointment or other obligation. DWD 15.03(5)(b) provides that if the custodial parent has repeatedly missed appointments or other obligations the child support agency may require verification of the adequate reason or find noncooperation if the parent is unable to provide verification.</p> <p>a. We believe workers should evaluate each situation individually before making a finding of noncooperation because victims of domestic abuse may have little they can do to control the level and amount of crisis in their lives that is created by their abusers rather than by them.</p> | <p>The department will be offering domestic abuse training to workers in child support agencies to assist them evaluate adequate reason for not complying with cooperation requirements with sensitivity to domestic abuse issues.</p> | <p>a. WCADV</p> |
| <p>b. This provision should be eliminated. Low-income households have family crises all the time. The agency is always entitled to require verification if there is doubt about the reason and the parent has the ability to produce the verification requested.</p> | <p>This section has been rewritten to state that “the child support agency may request evidence verifying adequate reason if there are repeated instances of failure to respond based on reasons in par. (a).”</p> | <p>b. WCCF</p> |
| <p>DWD 15.03(6) Affidavits attesting to lack of information This is a good provision. Parents should be told about this possibility and offered an affidavit whenever there is a dispute with the child support agency. This will help narrow the issues should a hearing become necessary on the issue of cooperation and ensure this provision is not an empty right.</p> | <p>Department agrees. Information instructing child support workers to offer the affidavit is contained in the <i>Wisconsin Child Support Procedures Manual</i>. The department will also be clarifying and strengthening the information on the affidavit in the <i>Wisconsin Child Support Policy and Program Administration Manual</i>.</p> | <p>WCCF</p> |
| <p>DWD 15.03(7) Noncooperation notice The notice should also advise the individual of his or her appeal rights.</p> | <p>Department agrees. Information on how to file an appeal by requesting a fact-finding with the child support agency will be contained in this notice. The notice currently contains information on requesting a good cause exemption.</p> | <p>LAW</p> |

| Comments | Department response | Name of organization commenting |
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| <p>DWD 15.03(8) Remediating noncooperation The proposed language that requires a person to demonstrate cooperation by “performing the action required for the agency to proceed with the case” sets far too high a burden on the parent. The parent may have missed a meeting but “what the agency need to proceed with the case” may be the full name and address of the alleged father, which the custodial parent may not be able to provide. Remediating cooperation should simply be performing any of the actions in DWD 15.03(2) that the person failed to perform, and which then became the basis for the noncooperation finding.</p> | <p>Department agrees.</p> | <p>WCCF</p> |
| <p>DWD 15.04 Cooperation and good cause notice In addition to the proposed times, the notice should provided when the person is referred to the child support agency.</p> | <p>The department added “when a parent leaves the W-2 group” to the times when a notice must be provided. Other events causing a referral to the child support agency are already included.</p> | <p>WCCF</p> |
| <p>The good cause notice should either contain the good cause criteria or include a good cause claim form to ensure parents understand the protections offered by the rule.</p> | <p>Department agrees.</p> | <p>WCADV WCCF</p> |
| <p>DWD 15.05 Good cause criteria The first sentence doesn’t make any sense.</p> | <p>Department agrees. The sentence has been rewritten.</p> | <p>WCCF</p> |
| <p>Where domestic abuse is mentioned in s. DWD 15.05, there should be a reference to the definition in s. DWD 15.02(4).</p> | <p>No change. This is not proper rule writing style.</p> | <p>LAW</p> |
| <p>The domestic abuse criteria should be the same as the food stamp rule, which has language from the federal food stamp regulations. There are good policy reasons and efficiency concerns for making the findings for good cause the same for both programs. The language “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” should be added.</p> | <p>Department agrees.</p> | <p>WCCF</p> |

