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Senator Fred Risser
President of the Senate
220 South, State Capitol
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Representative Scott Jensen
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

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Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 98-130

Rule number: DWD 43

Relating to: Child Support Administrative Enforcement

Dear Senator Risser and Representative Jensen:

I have enclosed a proposed rule and rule report for referral to the appropriate legislative standing committees. The report consists of a summary of the public hearing comments and the agency response, Legislative Council Rules Clearinghouse Report and the agency response, a fiscal estimate, and a regulatory flexibility analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, reading 'Linda Stewart', is written in a cursive style.

Linda Stewart, Ph.D.
Secretary

**State of Wisconsin
Department of Workforce Development**

DWD 43

CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

The Wisconsin Department of Workforce Development proposes an order to renumber chs. HSS 80 to 81 as DWD 40 to 41, and to create ch. DWD 43, relating to child support administrative enforcement.

Analysis

Authority for rule. Secs. 49.22 (2m)(d), 49.853 (1)(dm) and (2), 49.854 (17), 49.858 (2), and 767.027 (2), Stats.

Statutes interpreted. Secs. 49.22, 49.853, 49.854, 49.858 and 767.027, Stats.

Summary. In compliance with the child support enforcement requirements in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), 1997 Wisconsin Act 191 expands the authority of the Department of Workforce Development and county child support agencies to establish and acknowledge paternity, and to enforce child support orders. Act 191 requires the promulgation of administrative rules before the department may begin implementing the authorized administrative child support enforcement provisions. These are the proposed rules for the implementation of 1997 Wisconsin Act 191.

According Act 191, past-due support constitutes a lien against all of a child support payer's real and personal property in existence at the time of levy. Child support liens will be placed on the child support lien docket and electronically delivered to the county registers of deeds. The rule describes the threshold that arrears in a case must equal or exceed before a payer is placed on the child support lien docket, the calculation of the lien amount, the filing date of the lien, lien payments, and renewal of liens. Based on public testimony, the rule has been modified to require the department to develop procedures for releasing a lien and releasing property from a lien. The rule has also been modified to clarify the priority of the child support lien.

Payers placed on the lien docket have the opportunity to request a financial records and court order review to contest the lien amount. In response to comments received at public hearings, the rule has been revised to provide payers with an opportunity to request a meeting with a child support worker to review the financial records and to discuss any alleged errors in the records as a part of the financial record review process. Moreover, the rule has been modified to clarify that the relevant financial records provided to the payer will include the account history report and any relevant county financial records prior to the implementation of the statewide automated child support enforcement system. A note has also been added to the rule to specify the type of information that will be included on the account history report. In addition to the relevant

financial records, the department or child support agency will also provide the payer with a form that may be used to identify any alleged error in the records.

To enforce a lien, the department or child support agency may use the administrative enforcement actions authorized in Act 191. These administrative remedies include suspending and denying professional, occupational, recreational, and driver licenses; seizing real and personal property, including financial accounts; and intercepting judgments, settlements, and lump-sum pension payments. The department or child support agency may initiate these administrative remedies if arrears owed by a payer in a case equal or exceed a threshold. For each administrative enforcement action, the rule defines the threshold that arrears in a case must equal or exceed before the department or child support agency may initiate that action. Generally, that threshold for license suspension and account seizure is 300% of the monthly amount due, and the threshold for real and personal property seizure is 600% of the monthly amount due. Lump-sum pension payments, judgments, and settlements may be intercepted when a payer is placed on the lien docket.

In addition to considering the arrears in a case, the department or child support agency must determine whether property identified for seizure has sufficient value before initiating any seizure process. The rule specifies the amount that the property value must exceed before seizure may be initiated. For financial account seizure, the funds in all of a payer's accounts must exceed \$500. The rule has been modified to specify that the payer's equity in personal property must exceed \$500 per item before seizure may be initiated. In response to comments received at public hearings, the value that real property must exceed before seizure may be initiated has also been clarified in the rule. For real property seizure, the payer's equity in the property must exceed 10 percent of the property's fair market value.

Child support payers have an opportunity to negotiate alternative payment plans to suspend the execution of administrative enforcement actions. The rule outlines the process for negotiating payment plans, the factors that must be considered when establishing payment plans, and the possible terms and conditions of payment plans. The rule also defines noncompliance with a payment plan, and provides payers with an opportunity to renegotiate payment plans.

Notice of lien and administrative enforcement actions may be provided by regular mail to the last-known address of a child support payer. According to Act 191, notice requirements are met if notice of lien or administrative enforcement action has been sent to the last-known address provided by the payer, and a diligent effort has been made to ascertain the location of the payer. The rule outlines the process the department and child support agency will use to verify and obtain an address from a postmaster, and the diligent efforts that will be taken to obtain the current address of a payer. In response to comments received at public hearings, the definition of diligent effort has been expanded to include use of automated locate resources.

The rule describes the circumstances in which a payee will be notified that an administrative enforcement action has been initiated against the payer. In general, these are circumstances in which the department or the child support agency is aware that the payer is subject to a protective order or there is otherwise reason to believe that a payee or child may be harmed

physically or emotionally by the payer. The rule has been modified to provide a definition for a protective order.

In response to comments received at public hearings, the rule has also been modified to require the department or child support agency to provide notice to a payee when a payer requests a hearing, and the hearing has been scheduled.

The department and the child support agencies have the authority to request from any person information that they determine necessary for administering the child support program. Act 191 gives the department and child support agencies additional authority to issue administrative subpoenas to obtain financial information and other documentation necessary for child support administration. Under the Act, the department or child support agency may require individuals or entities to pay an administrative forfeiture for failure to comply with an administrative subpoena or a request for information. The rule specifies the administrative forfeiture that may be imposed for failure to comply with an administrative subpoena or a request for information, and when the administrative forfeiture may be imposed. Generally, an administrative forfeiture for a failure to comply is \$25, but if the failure to comply is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the administrative forfeiture is \$500. In response to comments received at public hearings, the rule has been modified to identify the process for quashing an administrative subpoena and for collecting the administrative forfeiture.

Act 191 requires the department and financial institutions doing business in the state to enter into agreements to perform quarterly record matching, using automation to the extent feasible, to determine whether a delinquent child support payer has an ownership interest in a financial account. The rule outlines the procedures the department will use to enter into agreements with financial institutions and requires the department to reimburse financial institutions for participating in the data match program. In general, financial institutions will be reimbursed \$100 per quarter for performing a data match with the department. In response to comments received at the public hearings, the distinction between an automated and a nonautomated financial institution has been removed from the rule.

The department's goal is to begin implementation of these provisions in 1999.

SECTION 1. Chapter DWD 43 is created to read:

DWD 43
CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT

DWD 43.01 Authority and purpose. This chapter is promulgated under the authority of ss. 49.22 (2m)(d), 49.853 (1)(dm) and (2), 49.854 (17), 49.858 (2), and 767.027 (2), Stats., for the purpose of administering the child support program under s. 49.22, Stats.

DWD 43.02 Applicability. This chapter applies to the department and county child support agencies under s. 59.53 (5), Stats., individuals participating in the child support program under s. 49.22, Stats., financial institutions doing business in the state, and persons subject to administrative subpoenas issued in accordance with s. 49.22 (2m)(b), Stats., or requests for information issued in accordance with s. 49.22 (2m)(a), Stats.

DWD 43.03 Definitions. In this chapter:

- (1) "Account" has the meaning given in s. 49.853 (1)(a), Stats.
- (2) "Administrative enforcement" means the department or a child support agency does any of the following:
 - (a) Puts child support liens into effect by placing them on the child support lien docket and electronically delivers the docket to the county registers of deeds.
 - (b) Receives proceeds from the sale of property when there is a child support lien against the property, and either the payer has transferred the property or the property has been seized and sold by an entity other than the department or a child support agency.
 - (c) Takes any administrative enforcement action.

(3) "Administrative enforcement action" means any of the following actions taken by the department or child support agency to enforce a lien:

- (a) The intercept of lump-sum pension payments in accordance with s. 49.852, Stats.
- (b) The seizure of accounts at financial institutions in accordance with s. 49.854(5), Stats.
- (c) The seizure of personal property in accordance with s. 49.854(6), Stats.
- (d) The seizure of real property in accordance with s. 49.854(7), Stats.
- (e) The intercept of judgments and settlements in accordance with s. 49.856, Stats.
- (f) The denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses for failure to pay support in accordance with s. 49.857, Stats.

(4) "Alternative payment plan" or "plan" means a negotiated agreement between a child support agency and a payer, or an order set by the court, which establishes terms for the payment of the arrearage debt.

(5) "Arrearage debt" means the sum of child support arrears, maintenance arrears, family support arrears, missed payments on past support, missed payments on lying-in costs, and missed payments on other medical support including missed lump-sum payments for medical support in a case. The arrearage debt does not include interest on arrears or on missed payments.

(6) "Child support agency" or "agency" means the county child support agency under s. 59.53 (5), Stats.

(7) "Child support lien" or "lien" means an administrative lien that arises by operation of law under s. 49.854 (2), Stats., against the real and personal property in which the payer has a

recorded ownership interest at the time of levy. A lien does not attach to the property title of a beneficial interest in a trust, member interest in a limited liability company, partner interest in a partnership, or shareholder interest in a corporation.

NOTE: According to s. 49.854 (2)(a), Stats., a child support lien is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on the title.

(8) "Court order" means an order for child or family support, maintenance, medical expenses, or birth expenses issued by a court.

(9) "Department" means the Wisconsin department of workforce development.

(10) "Equity" means the fair market value of the property minus the liens on that property with priority over the child support lien.

(11) "Failure to comply with an administrative subpoena or a request for information" means that the subpoena respondent did not provide the requested information within seven days after receiving the administrative subpoena or request for information, or that the subpoena respondent provided false or incomplete information.

(12) "Financial institution" or "institution" has the meaning given in s. 49.853 (1)(c), Stats.

(13) "Financial record review" means a financial records and court order review under s. 49.854 (3)(ag).

(14) "Gross income" has the meaning given in s. DWD 40.02 (13).

(15) "Lien-eligible amount" means the difference between the monthly charge and the arrearage debt in a case.

(16) "Monthly amount due" means the sum of court-ordered provisions for periodic payments, expressed as a fixed amount, due in one month in a case including periodic payments on arrearage debts.

NOTE: For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed amount, the monthly amount due is calculated using the fixed amount. A court-ordered provision expressed only as a percentage of income is not included in the monthly amount due when determining the lien threshold. However, when determining the threshold for administrative enforcement actions, the expected monthly amount due in DWD 43.10 is the fixed amount that is used to calculate the monthly amount due when a provision is expressed only as a percentage of income.

(17) "Monthly charge" means the sum of court-ordered provisions for periodic payments, expressed as a fixed amount, on child support, family support, maintenance, lying-in costs, past support, and other medical support due in one month in a case. The monthly charge does not include court-ordered provisions for periodic payments on arrearage debts.

NOTE: For a court-ordered provision requiring the greater or lesser of either a percentage of income or a fixed amount, the monthly charge is calculated using the fixed amount. A court-ordered provision expressed only as a percentage of income is not included in the calculation of the monthly charge.

(18) "Ownership interest" means any personal financial interest.

(19) "Payee" has the meaning given in s. DWD 40.02 (22).

(20) "Payer" has the meaning given in s. DWD 40.02 (23).

(21) "Property" has the meaning given in s. 49.854 (1)(e), Stats.

(22) "Protective order" means a temporary restraining order or injunction under s. 813.12, 813.122, 813.123, 813.125, or 813.127, Stats.

(23) "Reconciliation" means the procedure a child support agency uses to determine whether a payer has complied with the terms of a percentage expressed provision and, if the payer has not fulfilled the obligation, to establish an arrearage.

(24) "Subpoena respondent" means the person from whom information is requested in an administrative subpoena or request for information.

NOTE: "Person" has the meaning given in s. 990.01 (26), Stats.

(25) "Threshold" means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien-eligible amount or lien amount must equal or exceed before administrative enforcement may be used to enforce a court order.

DWD 43.04 Written notice of enforcement actions. (1) APPLICATION. This section applies to notices issued to the payer by the department under ss. 49.852 (2), 49.854 (3)(a) and (ag)1., (5)(d), (6)(a), (d), and (e), or (7)(a), (d), and (e), 49.856 (3), and 49.857 (3)(a) and (am), Stats.

(2) **USE OF MAIL.** The department or child support agency may send notices related to the administrative enforcement of a child support order by regular mail to the last-known mailing address provided by the payer under s. 767.263 (2), Stats. If the last-known mailing address for a payer is unverified, or a written notice sent to a payer at his or her last-known verified mailing address is returned, the department or child support agency shall contact the postmaster of the zip code of the address. If the postmaster verifies the unverified mailing address or provides a new verified address, the department or county child support agency shall send written notice to the mailing address provided by the postmaster. If the postmaster is unable to verify the last-known mailing address, or to provide a new verified address, the department or child support agency shall send notice to payer using the current employer mailing address provided by the payer under s. 767.263 (2), Stats. If the notice to the payer mailed to the payer's employer is returned, or the payer has not provided a current employer mailing

address, the department or child support agency shall use diligent effort to obtain a mailing address for the payer.

NOTE: Under sec. 767.263 (2), Stats., each party to a child support order is required to provide the child support agency with his or her residential and mailing address and the address and telephone number of his or her employer. A party shall advise the child support agency of any change in such information within 10 business days after the change.

(3) **DILIGENT EFFORT.** Diligent effort includes the following:

(a) For each of the following administrative enforcement actions, the department or county child support agency shall obtain and use:

1. License suspension and denial. For license suspension and denial under s. 49.857, Stats., the payer's mailing address of record at a state licensing agency or authority to provide notice under ss. 49.857 (3)(a) and (am), Stats., if the address is verified.

2. Account seizure. For account seizure under s. 49.854 (5), Stats., the payer's mailing address of record at a financial institution to provide notice under s. 49.854 (5) (d), Stats., if the address is verified.

3. Personal property seizure. For personal property seizure under s. 49.854 (6), Stats., the payer's mailing address of record at a state agency that titles personal property to provide notice under ss. 49.854 (6)(a), (d), and (e), Stats., if the address is verified.

4. Real property seizure. For real property seizure under s. 49.854 (7), Stats., the payer's mailing address of record on the tax bill for the property subject to seizure to provide notice under ss. 49.854 (7)(a), (d), and (e), Stats., if the address is verified.

5. Pension intercept. For pension intercept under s. 49.852, Stats., the payer's mailing address of record at the entity administering a pension plan to provide notice under s. 49.852 (2), Stats., if the address is verified.

6. Judgment and settlement intercept. For judgment and settlement intercept under 49.856, Stats., the payer's mailing address of record provided by the person ordered to pay the judgment or settlement to send notice under s. 49.856 (3), Stats., if the address is verified.

(b) If a verified mailing address cannot be identified under par. (a), the department or child support agency shall use all appropriate automated federal, state, and local locate resources and interfaces to ascertain a payer's current mailing address. If locate resources have been used for a period of 60 days and a verified mailing address has not been identified, the department or child support agency may proceed with the administrative enforcement action.

DWD 43.05 Administrative forfeitures for noncompliance with administrative subpoenas and requests for information. (1) MAXIMUM ADMINISTRATIVE FORFEITURES. The department or a child support agency may require a subpoena respondent who fails to comply with an administrative subpoena issued in accordance with s. 49.22(2m)(b), Stats., or a request for information made under s. 49.22(2m)(a), Stats., to pay an administrative forfeiture of \$25. If the failure to comply with an administrative subpoena or request for information is the result of intentional conduct by the subpoena respondent to hide information, falsify information, or provide incomplete information, the department or child support agency may require the subpoena respondent to pay an administrative forfeiture of \$500.

NOTE: Subpoena respondents may use the procedure in s. 805.07 (3), Stats., to attempt to quash an administrative subpoena.

NOTE: The department or child support agency will collect a forfeiture in accordance with 778.01, Stats.

(2) **WHEN IMPOSED.** The department or a child support agency shall determine when it is appropriate to impose an administrative forfeiture for failure to comply with a request for information or an administrative subpoena. In accordance with s. 49.22(2m)(a), Stats., a subpoena respondent who fails to comply with a request for information or an administrative subpoena may not be subject to administrative forfeiture if access to the requested information is prohibited or restricted by law, or if the subpoena respondent has good cause for refusing to cooperate with the request.

DWD 43.06 Liens. (1) LIEN DOCKET. (a) The department shall maintain a statewide support lien docket in accordance with s. 49.854(2)(b) and (c), Stats. The department shall be responsible for periodically updating the lien docket and providing a copy of the lien docket to the register of deeds and the child support agency in each county.

(b) The department or the child support agency shall be responsible for responding to inquiries concerning information recorded on the lien docket. The county register of deeds may refer any person who has an inquiry about the lien docket to the department or the child support agency.

(2) **WHEN ENTERED.** The department shall place a payer on the lien docket when the lien-eligible amount in one or more of the payer's cases equals or exceeds the lien threshold. If an individual is a payer in more than one case, each case will be evaluated separately to determine whether the lien threshold has been met, and to determine the lien amount.

(3) **DETERMINING WHETHER THE LIEN THRESHOLD HAS BEEN MET OR EXCEEDED.** The department shall place a payer on the lien docket if the lien-eligible amount in a case equals or exceeds the monthly amount due or \$500, whichever is greater.

(4) **LIEN AMOUNT** The lien amount on the lien docket shall equal the sum of lien-eligible amounts from the cases in which the lien-eligible amount meets or exceeds the lien threshold. The lien amount may include court-ordered liens made pursuant to s. 767.30, Stats.

(5) **PAYMENT OF LIEN.** (a) Any payment toward the lien amount shall indicate that the payment is a lien payment, and specify the case or cases from which the lien arose.

(b) A payment to satisfy a lien shall meet the conditions specified in par. (a) and be in an amount equal to the lien amount on the child support lien docket.

(c) The child support agency shall distribute any support payment made that does not meet the conditions in par. (a) or (b) in accordance with s. 767.25(6), 767.261, 767.51 (5p), or 767.62 (4)(g), Stats.

(d) Payments toward a court-ordered lien under s. 767.30, Stats., shall be credited toward the child support lien, if appropriate. Payments toward the child support lien shall be credited toward a court-ordered lien under s. 767.30, Stats., if appropriate.

NOTE: A payment will be credited toward a child support lien and a court-ordered lien if the arrearages that the liens are based on are the same. A payment toward a child support lien must be credited to a court-ordered lien if the property specified in the court-ordered lien is the property that is transferred.

(e) The department or child support agency shall record the satisfaction of a lien on the child support lien docket.

(6) **FILING DATE.** The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within five years after the date that the lien is first docketed.

(7) **LIEN PRIORITY.** The child support lien shall have priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective, and any other lien given priority under the law.

(8) **RENEWING A LIEN.** (a) At the end of the five year effective period of a lien, the department or a child support agency may renew the lien if the lien-eligible amount equals or exceeds the lien threshold. When a lien is renewed, the date on which the lien is renewed shall become the effective date of the lien, and a new five-year period shall commence.

NOTE: Under sec. 49.854(12)(a), Stats., a child support lien is effective for a period of five years from the effective date.

(b) When a lien is renewed, the department or the child support agency shall send the payer a notice that the lien has been renewed.

NOTE: Upon receiving notice, the payer has the opportunity to request a financial records review and a court review under sec. 49.854(3)(ag), Stats., or a direct appeal for a court review under sec. 49.854(3)(ar), Stats.

(9) **LIEN PROCEDURES.** The department shall develop procedures for releasing a lien and releasing specific property from a lien.