| Comments | Department response | Name of organization commenting |
|---|---|--|
| <p>DWD 15.06(2) Requiring good cause claims to be submitted under penalty of false swearing The proposed rule requires an applicant or participant's claim be sworn to be true under penalty of false swearing.</p> <p>a. The false swearing reference discourages good cause claims. We suggest a simple affidavit sworn before a notary.</p> <p>b. The requirements and reference to the false swearing statute should be removed.</p> | <p>The change was made as a technical correction. Under state law, false swearing penalties apply to written statements under s. 946.32, Stats., and perjury penalties apply to oral statements under s. 946.31, Stats. The department believes it is only fair to inform the parent of the significance of signing an affidavit. It is possible that he or she will later be asked to testify in a related legal proceeding and should be aware of the importance of providing consistent and truthful statements under oath.</p> | <p>a. WCCF</p> <p>b. LAW</p> |
| <p>DWD 15.06(3) Corroborative evidence This section should require the W-2 worker to advise applicants and participants that if they need assistance in obtaining evidence, the worker will assist them. The worker should also be required to provide assistance, without the need for a request by the individual, if the individual has difficulty understanding what is needed or obtaining the necessary documentation because of a disability or emotional distress due to the domestic abuse.</p> | <p>The department agrees that the W-2 worker should advise applicants and participants that the worker will help them obtain evidence if they request assistance.</p> <p>Although W-2 case managers receive domestic abuse awareness training, they are not domestic abuse experts and will not always know that an individual needs assistance when no request is made. Since s. DWD 15.08(1) requires an investigation when a claim is based on anticipated harm, assistance in obtaining evidence will be available in the course of this investigation.</p> | <p>LAW</p> |
| <p>DWD 15.06(4)(f) Corroborative evidence submitted by a third party. The proposed rule provides that these statements be submitted as affidavits that are subject to penalties for false swearing.</p> <p>a. We suggest that the penalty be minimized as much as possible in order to reduce intimidation and encourage potential witnesses to the violence to come forward with statements.</p> <p>b. The false swearing reference discourages good cause claims. We suggest a simple affidavit sworn before a notary.</p> <p>c. The requirements and reference to the false swearing statute should be removed.</p> | <p>Department agrees. A signed, written statement from a third party is adequate.</p> | <p>a. WCADV</p> <p>b. WCCF</p> <p>c. LAW</p> |

| Comments | Department response | Name of organization commenting |
|---|--|---------------------------------|
| <p>DWD 15.08(1)(a) Investigation. The proposed rule should provide for an investigation when the parent is unable to provide any corroborative evidence. The language from the current s. DWD 15.03(10) should be incorporated into the proposed rule and extended to all types of anticipated harm.</p> | <p>Department agrees.</p> | <p>WCCF</p> |
| <p>b. This section should be amended to include a statement requiring the agency to accept the best evidence available, whatever that may be.</p> | <p>The best evidence rule for the food stamp program requires that the local agency must accept any reasonable documentary evidence provided and must be primarily concerned with how adequately the verification proves the statements in the application. This general rule is followed in the good cause corroboration provision for W-2 and food stamps. There is no specific document that is required for verification; the primary concern is how adequately the statements are verified.</p> | <p>LAW</p> |
| <p>DWD 15.10(2) Fact-finding for noncooperation decisions by child support agency The department does not have statutory authority to delegate fact-finding reviews for noncooperation decisions to the child support agency. And a new administrative procedure does not make sense from a policy or cost point of view.</p> | <p>The child support agencies will review the noncooperation determination and not W-2 eligibility. Federal law requires that the child support agencies determine whether a TANF recipient is cooperating with the child support agency(42 USC 654(29); Section 454(29) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996). The purpose of a fact-finding is to attempt conciliation among the parties and the W-2 agency is not a party in the noncooperation determination. For the last few years, the W-2 agencies have been reviewing the noncooperation decisions made by the child support agencies and it has been administratively awkward for the W-2 agencies to review whether the participant has cooperated with another agency. Federal child support regulations that became effective in December 2000 require child support agencies to have an administrative complaint procedure so the W-2 fact-finding reviews will not impose a new procedural burden on the agencies.</p> | <p>WCCF LAW</p> |

May 6, 2002

MEMO

TO: Department of Workforce Development

FROM: Mary R. Lauby, Executive Director, Wisconsin Coalition Against Domestic Violence (WCADV)

RE: Testimony Regarding Proposed Rule Changes to Chapters DWD 15 and 19
Child Support Cooperation for W2 and Food Stamps

I am providing comments on behalf of the Wisconsin Coalition Against Domestic Violence (WCADV). Since 1978 WCADV has been the statewide membership organization representing domestic violence programs, battered women and their children, and citizens concerned with ending domestic violence. I am pleased to be able to offer you my testimony today regarding proposed rule changes that will guide child support cooperation in the W2 and Food Stamps programs on behalf of WCADV and our membership.