DWD 43.07 Financial record review. (1) In accordance with s. 49.854 (3)(ag), Stats., a payer may request a financial record review within 10 business days of the date of the notice of lien. The request shall be made in writing to the child support agency. The purpose of the financial record review is to determine the correctness of the financial records in a case. The financial record review shall cover only the period of time after the last judicial review or other account review.

NOTE: The procedure for a financial records and court order review is specified in sec. 49.854(3)(ag), Stats.

(2) Upon receiving a request for a financial record review, the child support agency shall provide the payer with the relevant financial records, information explaining how to interpret the records, and a form the payer may use to identify any alleged errors in the records. The relevant financial records may include the account history report and any county records prior to the implementation of the statewide automated child support enforcement system.

NOTE: Under sec. 49.854(3)(ag), Stats., the department shall conduct the financial records and court order review at no charge to the payer.

NOTE: The account history report is a document generated by the statewide automated child support enforcement system. The report includes a payment history which lists the date payments were received, the source of payments (except tax intercepts), the amount of payments, the debt to which the payment was applied, and any adjustments made to the payment. The report also includes the court order obligations in a case as well as a list of debts owed in a case and the current balance of each debt.

(3) Within 20 days after receiving the relevant financial records, the payer may request a meeting with the child support agency to review the financial records and to discuss any alleged errors. If the payer requests a meeting, the payer shall use the form provided by the child support agency in par. (2). After reviewing the financial records and any alleged error, the child support agency shall issue a determination as to whether the lien against the payer is in the correct amount.

(4) If the payer provides a statement of alleged error on the document provided by the department or child support agency in par. (2) within 20 days after receiving the financial records and does not request a meeting with the child support agency, the child support agency shall review the records to determine whether the alleged error is correct and provide a written determination as to whether the lien against the payer is in the correct amount.

(5) The child support agency shall provide the written determination in sub. (3) and (4) within 60 days after the date the payer's request for a financial record review is received under par. (2).

DWD 43.08 Seizure of property. (1) FREEZING FINANCIAL ACCOUNTS. (a) The department or a child support agency may not issue a notice of levy under s. 49.854 (5)(b), Stats., unless the sum of the funds in all of the payer's financial accounts, minus the \$5 levy fee under s. 49.854 (11)(a), Stats., and any early withdrawal penalty under s. 49.854 (5)(e), Stats., exceeds \$500.

(b) The notice of levy under s. 49.854 (5)(b) shall instruct the financial institution of the following:

1. The maximum amount frozen in an account at the time the notice of levy is received may not exceed the amount specified by the department or child support agency in the notice.
2. The maximum amount frozen in an account at the time the levy notice is received may not exceed the payer's ownership interest.

NOTE: According to s. 224.40 (3)(c), Stats., a financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the department or a county child support agency for the purpose of enforcing a child support order.

(c) The department, child support agency, and financial institution shall presume that a payer's ownership interest in an account is an equal pro-rata share of the account based on the number of individuals with a recorded ownership interest in the account.

(2) SEIZURE OF PERSONAL PROPERTY OTHER THAN FINANCIAL ACCOUNTS. (a) The department or a child support agency may not seize personal property

under s. 49.854(6), Stats., unless the payer's equity in the property, minus expected levy fees, exceeds \$500 per item total.

(b) The department and child support agency shall presume that a payer's equity in the property is an equal pro-rata share of the equity based on the number of individuals with a recorded ownership interest in the property.

(3) SEIZURE OF REAL PROPERTY. (a) The department or child support agency may not seize real property under s. 49.854(7), Stats., unless both of the following conditions are met:

1. The payer's equity in the property, minus expected levy fees, exceeds 10 percent of the property's fair market value.

2. The lien exceeds \$5,000.

(b) The department or child support agency shall presume that a payer's equity in the property is an equal pro-rata share of the equity based on the number of individuals with a recorded ownership interest in the property.

(4) INTERCEPT OF LUMP-SUM PENSION PAYMENTS, JUDGMENTS AND SETTLEMENTS. (a) When initiating the intercept of lump-sum pension payments under s. 49.852, Stats., the department or child support agency shall specify in the notice provided under s. 49.852 (1), Stats., that the amount withheld from the lump-sum pension payment may not exceed the payer's ownership interest in the lump-sum pension payment

(b) When initiating the intercept of judgments and settlements under s. 49.856, Stats., the department or child support agency shall specify in the notice provided under s. 49.856 (2),

Stats., that the amount withheld from the judgment or settlement payment may not exceed the payer's ownership interest in the judgment or settlement payment.

(c) The department or child support agency shall presume that the payer's ownership interest in the property is an equal pro-rata share of the equity based on the number of individuals with a recorded ownership in the property.

(5) NOTICE TO INDIVIDUALS OTHER THAN THE PAYER WITH A RECORDED OWNERSHIP INTEREST IN PROPERTY. The department or child support agency shall provide notice related to the seizure of property to any individual other than the payer with a recorded ownership interest in property subject to seizure under s. 49.854 (5), (6), or (7), or 49.856, Stats., as follows:

(a) Account seizure. For account seizure under s. 49.854 (5), Stats., notice shall be sent to the mailing address of record at the financial institution.

(b) Personal property seizure. For personal property seizure under s. 49.854 (6), Stats., notice shall be sent to the mailing address of record at a state agency that titles personal property.

(c) Real property seizure. For real property seizure under s. 49.854 (7), Stats., notice shall be sent to the mailing address of record on the tax bill for the property subject to seizure.

(d) Judgment and settlement intercept. For judgment and settlement intercept under s. 49.856, Stats., notice shall be sent using the mailing address or addresses of record provided by the person ordered to pay the judgment or settlement.

NOTE: Pursuant to s. 49.854 (5)(d), (6)(a) and (e), and (7)(a) and (e), Stats., the department or child support agency is required to provide a notice to any individual with a recorded ownership interest in a property subject to seizure. Individuals other than the payer who have a recorded ownership interest in the property subject to seizure have 20 business days after the date of the notice to request a hearing to protect the portion of the property that is attributable to their net contributions to the property.

(6) PRESUMPTION OF PAYER'S OWNERSHIP INTEREST. (a) If an individual other than the payer has a recorded ownership interest in property subject to seizure under s. 49.852, 49.854 (5), (6), or (7), or 49.856, Stats., the individual may request a hearing under s. 49.854 (7m), Stats., for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property in any county that initiated property seizure.

(b) When seizing property, the department or child support agency shall proceed based on the presumption under subs. (1)(c), (2)(b), (3)(b), or (4)(c) unless an individual other than a payer with a recorded ownership interest in the property requests a hearing under s. 49.854(7m), Stats., within 20 business days of the date of notice that seizure has been initiated under s. 49.854 (5), (6), or (7), or 49.856, Stats.

NOTE: According to s. 49.854 (7m), Stats., if the court determines that a portion of the property is attributable to the contributions of an individual other than the payer with an ownership interest in the property, the court shall direct the department or child support agency to pay the individual, from the net balance of the account or the net proceeds of the sale of the real or personal property, the proportion of the gross value of the account or real or personal property that is attributable to that person's interest.

DWD 43.09 Notice to the payee of enforcement proceedings. (1) If the child support agency is aware that a payer is subject to a protective order with respect to a payee or child in his or her case, or the child support agency has reason to believe that a payee or child in a payer's case may be harmed physically or emotionally by the payer, the department or the child support agency shall provide written notice to the payee when an administrative enforcement action has been initiated against the payer. The notice to the payee shall be sent at the same time

notice is sent to the payer in accordance with s. 49.852 (2), 49.854 (5)(b), (6)(a), or (7)(a), 49.856 (2), or 49.857 (3)(a), Stats.

(2) The department or child support agency shall provide a notice of hearing to the payee when the payer requests a hearing under s. 49.852(2)(b), 49.854 3)(ag)2. or (ar), (5)(d)6., (6)(b)3. or (7)(b)1.c., 49.856(3)(b), or 49.857(3)(a)5. or (am)5., Stats., and the hearing has been scheduled.

DWD 43.10 Thresholds for administrative enforcement actions. (1) LICENSE SUSPENSION. The department or child support agency may initiate license suspension under s. 49.857, Stats., if there is a lien against a payer, and the lien amount in the payer's case equals or exceeds 300 percent of the monthly amount due in the court order.

(2) **ACCOUNT SEIZURE.** The department or child support agency may initiate an account seizure under s. 49.854(5), Stats., if there is a lien against a payer, and the lien amount in the payer's case equals or exceeds 300 percent of the monthly amount due in the court order or \$1,000, whichever is greater.

(3) **REAL AND PERSONAL PROPERTY SEIZURE.** The department or child support agency may initiate personal property seizure under s. 49.854(6), Stats., or real property seizure under s. 49.854(7), Stats., if there is a lien against a payer, and the lien amount in the payer's case equals or exceeds 600 percent of the monthly amount due in the court order.

(4) **INTERCEPT OF LUMP-SUM PENSION PAYMENTS, JUDGMENTS, AND SETTLEMENTS.** The department or child support agency may initiate the intercept of lump-sum pension payments under s. 49.852, Stats., or the intercept of judgments and settlements under 49. 856, Stats., when a payer has been placed on the child support lien docket.

(5) DETERMINING THE MONTHLY AMOUNT DUE FOR COURT-ORDERED PROVISIONS EXPRESSED ONLY AS A PERCENTAGE OF INCOME. For a court-ordered provision expressed only as a percentage of income, the monthly amount due shall be calculated using the expected monthly amount due as the fixed amount.

(a) The expected monthly amount due means the identified monthly income of the payer multiplied by the percentage ordered for the provision

(b) To determine a payer's identified monthly income, the department or child support agency shall use the best available information which includes, but is not limited to, the income of the payer during the period of the most recent reconciliation, the most current income information reported by the payer's employer under s. 767.265(3h), Stats., information provided verbally or in writing to the child support agency by the payer, or tax returns or records.

DWD 43.11 Alternative Payment Plans. (1) APPLICABILITY OF ALTERNATIVE PAYMENT PLANS. When the department or a child support agency enforces a lien through seizure of real property or personal property, seizure of financial accounts, or denial, nonrenewal, restriction, or suspension of licenses, the payer may negotiate an alternative payment plan with the child support agency.

(2) NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER RECEIVING NOTICE OF AN ADMINISTRATIVE ENFORCEMENT ACTION. (a) The notices issued under s. 49.854(5)(d), (6)(a), or (7)(a), or 49.857(3)(a) or (am), Stats., shall inform the payer of the opportunity to negotiate an alternative payment plan, and shall notify the payer of the circumstances under which the payer may request a court hearing under s. 49.854(5)(f), (6)(c), or (7)(c), or 49.857(3)(ac) or (ar), Stats.

NOTE: Under ss. 49.854 (5)(d), (6)(b), and (7)(b), and ss. 49.857(3)(a) and (am), notices must inform the payer of his or her opportunity to request a hearing within 20 business days after the date of the notice.

(b) A payer may submit a written request to the child support agency to negotiate an alternative payment plan within 10 business days after the date of notice under s. 49.854(5)(d), (6)(a), or (7)(a), or 49.857(3)(a) or (am), Stats. The payer may submit a written request for a court hearing on the reasonableness of the plan within 20 business days after the date of notice under s. 49.854(5)(d), (6)(a), or (7)(a), or 49.857 (3)(a) or (am), Stats.

(c) If the child support agency and the payer are unable to reach agreement on the terms of a plan, and the payer requested a court hearing within 20 business days after the date of notice under s. 49.854(5)(d), (6)(a), or (7)(a), or 49.857 (3)(a) or (am), Stats., a hearing shall be conducted. If the court determines that the plan is not reasonable, it may order a plan by setting payments pursuant to s. 767.30 (1), Stats., in the amounts and at the times it considers expedient.

(3) **NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER COURT DETERMINATION ON MISTAKE OF FACT.** If a court determines that a payer owes arrears as a result of a review of alleged mistake of fact under s. 49.854(5)(f), (6)(c), or (7)(c), or 49.857(3)(ac) or (ar), Stats., and the payer did not attempt to negotiate a plan prior to the court review, the payer may, within 10 business days of the court determination, submit a written request to the child support agency to negotiate a plan.

(4) **NEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN AFTER THE RESTRICTION, LIMITATION, SUSPENSION OR REFUSAL OF A LICENSE.** Pursuant to s. 49.857 (3)(d)1., Stats., a payer may negotiate a plan with the department or child support

agency to have a license issued or renewed after it has been restricted, limited, suspended or refused.

(5) **STAYING ADMINISTRATIVE ENFORCEMENT ACTIONS.** Administrative enforcement actions shall be stayed by the child support agency that initiated an action while the payer and the agency are negotiating a plan, or, if a court review of the reasonableness of the plan is requested, until the court determination has been made. To stay an administrative enforcement action means the following:

(a) License suspension and denial. The payer may not be certified to state licensing agencies or authorities for denial, nonrenewal, restriction, or suspension of professional, occupational, recreational, or driver licenses.

(b) Account seizure. Any financial accounts frozen under s. 49.854(5)(b), Stats., shall remain frozen and may not be seized.

(c) Personal property seizure. Personal property that has been seized under s. 49.854 (6), Stats., shall be held by the department or the sheriff and may not be sold.

(d) Real property seizure. Real property may not be seized and sold.

(6) **SUSPENSION OF ADMINISTRATIVE ENFORCEMENT ACTIONS.** (a) When a plan has been negotiated between the payer and the child support agency, or the court has determined that a plan is reasonable or has ordered a plan pursuant to s. 767.30 (1), Stats., the child support agency in the county in which the plan is set shall suspend administrative enforcement actions as long as the payer complies with the plan.

(b) If a payer makes a full arrearage debt payment, prior to the completion of the administrative enforcement action, the action shall be suspended.

(7) **PROCEEDING WITH ADMINISTRATIVE ENFORCEMENT ACTIONS.** If the court determines under sub. (2)(c) that a plan is not reasonable and does not set a plan, or the payer and child support agency are unable to negotiate a plan under sub. (3), the child support agency may continue with the administrative enforcement action.

(8) **DISCLOSURE OF INCOME AND ASSETS.** The request to negotiate a plan shall include an agreement by the payer to provide the child support agency with a full disclosure of income and assets available. The payer shall provide complete income and assets information to the child support agency within 5 business days of the request to negotiate a payment plan.

(9) **CASE-BY-CASE BASIS.** A child support agency shall negotiate a plan with a payer only on cases venued in its county.

(10) **TERMS OF AN ALTERNATIVE PAYMENT PLAN.** (a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrearage debt, or both, subject to the following standards:

1. The sum of any periodic payment established under the plan and any other court-ordered payment of support, when subtracted from the payer's gross income, may not leave the payer below 100% of the poverty line established under 42 U.S.C. 9902 (2) unless the payer agrees otherwise.

2. When establishing an alternative payment plan, the child support agency shall consider the factors used by the court in determining whether the use of the percentage standard is unfair to the child or any of the parties, as specified in s. 46.10(14), 767.25, 767.51, or 767.62 (3)(e), Stats.

(b) In a case in which the conditions in par. (a)1. cannot be met, the child support agency may negotiate a lump-sum payment with the payer, or may elect to suspend administrative enforcement action.

(c) Upon agreement by the payer, periodic payments under the plan may be made through income withholding in amounts in addition to the amount ordered under s. 767.265 (1).

(11) **DEFAULT ON AN ALTERNATIVE PAYMENT PLAN.** In the event that the payer defaults on the plan by failure either to make the full lump-sum payment within one month of the date that the payment is due, or to pay an amount equal to the amount due in one month under the plan, the child support agency shall notify the payer in writing that an administrative enforcement action shall be implemented unless the lien is paid in full.

(12) **RENEGOTIATION OF AN ALTERNATIVE PAYMENT PLAN.** After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the payer or child support agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:

(a) A change in the payer's income or assets, including the sale or purchase of real or personal property.

(b) A change in the payer's earning capacity.

(c) Any other factor that the child support agency determines is relevant.

(13) **PAYERS WITH CASES IN MULTIPLE COUNTIES.** (a) When multiple county child support agencies initiate administrative enforcement actions against the same payer, and the payer negotiates an alternative payment plan with one of the agencies, the plan does not

preclude any other child support agency from proceeding with its administrative enforcement action.

(b) If a child support agency which has a lien against property of a payer negotiates an alternative payment plan with the payer, the agency may receive proceeds from the sale of the payer's real or personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other child support agencies.

DWD 43.12 Agreements with financial institutions. (1) PROCESS FOR ENTERING INTO AGREEMENTS WITH FINANCIAL INSTITUTIONS. (a) The department shall enter into agreements with financial institutions to operate a financial record matching program using an automated data exchange to the extent feasible to identify the accounts of delinquent payers. In the agreement, the financial institution shall agree to provide information on the accounts maintained at the institution in a standard format prescribed by the department, and shall indicate all of the following:

1. The financial institution matching option in s. 49.853 (3), Stats., or the state matching option in s. 49.853 (4), Stats., as the method for participating in the financial record matching program.
2. The media for transmitting data to the department or receiving data from the department.

NOTE: The standard format for record matching will be based on specifications provided by the U.S. Department of Health and Human Services.

(b) The financial institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement.

(c) When a financial institution returns to the department an agreement that has met the conditions in par. (a), the department shall sign the agreement and provide the financial institution with a copy of the agreement.

(d) In order for a financial institution to change the conditions specified in par. (a), it shall contact the department at least 60 days prior to the beginning of the next quarterly record match.

NOTE: The department and financial institutions are subject to the confidentiality provisions in s. 49.853 (3)(c) and (4)(c) and (d).

(2) REIMBURSEMENT FOR PARTICIPATION IN THE FINANCIAL RECORD MATCHING PROGRAM. In accordance with s. 49.853 (2), Stats., the department shall reimburse a financial institution \$100 per quarter for participating in the financial record matching program in accordance with s. 49.853 (3) or (4), Stats., and the terms of the agreement under sub. (a).

SECTION 2. Chs. HSS 80 to 81 are renumbered chs. DWD 40 to 41.

EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

(End)

**SUMMARY OF PUBLIC HEARING AND PUBLIC HEARING PARTICIPATION
DWD 43 - CHILD SUPPORT ADMINISTRATIVE ENFORCEMENT**

Four public hearings were conducted on proposed administrative rule DWD 43 during October 1998.

- The first public hearing was held in Madison, Wisconsin on October 2, 1998. Staff in attendance included Howard Bernstein, Hearing Officer, and Troy Sterr and Amber Erickson, Resource Persons.
- The second public hearing was held in Appleton, Wisconsin on October 13, 1998. Staff in attendance included Carol Henry, Hearing Officer, and Amber Erickson, Resource Person.
- The third public hearing was held in Milwaukee, Wisconsin on October 20, 1998. Staff in attendance included Connie Chesnik, Hearing Officer, and Troy Sterr and Amber Erickson, Resource Persons.
- The fourth public hearing was held in Menomonee, Wisconsin on October 27, 1998. Staff in attendance included Susan Pfeiffer, Hearing Officer, and Troy Sterr and Carol Chellew, Resource Persons.

The hearing record was open until November 6, 1998, for written comments.

Registered	39
Observation	20
Oral presentation	19
Written Comments	13
Support the rule changes	6
Oppose the rule changes	14
Neither for nor against	23

The following is a list of persons who testified at the public hearings, observed the public hearings, or submitted written comments on the rule. The number preceding each name serves as the numerical code used to indicate the person providing specific recommendations in the summary of the public hearing testimony.