Thank you for the treatment you have given the issue of domestic violence in the development of these rules. While not all victims want or request good cause exemptions from cooperation with child support, for those whose lives may be endangered by domestic violence, these rules may provide critical support and protection. While overall these rules address domestic violence as a good cause factor within the W2 and food stamp systems, I do have some comments that I believe will further enhance these rules.

First, I am concerned about the adoption of child support cooperation rules within the food stamp program. I realize that this decision was made at an earlier time via legislation. However, very few states have elected to adopt this particular option. I believe there is little to be gained through this initiative. There are very few custodial parents receiving food stamps that are not already involved with the VI-D child support system. Additionally, in order to pursue cases where domestic violence may be a factor, the state should have well-developed protective protocols in place. Wisconsin has failed to adopt the Family Violence Option (FVO) and therefore, has done relatively little to address domestic violence among W2 and food stamp recipients. I believe that the welfare, food stamp and/or child support systems are not in a position to fully address or accommodate the needs of domestic violence victims. I also recognize that DWD is in the process of adopting a rule to provide training of W2 workers regarding the screening and identification of domestic abuse victims. This training is required for W2 employees, but is not required for those working in either the food stamp or the child support programs.



307 S. Paterson Street, Suite 1, Madison, WI 53703 Phone: 608/255-0539 Fax: 608/255-3560

The definitions of domestic violence (DWD 15.02 and DWD 19.02) are sufficiently broad and inclusive of a wide range of abusive behaviors, however are not consistent between these two rules. I suggest that the definitions found in both rules be written consistently in order to reduce any confusion. The key differences are found in DWD 19.02(4)(b) and (d). WCADV supports the definitions as written in these sections and would like DWD 15.02 (4)(b) and (d) to reflect the same. Additionally, (a) in both rules defines domestic abuse as "physical acts that result in injury". I suggest that you make this section consistent with other definitions of domestic abuse as found in Wisconsin statutes 813.12(1)(a) and 968.075(1)(a)(1.). This section could read as follows: "physical acts that result in pain, injury or illness".

Many individuals living in poverty, including those who are enrolled in W2 or the food stamp program, may have numerous factors that contribute to inability to respond to requests for information or responses to the department regarding child support compliance. For victims of domestic violence, there may be little they can do to control the level and amount of crisis that can arise in their lives as the crisis is created by their abusers rather than by them. Therefore, we are somewhat concerned with DWD 15.03(5)(b), which addresses adequate reasons for failure to respond. This section indicates that "repeated instances of failure may result in a finding of non-cooperation". While sometimes it is inconceivable that a person may generate multiple reasons for failing to comply, it is not at all out of the realm of possibility for victims of abuse. Their abusers are often likely to repeatedly sabotage the victims' best efforts to comply as a means to continue to exert control. We believe this section of the proposed rule should be removed. W2 and food stamp workers should evaluate each situation individually before making a determination of "non-cooperation".

DWD 15.04 addresses cooperation and the good cause written notice that is distributed to all W2 and food stamp recipients. While it is good practice to provide all recipients with a written notice about the availability of good cause, the current written notice does not include an explanation of what "good cause" is. We suggest that you include an explanation defining good cause on this written notice. The good cause criteria defined in DWD 15.05 (1-6) provides an excellent working definition and could easily be printed on the written notice that is provided to W2 and food stamp recipients.

Finally, domestic violence is a private and personal crime. Many victims are ashamed of the abuse and do not disclose the violence in their lives to anyone. Therefore, many victims do not have the ability to produce evidence that corroborates the abuse. While the list of types of corroborative evidence listed in DWD 15.06(4) provides a wide range of potential sources of verification, we continue to be concerned that some victims may yet be unable to produce evidence. A common source of verification may come from others (friends, family) that the victim has told about the violence. While this potential source of corroboration is outlined in DWD 15.06(4)(f), this proposed rule makes clear that these statements must be sworn to be true under penalty of *false swearing* (a felony). While we encourage everyone to be truthful in these matters, this potential penalty may prove very intimidating to many potential witnesses. We suggest that the potential for

penalty be minimized as much as possible in order to reduce intimidation and encourage potential witnesses to the violence to come forward with statements.