- | | |
|---|---|
| 1. Mary Beth Keppel
Family Law Section
State Bar of Wisconsin
Room 104 City County Building
Madison, WI 53709 | 4. Rose Oswald Poels
Vice President - Legal
Wisconsin Bankers Association
P.O. Box 1667
Madison, WI 53703 |
| 2. Thomas Knabel
S40 W26950 Oakgrove Ln
Waukesha, WI 53189 | 5. Katherine L. Komadtz
S Mills St.
Madison, WI 53725 |
| 3. John C. Engel
Wisconsin Credit Union League &
Affiliates
N25 W23131 Paul Road
Pewaukee, WI 53072-5779 | 6. Michael H. Blumenfeld
N. Carroll St., Ste 800
Madison, WI 53703 |

7. Leslie L. Lord
N25 W23131 Paul Rd
Pewaukee, WI 53072
8. Judge Philip M. Kirk
Chief Judge, 8th Judicial District
Harding Street
Waupaca, WI 54981
9. Mark Wildeman
8th Street
Menasha, WI 54952
10. Deborah Agate
N Lynndale Dr
Appleton, WI 54914
11. Kenneth M Wagner
S Walnut Street
Appleton, WI 54911
12. Traycee England
Wagon Wheel Drive
Appleton, WI 54915
13. Beth Trembl
N4127 Ganley Ave
Kaukauna, WI 54130
14. Ric Doran
S Walnut Street
Appleton, WI 54911
15. Fredrick J. Sense
S. Mueller St.
Appleton, WI 54911
16. Ann Biersteker
Green Meadow Dr. # 3
Appleton, WI 54914
17. Kathy Walsh Nufer
Elm Street
Menasha, WI 54952
18. K.L. Kortness
Primerose Ln
Neenah, WI 54956
19. Tim Bloch
Governor's Office - Milwaukee
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Milwaukee, WI 53203
20. Roberta M. Rieck
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21. Jessica Barwig
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22. Janet Nelson
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23. Rachel Davis
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24. Robyn A. Schuchardt
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25. Jack B. Oates
Douglas
Racine, WI 53402
26. Lucy Cooper
State Bar, Family Law Section
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Milwaukee, WI
27. Lauren Lehaberg
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Port Washington, WI 53074
28. Burton Davis
W Beacon Hill Drive
Franklin, WI 53132
29. Nola Vander Meulen
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30. Michael P. Sullivan
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Milwaukee, WI
31. Teresa Cole
W. Beechwood
Milwaukee, WI 53223
32. Joseph Donnelly
S 11th St
Milwaukee, WI 53215
33. Andrew Kellner
W3305 Hwy 64
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34. Lisa Stark
State Bar Family Law Section
PO Box 390
Eau Claire, WI 54702-0390
35. Jo L. Kutzner, Director
Clark County Child Support Agency
Courthouse, Room 504
Court Street
Neilsville, WI 54456
36. Gretchen Meierotto
St. Croix County Child Support Agency
Carmicheal Road
Hudson, WI 54016
37. T. Lynn Holmes
St. Croix County Child Support Agency
Carmicheal Road
Hudson, WI 54016
38. Renee Lyon, Director
Trempealeau County Child Support
Main Street
Whitehall, WI 54773
39. Jeanne Stevenson
Dunn County Child Support Agency
Parkway Drive
Menomonee, WI 54751
40. Ms. Carole J. Elbe, President
Valley Health Credit Union
E North Water St
Neenah, WI 54956-2781
41. Ms. Doris M. Shouldice
P.O. Box 73
North Prairie, WI 53153
42. Mr. Michael J. DeGrand, President
Harbor Credit Union
Weise Street
Green Bay, WI 54305
43. SOLHEIM BILLING & GRIMMER, S.C.
Attn: Mr. Thomas P. Solheim
Firststar Plaza, Suite 750
PO Box 1644
Madison, WI 53701-1644
44. Ms. Susan Taylor Campbell
E Pine Street
River Falls, WI 54022
45. Mr. J. Bushnell Nielson
Associate Area Counsel
Chicago Title Insurance Company
Swenson Drive
Waukesha, WI 53187-0987
46. Ms. Debra A. Bougie
Kingsbridge Rd
Madison, WI 53714-3418

SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

RULE

RESPONDENT NUMBER

COMMENTS

DEPARTMENT RESPONSES

5	General	Clarify how the rule affects foreign judgments and out of state payers.	The administrative enforcement actions in DWD 43 may be imposed only if Wisconsin is enforcing the child support order. A foreign order registered in Wisconsin for enforcement would be subject to DWD 43. If the payer lives out of state, and Wisconsin is enforcing the order, any property that the payer owns in Wisconsin may be subject to a lien and seizure, and any licenses issued by the state may be suspended or denied.
9	General	It is unfair to payers to implement such extreme punishments before the financial component of the KIDS system is fixed. Many arrearages are incorrect and these proposed penalties are too significant to impose before the existing errors are corrected.	Payers always have the opportunity to dispute arrearage amounts when an administrative action is initiated. When a lien is docketed, payers have the opportunity to request a financial record review and a court hearing to dispute whether past-due support is owed. When property seizure or license suspension is initiated, payers have the opportunity to negotiate a payment plan with a child support agency in order to suspend the action, and request a court hearing to dispute whether past-due support is owed or the payment plan is reasonable.
27	General	The provisions in the rule do not address situations in which payers quit their jobs to avoid paying support and can exist without technical income.	In cases in which the payer is shirking in order to avoid paying support, the court may impute a support amount based on the payer's earning capacity in order to establish an order. Although the payer does not have technical income, if arrears accrue on the unpaid imputed amount, the child support agency may pursue contempt proceedings against the payer, or initiate the suspension of a payer's professional, occupational, recreational or drivers licenses to enforce the support order.
25	General	These are communist laws.	1997 Wisconsin Act 191 requires the department to promulgate rules necessary to implement the administrative enforcement provisions required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
25	General	This is an ex-wife support bill.	The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to have laws for administrative child support enforcement. Increased administrative enforcement will increase the amount of support collected on behalf of families.

SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

RULE NUMBER

COMMENTS

DEPARTMENT RESPONSES

25,31	General	Men have no rights in child support. This bill is against men.	The enforcement provisions in DWD 43 are gender neutral. Child support agencies may use these enforcement remedies equally against mothers or fathers who fail to pay support.
29	General	It is important that the state take a more pro-active stance in pursuing delinquent parents.	The rule expands the tools available to child support agencies to collect past-due support. These administrative remedies will expedite the enforcement process.
29	General	Implementing lien and seizure provisions is important when the custodial parent does not have property but the noncustodial parent does own property.	A child support lien on property will prevent delinquent payers from transferring property without first satisfying past-due support. In addition, child support liens will be reported to credit bureaus which may affect the ability of delinquent payers to purchase property. A child support agency may initiate property seizure to enforce a lien if the arrearage in the case meets the threshold for seizure, the child support worker determines that seizure is the next appropriate action in the case, and the value of the property that is subject to seizure exceeds the amount specified in the rule.
28	General	The rule does not provide a quick way to stop an administrative process once it has been initiated. The more severe the penalty, the more there is a need for immediate relief to the problem.	Payers always have the opportunity to dispute arrearage amounts when an administrative action is initiated. When a lien is docketed, payers have the opportunity to request a financial record review or a court hearing to dispute whether past-due support is owed. When property seizure or license suspension is initiated, payers have the opportunity to negotiate a payment plan with a child support agency in order to suspend the action, and request a court hearing to dispute whether past-due support is owed or the payment plan is reasonable.
28	General	When the KIDS system shows that a payer is behind in child support, enforcement actions are initiated based on the presumption that a payer is guilty of owing those arrears. The legislature should not create additional penalties without a presumption of innocence.	As the custodian of KIDS records, the department presumes that its records are accurate. Administrative actions will be initiated based on the arrearage in these records.
44	General	Each child support case must be considered on its own merits to determine whether actions in that case will harm women and children.	Before an administrative enforcement action is initiated in a case, child support workers will determine whether that action is the next appropriate action based on the circumstances in the case.
32	General	The property that the payer lives in with his children may have a lien placed against it because he owes past-due support. His ex-wife also owes him past-due support.	A lien will not be placed on the property if past-due support owed by the payer is paid in full.

SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

RESPONDENT RULE NUMBER COMMENTS DEPARTMENT RESPONSES

33	General	Taking a person's drivers license or professional license will not be a positive move to force fathers to pay child support. It denies fathers of their livelihood which may be unconstitutional.	The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to have laws requiring the suspension, denial, and restriction of driver, professional, occupational, and recreational licenses for failure to pay support. The purpose of these laws is not to suspend licenses but to encourage payers to make arrangements to satisfy past-due support.
33	General	The need for child support would be reduced if the divorce process were less adversarial and both parents shared equally in custody, placement, and support.	1997 Wisconsin Act 191 requires the department to promulgate rules necessary to implement administrative enforcement actions. This recommendation exceeds the scope of DWD 43.
28, 41	General	These administrative procedures are just another way to get more money from the federal government. This money does not go to any child.	The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to have laws for administrative child support enforcement. Increased administrative enforcement will increase the amount of support collected on behalf of families.
41	General	The rule lacks necessary opportunities for noncustodial parents to identify errors and mistakes.	The rule, along with provisions of 1997 Wisconsin Act 191, provide the payer with several opportunities to identify errors and mistakes in financial records. When a lien is docketed, payers have the opportunity to request a financial record review or a court hearing to dispute whether past-due support is owed. When property seizure or license suspension is initiated, payers have the opportunity to request a court hearing to dispute whether past-due support is owed.
25	General	Without proper guidelines, these rules will be turned against fathers when they are given to administrators.	Procedures for these administrative enforcement provisions will be provided to county child support agencies before these provisions are implemented.
31, 32	General	Do not pass laws that devastate parents and children.	The purpose of the rule is to ensure that support is collected for children, not to devastate families.
41	General	The rule should impose punitive measures against agencies that make mistakes. As the rule is written, there is no incentive for agency workers to be accurate.	Before a child support worker initiates an administrative enforcement action, the worker will review the case to determine an administrative remedy is the next appropriate action in the case. The department is not using the blanket approach for suspending licenses or seizing property that would target all delinquent payers.
41	General	The rules could be construed to apply to all parents in the state regardless of whether they receive welfare.	The rule only affects cases that are enforced by a child support agency.

SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

RULE

RESPONDENT NUMBER

COMMENTS

DEPARTMENT RESPONSES

44	General	The payment of child support needs to be enforced. This rule may be the answer to increased enforcement	We agree. The rule expands the tools available to child support agencies to collect past-due support. These administrative remedies will expedite the enforcement process.
46	General	It is inappropriate to proceed with this rule while the KIDS system is erroneous. The rules do not provide adequate protections from these significant enforcement activities for consistent payers if an error in KIDS does occur.	Payers always have the opportunity to dispute arrearage amounts when an administrative action is initiated. When a lien is docketed, payers have the opportunity to request a financial record review or a court hearing to dispute whether past-due support is owed. When property seizure or license suspension is initiated, payers have the opportunity to negotiate a payment plan with a child support agency in order to suspend the action, and request a court hearing to dispute whether past-due support is owed or the payment plan is reasonable.
46	General	There is no notification given to a payer that a payment has been received and credited to the proper account. There is no good way to a payer to call and receive this information.	With the implementation of centralized receiving and disbursement, payers may contact the customer service center at the Wisconsin Support Collection Trust Fund to receive account information. In addition, the monthly account statements include the amount of the support paid during the previous month.
34	General	A person could be damaged by an administrative enforcement action if the action is taken incorrectly. The rule does not have a provision to protect individuals against unwarranted action taken against them. Individuals will spend time and money to defend against improper actions taken against them.	A mistake in identity can be corrected simply by presenting identifying information to the county child support agency. A mistake in the amount of past-due support owed can be corrected by requesting a financial record review. A payer can request a financial record review after receiving a notice of lien. A financial record review is an administrative process to review payment records and court orders, and should not require the services of an attorney. However, a payer always has the right to obtain legal counsel. A provision to reimburse individuals for damages and legal fees will not be included in the rule.

SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

RESPONDENT RULE NUMBER

COMMENTS

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3	43.03 (1)	<p>Clarify whether a financial institution would participate in Wisconsin's financial record matching program only as to accounts located in Wisconsin, or wherever located. Under Act 191, a financial institution is not liable for disclosing information to the department or a child support agency pursuant to the financial record matching program. It is not clear that this provision of Wisconsin law will be applied by courts of other states which may hear privacy suits against Wisconsin financial institutions. Include a definition for the phrase "account maintained at a financial institution" that would exclude accounts held at out-of-state branches of Wisconsin financial institutions.</p>	<p>The rule has not been modified. Any accounts maintained by an institution doing business in Wisconsin would be subject to data matching regardless of whether the accounts are located in Wisconsin. The institution would not be liable for providing this account information. According to 42 U.S.C. 669A (a), notwithstanding any other provision of federal or state law, a financial institution is not liable under any federal or state law for disclosing any financial record of an individual to a state child support agency attempting to establish, modify, or enforce a child support obligation of such individual.</p> <p>If an institution is a operating in more than one state, it may decide to perform the data match with the federal Office of Child Support Enforcement instead of state child support agencies in accordance with Section 406 of P.L. 105-200.</p>
4	43.03 (7)	<p>Clarify the definition of "child support lien." DWD 43 allows for a lien against all real and personal property of a payer. Section 49.854 (1)(e) limits the department to a lien against only that property which is in existence at the time of levy. Moreover, a lien is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on that title</p>	<p>To be consistent with s. 49.854 (1)(e), Stats., the rule has been modified to limit the lien to property in which the payer has a recorded ownership interest at the time of levy. In addition, a note has been added to the rule to indicate that a lien is not effective against a good-faith purchaser of titled personal property unless the lien is recorded on that title.</p>
20/21	43.03 (10)	<p>The expected income amount due should be based upon the most current income information available, especially when the income of the payer fluctuates.</p>	<p>We agree. The rule has been modified to specify that the most current income information reported by the payer's employer or the payer will be used to determine the expected monthly amount due in addition to the income of the payer during the period of the most recent reconciliation or in tax returns or records. The definition of expected monthly amount due has been moved to DWD 43.10 (5).</p>
20/21	43.03 (14)	<p>The definitions of "lien eligible amount" should be expanded to include the definition given under DWD 43.06(3).</p>	<p>The definition of the lien eligible amount under DWD 43.03 (15) has been modified to include DWD 43.06 (3) of the proposed rule. DWD 43.06 (3) has been deleted from the rule.</p>
20/21	43.03 (21)	<p>Clearly define the word "person."</p>	<p>As defined in s. 990.01 (26), Stats., "person" includes all partnerships, associations, and bodies politic or corporate. A note has been added to the rule to include this definition.</p>

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20/21	43.04	There should be a notice included in the monthly billing statements that clearly describes that consequences noncustodial parents will face if they fall behind in their child support.	The department plans to send a notice to all payers prior to the implementation of the lien docket that informs payers of the consequences of being placed on the lien docket. In addition, prior to the implementation of administrative enforcement actions, all payers will receive information about these new enforcement remedies. In new cases, a payer will receive information about administrative enforcement actions when a court order is entered. When payers are delinquent, the monthly billing statements will inform them of their delinquency status and that enforcement actions may be taken to collect past-due support.
21	43.04	Notices of administrative enforcement actions must outline the timelines that a payer must follow to request a financial record review or hearing.	We agree. Notices of administrative enforcement actions will notify payers of their due process rights and the time frames for requesting a court hearing and a financial record and court order review, and negotiating an alternative payment plan. This is a procedural concern that will not be addressed in the rule.
34	43.04	Notification of administrative enforcement actions required in the rules should be included with the regular monthly billing statements to the payer.	Notice of administrative enforcement actions will be sent separately from monthly billing statements. These notices will be more distinctive if they are mailed separately instead of sent with a monthly billing statement.
20/21	43.04 (2)	Add a requirement to this section that requires the department to document what steps it has taken to ensure that diligent effort has been made in sending out notices.	45 CFR 303.2 (c) requires child support case records to be supplemented with all information and documents pertaining to the case including all relevant facts, dates, actions taken, contact made and results in a case.
20/21	43.04 (4)	This section should be renumbered 43.04(3)(g) because using the locate services should be a component of the diligent effort to locate requirement.	The rule has been modified to include locate resources as a component of diligent effort for notifying the payer of administrative enforcement actions.
21	43.04 (5)	Clarify how third parties will receive notice of administrative enforcement actions when the payer is the only person listed on the title or only the payer's address is provided.	Notice of administrative enforcement actions will be provided to third parties with a recorded ownership interest in the property.
20/21	43.04 (5)	This section should direct the department or child support agency to send notices related to the seizure of property to the payer's spouse.	The rule has been modified to indicate that individuals other than the payer with a recorded ownership interest in property will be notified when the property is subject to seizure. A spouse will receive notice of property seizure if he or she has a recorded ownership interest in the property. DWD 43.04 (5) has been moved to DWD 43.08 (5).

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20/21	43.04 (5)	The notice sent to joint property holders should include a request for hearing that is easy to understand. The notice should clearly outline the time lines for requesting financial record reviews and for requesting court hearings.	When the department develops the notices for individuals other than the payer with a recorded ownership interest in property subject to seizure, the notice will indicate that the individual has 20 business days after the date of notice to request a hearing to protect the portion of the property that is attributable to his or her contributions. Sections 49.854 (5)(d), (6)(b), and (7)(b), Stats., require that the notice include this timeframe for requesting a court hearing. Individuals other than the payer with a recorded ownership interest in property do not have the opportunity to request a financial record review.
9	43.05	The arrearage problem in KIDS must be corrected before administrative penalties are imposed.	Administrative penalties may be imposed if a subpoena respondent fails to comply with an administrative subpoena or request for information, not if arrearages are owed.
10, 30	43.05	The rule does not identify the procedures individuals should follow if they have questions about the subpoena or do not understand the subpoena.	The administrative subpoena advises the subpoena respondent to contact the child support agency that issued the administrative subpoena if he or she has questions about the subpoena.
10, 21, 26, 30, 34	43.05	The rule does not specify where a subpoena respondent should go to quash a subpoena if the subpoena is oppressive or unwarranted.	The procedure for quashing an administrative subpoena is the same as the procedure for quashing a judicial subpoena at s. 805.07 (3), Stats. A note has been added to the rule to cross-reference this provision.
10, 30, 34	43.05	The rule does not specify how individuals can defend themselves against a forfeiture if they have a valid reason for not complying with an administrative subpoena.	Individuals may quash an administrative subpoena using the procedure outlined in s. 805.07 (3), Stats., for quashing a judicial subpoena. A note has been added to the rule to cross-reference this provision.
10, 30, 34	43.05	The rule does not specify how the department will collect the forfeiture that is imposed for failure to comply with an administrative subpoena.	The department will collect forfeitures in accordance with s. 778.01, Stats. A note has been added to the rule to cross-reference this provision.