Again, on behalf of WCADV and our membership, thank you for allowing me to offer this testimony and suggested changes to the proposed rule. Should you have further questions regarding these suggestions, you are welcome to call me at 608/255-0539.

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May 3, 2002

Elaine Pridgen
Office of Legal Counsel
Department of Workforce Development
201 East Washington Avenue
P. O. Box 7946
Madison, Wisconsin 53707-7946

**Re: Child Support Cooperation for W-2
Proposed Rules - Chapter DWD 5**

Dear Ms. Pridgen:

These comments are submitted in response to the proposed rules regarding child support cooperation for W-2.

- (1) Section 15.03(2)(a) 1. - relating to acts of cooperation. The requirement that the applicant or recipient shall swear or affirm under a penalty of false swearing pursuant to §946.32 should be deleted. For individuals who are victims of domestic abuse, documenting the precise details of the abuse may be difficult and painful. Mistakes, such as dates of occurrences, may be made. They should not be under the threat of a criminal penalty. A notarized statement, which is the current practice, should be sufficient.
- (2) Section 15.03(4) - relating to non-cooperation. Before the agency makes a finding of non-cooperation it should be required to determine that the parent understands the request and had the ability to comply. If the parent has a cognitive, affective or other disorder that might interfere with his or her ability to understand and/or comply this should be taken into account.
- (3) Section 15.03(5)(a) - relating to adequate reason for non-cooperation. Subsection (6) should be amended to provide "other reasonable circumstances

as determined by the child support agency or department.” A section should be added specifying that if the non-custodial parent has good cause for his or her failure to comply, the failure should be excused. (The proposed rule only addresses custodial parents) In determining non-compliance, an individual should be penalized only for a deliberate refusal to comply, not an inability to cooperate.

- (4) Section 15.03(7) - relating to non-cooperation notification. The notice should also advise the individual of his or her appeal rights.
- (5) Section 15.05 - relating to good cause criteria. For subsections (1), (2), (3) a provision should be added to the reference to domestic abuse to provide “as defined in §15.02(4)” to make it clear what is included in the term.
- (6) Section 15.06(2) - as noted above, the requirements and reference to §946.32 Wis. Stats. should be removed.
- (7) Section 15.06(3) - relating to the submission of corroborative evidence. This section should be amended to require the W-2 worker to advise applicants and recipients that if they need assistance in obtaining evidence, the worker will assist them. The worker should also be required to provide assistance, without the need for a request by the individual, if the individual has difficulty understanding what is needed or obtaining the necessary documentation because of a disability or emotional distress due to the domestic abuse.
- (8) Section 15.08(1) - relating to evaluating a good cause claim. This section should be amended to include a statement requiring the agency to accept the best evidence available, whatever that may be.
- (9) Section 15.10(2) - related to review of non-cooperation determinations. This section requires a W-2 agency to delegate the factfinding function in non-cooperation cases to the child support agency. There is no statutory authority for this subsection and it should be removed. In addition, it would require child support agencies to develop procedures that are not now in existence. This requirement would only add more complexity to an already burdensome and complex system. The better practice is to use the current factfinding system with DHA review and ensure that the child support agency appears as a witness. That is the current practice and it works reasonably well. Under the proposed

rule, there would be two different appeal systems, depending on the precise child support issue (non-cooperations versus good cause determinations.) There is simply no justification under state law, or as a practical matter, for creation of this dual system.

Your attention to, and consideration of, these comments is appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Patricia DeLessio".

Patricia DeLessio
Attorney at Law

PDL/eca



May 3, 2002

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946

Re: Proposed Chapter DWD 15: Child Support Cooperation for Wisconsin Works

Dear Ms. Pridgen,

This letter constitutes my comments on the proposed rule governing child support cooperation requirements for W-2 participants. I will be commenting on the cooperation requirements for food stamp participants in a separate letter, although many of my comments apply similarly to both rules.

DWD 15.02(4) Definition of "domestic abuse"

The wording of this definition should conform to the wording in the proposed food stamp rule definition. Whether or not domestic abuse has occurred or is threatened is important in determining whether one has good cause for not cooperating with the child support investigation, and those standards should be the same for both programs. Otherwise you might have the anomalous result of a finding of good cause for one program but no good cause for the other. Since the additional phrases in the food stamp rule are required by federal law, those should be adopted for the W-2 rule, as well, including at (4)(b), "including a caretaker relative of a dependent child being forced to engage in nonconsensual sexual acts or any sexual activity involving a dependent child" and at (4)(d) adding in "or mental" to the types of abuse which may meet the definition.