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30, 34	43.05	<p>The rule does not specify how the penalty for failure to comply with an administrative subpoena is set. The assessment of a penalty may be arbitrary.</p>	<p>The arbitrariness of the forfeiture amount has been removed from the rule. The rule has been modified to set a forfeiture of \$25 (instead of up to \$25) if a subpoena respondent fails to comply with an administrative subpoena unwillfully.</p> <p>Based on the circumstances in the case, the child support agency will determine whether a forfeiture is appropriate. The rule states that a subpoena respondent who fails to comply with a request for information may not be subject to an administrative forfeiture if access to the requested information is prohibited or restricted by law, or the subpoena respondent has good cause for refusing to cooperate. The rule has been modified to extend these exceptions to respondents who fail to comply with an administrative subpoena.</p>
34	43.05	<p>It is unusual for the agency that issues the administrative subpoena to impose the sanctions for failure to comply with the subpoena. This may be unconstitutional and may not provide due process.</p>	<p>Section 325 of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to have laws that authorize IV-D agencies to issue administrative subpoenas and impose penalties for failure to comply with an administrative subpoena.</p>
33	43.06	<p>Placing liens will not be effective because there are ways for payers to get around the lien such as not holding property in their name.</p>	<p>Under Wisconsin's Uniform Fraudulent Transfer Act, child support agencies may have transfers of property voided if the purpose of the transfer was to prevent assets from being seized to satisfy child support debts. In addition, payers who do not hold property in their name in order to escape a lien will not build equity in their name.</p>
20/21	43.06	<p>Consideration should be given to paternity cases when determining whether the lien threshold has been met. For instance, a payer may be in arrears in two court cases with the same payee. If the rule as written were applied, neither cases may meet the lien threshold unless there were a mechanism for consolidating the cases. In essence custodial parents with child support orders in a number of different paternity cases would not be provided the same enforcement options as custodial parents in divorce cases where there are multiple children and one order.</p>	<p>The Bureau of Child Support will establish policy advising counties to consolidate child support orders involving the same payer and payee.</p>

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45	43.06	In the sale or financing of real estate, there has to be certainty as to the lien amounts so that the buyer or lender can take an interest in the property free of all liens. A payoff letter with the specified amount needed to satisfy the lien, plus any interest charges, should be issued by the department. Without this type of notification an obligor will have a hard time selling or financing real estate.	The rule has been modified to require the department to develop procedures for releasing a lien.
45	43.06	The department should adopt a procedure for the release of real estate.	The rule has been modified to require the department to develop procedures for releasing property from a lien.
45	43.06	The department may wish to adopt a procedure for subordinating its liens to refinanced mortgages, on the idea that the obligor will obtain a better ability to pay after refinancing.	The rule has not been modified to require the department to develop procedures for subordinating its lien. A payer will have to satisfy the child support lien before refinancing property.
45	43.06	Liens must have effective dates shown on them so that the date of priority of each lien is visible from the docket itself.	The rule has been modified to indicate that the effective date of the lien is the date that the lien is first docketed and delivered to the register of deeds. The effective date will be displayed on the electronic lien docket.
45	43.06	Each lien must have a unique lien number so if a second lien is filed after the first is satisfied, payments will be tied to the correct lien.	This is a procedural issue that will not be addressed in the rule. Each lien will have a unique lien number. The lien number will include the year that the lien is docketed and the sequence in which the lien is docketed that year.
45	43.06	The payer's date of birth and address, and the county originating the lien must appear on the lien docket to help title searchers determine if there is a lien against an individual.	This is a procedural issue that will not be addressed in the rule. For each entry on the lien docket, the department will include a payer's date of birth and address, and the county or counties from which the lien originated.
2, 45	43.06	Clarify the priority of the child support lien versus other types of liens, such as superpriority liens, and real estate interests.	The rule has been modified to indicate that a child support lien has priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective, and any other lien given priority under the law.
3	43.06	Section 49.854 (12)(a) establishes the lien priority on real property. Clarify the lien priority on personal property.	See previous comment.

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45	43.06	Clarify whether a lien attaches to the marital property interest of a spouse not in title. This is not a joint interest as defined in the rule.	The definition of child support lien has been modified to clarify that the lien will attach itself to any real and personal property in which the payer has a recorded ownership interest at the time of levy.
45	43.06	Clarify whether a lien attaches to property title in a trust or a limited liability company when either the beneficiary or trustor is the obligor.	The rule has been modified to indicate that a lien does not attach to the property title of a beneficial interest in a trust, member interest in a limited liability company, partner interest in a partnership, and shareholder interest in a corporation.
45	43.06	It is problematic for a title searcher or Registrar of Deeds to directly match a lien with a satisfaction due to the fact that the lien is stored on the electronic docket and the satisfaction is stored in the Registrar of Deeds office.	Section 49.854 (2)(d), Stats., states that a satisfaction of lien may be recorded in the office of the registrar of deeds in which real or personal property of the person who owed support is located. Instead of filing a satisfaction with the registrar of deeds, the electronic child support lien docket will indicate whether a child support lien has been satisfied. The electronic child support lien docket will be accessible in the office of the county registers of deeds. The rule has been modified to indicate that the department or child support agency will record the satisfaction of a lien on the child support lien docket.
45	43.06 (1)	There needs to be more widespread availability of the lien docket. The terminals at the registrar of deeds office is not adequate to handle the volume of daily queries this rule calls for. Also, institutions should have the option to print the lien docket. The best solution would be to make the lien docket available to private companies at a cost to them.	The department will address this concern when it implements the child support lien docket.
20/21	43.06 (3)	The rule does not outline a procedure for establishing the amount of arrears owed in cases with percentage expressed orders. Without a procedure for establishing arrears, percentage expressed orders will be excluded from administrative enforcement activities. Child support agencies should be directed to conduct account reconciliation on percentage expressed orders at least every six months.	The rule will not be modified to require that reconciliations be conducted every six months for several reasons. First, the method for charging an arrearage is not germane to the rule; the rule does not outline how an arrearage is charged in cases with fixed orders. Second, given the workload associated with reconciliation, it would be impossible for child support agencies to conduct a reconciliation every six months. Finally, it is the policy of the Bureau of Child Support that reconciliations be conducted annually in cases with percentage expressed orders.

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20, 21	43.06 (3)(b)	There is no monthly amount charged in cases where the child support order is percentage expressed for the purposes of determining the lien eligible amount. Without a requirement to determine the amount owed for percentage expressed orders, the proposed rule will exclude percentage expressed orders from administrative enforcement activities.	The lack of a monthly charge does not mean that cases with percentage expressed orders will be excluded from administrative enforcement. When the lien-eligible amount is calculated, the monthly charge is subtracted from the arrearage debt in the court case in order to correct for any potential false arrearages. In cases with purely percentage expressed provisions, the arrearage debt does not include any false arrearages. Therefore, a monthly charge does not need to be subtracted from the arrearage debt.
26, 34	43.06 (4) and 43.10	Thresholds for administrative actions should be set at a uniform dollar amount and remain consistent throughout all thresholds. The amount of \$500 is too low considering the seriousness of the actions and the time involved to impose sanctions. A better threshold amount would be an amount of \$1500 for enforcement actions.	The department has worked with the Child Support Policy Advisory Committee and the legislature to develop reasonable thresholds for initiating administrative enforcement actions. The thresholds for initiating administrative remedies are based on a given percentage of the monthly amount due in the court case. Basing the thresholds on the monthly amount due equalizes the thresholds across cases with different levels of child support due. Different thresholds create a hierarchy of enforcement actions. As the severity of the administrative enforcement action increases, the percentage of the monthly amount due that arrears in a court case must meet or exceed also increases.
32	43.07	Computer printouts are worthless and cannot be understood.	The account history report has been modified to contain more plain language descriptions rather than codes. In sections that contain codes, an attempt has been made to make the codes understandable. An information sheet explaining how to read the account history report and a key attachment of the codes will be provided with the account history report. The account history report will include a payment history which lists the date payments were received, the source of the payments (except tax intercepts), the amount of payments, the debt to which the payment was applied, and any adjustments made to a collection. The report will also include the court order obligations in a case as well as a list of debts owed in a case and the current balance of each debt. A note has been added to DWD 43.07 (2) to indicate the information included in the account history report.

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31	43.07	It takes payers time to correct problems with computer records that are inaccurate.	In some cases in Milwaukee County, inaccurate data was loaded into the KIDS system during conversion. As a result of KIDS implementation, these errors were identified and corrected. The KIDS system itself tracks payments and arrearages correctly.
35	43.07	The relevant financial records should not go back to the opening of the case. Only records from the most recent order should be provided.	According to DWD 43.07 (1), the financial record review will cover the period of time after the last judicial review or other account review.
1	43.07	The rule does not define relevant financial records.	DWD 43.07 (2) has been modified to indicate that the relevant financial records may include the account history report and any relevant county records prior to the implementation of the statewide child support enforcement system.
1, 8, 10, 20, 21, 26	43.07	By simply requiring the child support agency to provide the payer with a copy of relevant financial records and information explaining how to interpret them shifts the burden to the payer to review and interpret any the records and to allege any errors. This process is inconsistent with s. 49.854 (3)(ag), Stats., which requires the child support agency to "hold" and "conduct" a financial record review.	As the custodian of KIDS records, the department presumes that its records are accurate. It is the responsibility of the payer to identify any errors in the records. However, the rule has been modified to provide a payer with the opportunity to meet with a child support worker to review the financial records and to discuss any alleged errors. The payer does not have to allege an error in the records in order to meet with a child support worker to review the records.
1	43.07	The department must conduct a financial record review that does not depend on the payer alleging an error in the records.	As the custodian of KIDS records, the department presumes that its records are accurate. It is the responsibility of the payer to identify any errors in the records. However, the rule has been modified to provide a payer with the opportunity to meet with a child support worker to review the financial records and to discuss any alleged errors. The payer does not have to allege an error in the records in order to meet with a child support worker to review the records.

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1, 8, 26, 30, 34	43.07	KIDS financial records are difficult to understand even with instructions explaining how to interpret the records. The financial record review is not meaningful if the payer cannot understand the records.	The account history report has been modified to contain more plain language descriptions rather than codes. In sections that contain codes, an attempt has been made to make the codes understandable. An information sheet explaining how to read the account history report and a key attachment of the codes will be provided with the account history report.
30	43.07	There is no due process of law if the records are unintelligible.	The account history report will include a payment history which lists the date payments were received, the source of the payments (except tax intercepts), the amount of payments, the debt to which the payment was applied, and any adjustments made to a collection. The report will also include the court order obligations in a case as well as a list of debts owed in a case and the current balance of each debt. A note has been added to DWD 43.07 (2) to indicate the information included in the account history report. See previous comment.
8	43.07	Child support agencies should be required to meet face-to-face with payers and help them read and understand the records	The rule has been modified to provide a payer with the opportunity to meet with a child support worker to review the financial records and to discuss any alleged errors. The payer does not have to allege an error in the records in order to meet with a child support worker to review the records. See previous comment.
8	43.07	Face-to-face meetings between the child support agency and the payer will lead to more settlements without court assistance which is the purpose of the administrative provisions in 1997 Wisconsin Act 191 and DWD 43. These settlements will have a positive impact on workload scheduling for those cases that do require court time.	See previous comment.
8	43.07	A child support agency's case in court will be enhanced if the agency has attempted to explain and settle the manner with the payer.	See previous comment.
34	43.07	The last judicial review may have been taken without the actual record being reviewed.	The financial record review will not include the financial records for a period of time prior to a court review or other account review. A court determination of arrearages is a final determination.