In addition, (4)(a) should be changed to read "Physical acts that result in pain, injury, or illness. That is more consistent with the domestic abuse definition in s. 813.12(1)(a), Stats.

DWD 15.03(2)(a)1 Cooperating by signing an affidavit under penalty of false swearing

Current law requiring that a simple affidavit be signed under penalty of perjury alleging a lack of knowledge should be maintained. Requiring that an affidavit be

signed under penalty of false swearing pursuant to s. 946.32, Stats., seems to go much farther than necessary to get a truthful statement from a parent. W-2 participants often lack literacy skills, are likely to be legally unsophisticated, and will most often be unrepresented at this stage. On the other side, these affidavits will likely be drafted by prosecutors in the child support office, whose interests are opposed to the parent alleging a lack of knowledge, and who may be upset with the parent, as well. To subject participants to such a process and place them in jeopardy of a felony conviction seems unfair, out of balance, and unnecessary, and may have a chilling effect on legitimate requests for assistance under W-2. Has there been a gross abuse of the current process requiring simple affidavits in such cases?

DWD 15.03(2)(a)5 Cooperating by paying court-ordered child support to the department after an assignment

It does not seem necessary to keep this in the rule now that child support is passed through to the custodial parent even when assigned to the department.

DWD 15.03(2)(b)4 Cooperating by paying court-ordered support

This requirement should be modified by adding, "if within the noncustodial parents ability to pay." Cooperation requirements must never exceed an individual's ability to comply, and there will be times when a court-ordered support amount is beyond the noncustodial parent's ability to pay. There is no authority for denying W-2 to any person who fails to comply with a court order for child support. State statutes require that the person "cooperate in good faith with efforts directed at obtaining support. . ." Similar language appears in federal law at 42 USC 654(29).

DWD 15.03(4)(b) Noncooperation by noncustodial parents who are subjects of certain warrants

This provision should be modified to provide notice to subjects of these warrants that they may cure their noncooperation by contacting the child support office. According to advocates who work with low-income, noncustodial parents, in many cases these parents do not even know warrants exist. They also may be unsure how to respond to the knowledge that an outstanding warrant exists against them.

Once they are apprised of the warrant through the denial of food stamps, they should be immediately instructed about how to take care of the warrants. That serves the court system as well as the purposes of the food stamp program.

DWD 15.03(5)(a)5 Mail problems as an adequate reason for failure to respond to communications

This should be broadened to clarify that the provision doesn't simply mean a

problem with the postal delivery service. The reason here is the failure to receive the notices or requests, which may be shown by a "demonstrable mail problem," an address change, a person being out of town or in the hospital, or other cause. That is how this should be stated.

DWD 15.03(5)(b) Noncooperation for repeated instances of failure to respond based upon adequate reasons

This should be eliminated. As long as a person has an "adequate reason," there should not be a penalty. Low-income households have family crises all the time, often lack transportation, and are less likely to be under a regular doctor's care when they sustain an illness or injury. The agency is always entitled to require verification if there is doubt about the reason and the parent has the ability to produce the verification requested.

DWD 15.03(6) Affidavits attesting to full cooperation

This is a good provision. However, parents should be told about this possibility and offered an affidavit attesting to full cooperation whenever there is a dispute with the child support agency. This will help narrow the issues should a hearing become necessary on the issue of cooperation. And, otherwise the provision is an empty right.

DWD 15.03(8) Remediating noncooperation

Requiring that a person may only demonstrate cooperation by "performing the action required for the agency to proceed with the case," sets far too high a burden on the parent. A parent with the best will in the world may be totally unable to perform such an action. For example, a parent may have failed to cooperate by missing meetings. However, performance of "the action required by the agency to proceed" may be giving the child support office the putative father's full name, or providing an address, either of which may be totally beyond the capacity of the custodial parent to perform. Remediating noncooperation should simply be performing any of the actions in DWD 15.03(2) which the person failed to perform, and which then became the basis for the finding of noncooperation.

DWD 15.04(1) Cooperation and good cause notice

In addition to the proposed times when the notice must be provided, the point where the person is referred to the child support agency should be included, as well. This would make sure that when the referral doesn't take place simultaneously with the parent's application, it would be brought to the parent's attention at the most logical point: when the paternity and child support process is beginning.

DWD 15.04(2) Contents of the cooperation and good cause notice

In addition to the items listed, the good cause notice should also contain an explanation of what good cause is – either by simply including a good cause claim form or restating the criteria (DWD 15.05) in the notice itself. Otherwise the notice fails to adequately inform the parent of the rights embodied in the good cause claim process. A parent who has a good cause claim may not pursue the claim, to the parent or a child's ultimate harm, because of a lack of understanding of the types of protections afforded by the rule.

DWD 15.05 Good cause criteria

This first sentence doesn't make sense. It states that the "parent may request a good cause exemption . . . when the W-2 agency determines that it is in the best interest of the child or parent." It cannot be intended that the agency is to make a determination of best interest before an exemption is even requested!

DWD 15.05(3) Good cause/domestic abuse criteria

This criteria, that cooperation "would make it more difficult for the individual to escape domestic abuse," should be expanded with the language from the comparable food stamp criteria: "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 latter phrases are required by federal law for the food stamp noncooperation process and, as I indicated earlier, there are good policy reasons as well as efficiency concerns for making the findings for good cause the same for both programs. (See discussion at 15.02(4), above.)

DWD 15.06(2) and (4)(f) Requiring claims and evidence submitted under penalty of false swearing

These two provisions require that a parent claiming good cause and any witness to the harm sign affidavits under penalty of false swearing pursuant to s. 946.32, Stats., a felony. If the intent here is to discourage claiming good cause, and discouraging witnesses to support claimants, then this provision is likely to be effective. However, the good claim process is intended for the protection of parents and their children, and should not be drafted so as to chill the assertion of such protections by parents. Furthermore, as was pointed out in response to an earlier proposed section, W-2 participants often lack literacy skills, are likely to be legally unsophisticated, and will most often be unrepresented at this stage. On the other side, these affidavits will likely be drafted by those with legal training, whose interests may be opposed to the parent alleging good cause. To subject participants to such a process and place them in jeopardy of a felony conviction offends the purposes of the good cause claim process. Regarding the witness requirement, those who would ordinarily be glad to help a friend or neighbor

protect herself may well be intimidated by seeing such language on the affidavit. As with the similar requirement for claiming a lack of knowledge, I would ask if there has been a gross abuse of the current process requiring simple affidavits, sworn before a notary, in these cases.

DWD 15.08(1)(a) Corroborative evidence

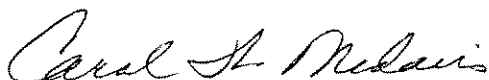
The rule should always provide for the investigation of claims when the parent asserting the claim is unable to provide any corroborative evidence. Proposed DWD 15.08 does not appear to do so. Cases of domestic abuse and child sexual abuse are the classic types of cases presenting difficulties of proof. No such case should be denied out of hand without an investigation by the W-2 agency. The current administrative rule provides that the "agency shall conduct an investigation of any good cause claim based on anticipated physical harm, both when the claim is credible without corroborative evidence and when corroborative evidence is not available. Good cause shall be found when both the parent or other caretaker relative's statement and the investigation satisfy the income maintenance agency that he or she has good cause." (Current DWD 15.03[10]) That language should be incorporated into the proposed rule and extended to all types of anticipated harm as set forth in DWD 15.05.

DWD 15.10(2) Review of noncooperation by the child support agency

The rule proposes to change the current review procedures by delegating the first review step – fact-finding – to the child support agency. However, this exceeds the Department's authority under state law. Section 49.152(2), Stats. provides that upon a timely review of a decision to deny W-2 benefits, the "Wisconsin works agency shall give the applicant reasonable notice and opportunity for review. . . . [and] shall render its decision as soon as possible after the review." That clearly places the responsibility for review of W-2 decisions in the W-2 agency. Cooperation with the child support office is an eligibility requirement like any other, see s. 49.145(2)(f), Stats. , and there are no separate procedures established under the statute for denials of eligibility on that basis.

On beyond the legal requirements, local child support agencies are not set up to provide for fact-finding reviews and to require them to set up a new administrative procedure does not seem to make sense from either a policy or cost point of view.

Respectfully submitted,



Carol W. Medaris
Project attorney

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.