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34	43.07	The time period of the financial record review is limited. The review should cover a longer period and be more comprehensive unless not requested by the payer.	See previous comment.
34	43.07	It is difficult to succinctly write why records are in error and provide documentation to support your position. It will be easier for a payer to allege an error in the financial record review process if the payer has the opportunity to meet face-to-face with a child support worker.	When a payer requests a financial record review, the child support agency will provide the payer with an account history report, any relevant pre-KIDS county records, and information on how to read the account history report. In addition, the agency will provide the payer with a form the payer may use to identify any alleged errors in the records. The form will provide the payer with categories of potential types of errors that the payer may allege.
10	43.07	The child support agency does not need to meet with every payer for a financial record review, but payers should have the opportunity for a face-to-face meeting with the child support agency.	The rule has been modified to provide a payer with the opportunity to meet with a child support worker to review the financial records and to discuss any alleged errors. The payer does not have to allege an error in the records in order to meet with a child support worker to review the records.
26	43.07	The child support agency does not need to meet with every payer for a financial record review, but payers should have the opportunity for a face-to-face meeting with the child support agency if the payer finds an error.	The rule has been modified to provide a payer with the opportunity to meet with a child support worker to review the financial records and to discuss any alleged errors. The payer does not have to allege an error in the records in order to meet with a child support worker to review the records.
1	43.07	KIDS financial records do not indicate whether various court orders have been entered correctly in KIDS. When a financial record review is requested, the child support agency must be required to retrieve all of the court orders in existence on that case and manually check whether each of the orders was correctly placed in the system.	See previous comment.
			As the custodian of KIDS records, the department presumes that its records are accurate. Therefore, it is the payer's responsibility to determine whether various court orders have been entered correctly into KIDS. The account history will be modified to include a readable summary of court order obligations in a case.
			A note has been added to the rule to indicate that the account history report includes court order obligations in a case.

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1, 10, 30, 34	43.07	The financial records must include a readable summary of court orders, including the effective dates and amounts of past orders, so that NCPs will be able to accurately determine whether orders were entered correctly and arrearages are correct.	A note has been added to the rule to indicate that the account history report includes court order obligations in a case.
1	43.07	Financial records will need to indicate adjustments made in the payment records and any notes associated with those adjustments.	A note has been added to the rule to indicate that the payment history section of account history report includes any adjustments made to a payment.
1, 10, 26, 34	43.07	During the conversion to KIDS, arrearages were doubled or deleted in cases. Payers will not know if the system made a mistake during conversion.	These conversion problems were experienced in Milwaukee County. Milwaukee County has made every effort to correct these problems associated with conversion.
1, 10, 30, 34	43.07	The financial records that are provided to payers must include a clear list of the source of payments, the date of payments, and the amount of the payment.	A note has been added to the rule to indicate that the account history report includes the date that a payment was received, the collection source of the payment (except tax intercept), the amount of the payment, and the debt to which the payment was applied.
34	43.07	The amount of arrears and any miscellaneous charges must be included in the financial records provided to payers.	A note has been added to the rule to indicate that the account history report includes a listing of debits owed in a case and the current balance of each debt.
20/21	43.07	The rule does not state whether the financial records are free of charge to the payers and payees when requested.	Section 49.854 (3)(ag), Stats., states that the department must conduct the financial record and court order review at no charge to the payer. The note in DWD 43.07 (2) includes a cross-reference s. 49.854 (3)(ag), Stats.
20, 21	43.07	The presumption of accuracy of the financial records that existed when the clerks of court maintained the records cannot be extended to the department because the department, as a party to the family court action, should have to prove the accuracy of the financial records it relies upon. The department or the child support agencies should be required to review the actual financial records and the court orders in cases where requests are received given the known inaccuracies of KIDS records.	Financial records maintained by the clerks of court are no more likely to be accurate than records maintained by the department. However, because KIDS record maintained by the clerks of court were records of the court and, therefore, authentic records, they are more likely to be considered accurate. The department has developed a process for establishing the authenticity of records for court proceedings. As the official custodian of KIDS records, the department will self-authenticate KIDS records under s. 909.02, Stats. Authenticating KIDS records will maintain the integrity of KIDS records and shift the burden of finding errors in the records to the payer.

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45	43.08 (1)	<p>The rule intends to divest existing property rights of which there is notice in the public records. For example, if a nonobligated joint property owner owns 99 percent of a piece of real estate, that owner will lose 49 percent of that interest because he or she does not request a hearing. It should be the department's responsibility to look at the public records and treat the joint holder fairly without requiring the joint holder to schedule a hearing.</p>	<p>The rule will not be modified. According to the Legislative Council Staff, the department has the authority to seize the entire property of a child support payer who is a joint property holder, with the exception that the other joint owners can request a hearing to protect their property rights. To be fair to individuals other than the payer with a recorded ownership interest in property, the department has created the presumption that the payer's ownership interest in property is equal to a pro rata share based on the number of individuals with a recorded ownership interest in the property. The department will only seize the payer's ownership interest in the property.</p> <p>When the department initiates seizure, it will notify individuals with a recorded ownership interest in the property that property has been or will be seized. The notice will also inform these individuals of the opportunity to request a hearing to determine property rights.</p>
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4	43.08 (2)	Clarify the length of time that accounts will be frozen.	<p>The length of time an account is frozen will depend on actions taken by the payer after receiving a notice of levy.</p> <ul style="list-style-type: none"> • According to s. 49.854 (5), Stats., a payer may request a hearing within 20 business days of the date of the notice of levy. If the payer does not request a hearing, the institution will be instructed to remit funds to the state. In this scenario, the account will be frozen for at least 20 business days. • If the payer requests a hearing, the hearing must be held within 45 business days after receiving the request. If the court determines that arrearages are owed, the department will instruct the financial institution to remit funds. In this scenario, the account may be frozen over 65 business days. • If the hearing was conducted by a family court commissioner, the payer has the opportunity to request a hearing before the court 15 business days after the date of the family court commissioner's decision. If the payer does not request a review of a decision made by a family court commissioner, the institution will be directed to remit funds. In this scenario, the account may be frozen 80 business days. • If the payer requests a court review of the family court commissioner's decision, the account will be frozen more than 80 business days.
4	43.08 (2)	The rule should be clarified to provide that a financial institution will be directed to freeze the portion of the account equal to the payer's pro-rata share when an account is jointly owned.	<p>The rule has been modified to address this concern. If individuals other than the payer have a recorded ownership interest in an account, the notice of levy will instruct the financial institution to freeze the payer's ownership interest in the account. The payer's ownership interest in the account is presumed to be an equal pro-rata share of the account, based on the number of individuals with a recorded ownership interest in the account, at the time the institution receives the notice of levy.</p>

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4	43.08 (2)	The rules should clarify that if a court determines that an amount other than an equal pro-rata share is the payer's portion of a jointly-held account, then only that amount should be frozen.	The rule has been modified to address this concern. The department or child support agency will continue with the presumption that the payer's pro-rata share of an account should be seized unless an individual other than the payer with a recorded ownership interest in the account requests a court hearing for determination of property rights within 20 business days of the date of the notice of levy. According to s. 49.854 (7m), Stats., if the court determines that a portion of the account is attributable to the contributions of an individual other than the payer with a recorded ownership interest in the property, the court must direct the department or child support agency to pay the individual, from the net balance of the account, the proportion of the gross value of the account that is attributable to that person's interest.
4	43.08 (2)	The rule should clarify that any subsequent activity (including subsequent deposits) by either the payer or the joint account holders after the financial institution is notified to freeze an equal pro-rata share of the money in the payer's account is permitted, and the financial institution is not liable for purposes of law and these rules for allowing such activity to occur.	According to s. 224.40 (3)(c), Stats., a financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the department or a county child support agency for the purpose of enforcing a child support order. A note has been added to the rule to cross reference this section.
4	43.08 (2)(b)	The provision needs to be clarified to provide that it is DWD's responsibility to instruct financial institutions as to how much money in accounts held at their institutions by the payer is intended to be frozen and then seized by the department. The financial institutions should not bear the burden of determining whether the first \$500 of a payer's account maintained at their institution is available for the payer to use.	The rule has been modified to require the notice of levy to specify the maximum amount that may be frozen in an account. If more than one individual has an ownership interest in the account, the maximum amount frozen may not exceed the payer's pro-rata interest based on the number of individuals with an ownership interest in the account. The requirement that the department or child support agency may only seize funds in excess of \$500 across all of a payer's accounts has been removed from the rule.

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42	43.08 (3) 43.08 (5)	Financial institutions have concerns about the ability of the state to seize real and personal property that is the institution's collateral.	If a financial institution has a collateral interest in a property but not a lien against the property, a child support lien would have priority over a collateral interest. Therefore, the department or child support agency may seize property that is a financial institution's collateral.
42	43.08 (3) 43.08 (5)	A loan for a property is granted to an individual without any current delinquency in child support. If the individual accrues a child support delinquency, does the state have a priority lien over that of the financial institution?	In the future, child support liens will be reported to credit bureaus. Financial institutions will be able to determine whether there is a child support lien against property that may be used as collateral before issuing a loan to an individual. The effectiveness of a child support lien is determined by the date it is filed. DWD 43.06 has been modified to indicate that a child support lien has priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective, and any other lien given priority under the law.
42	43.08 (3) 43.08 (5)	When a loan becomes delinquent, financial institutions may use savings on deposit in the institution at the time of default as collateral. Financial institutions are concerned that if a loan becomes delinquent at the same time that child support becomes delinquent, any deposits that the institution may use as collateral prior to the department notifying the institution of the child support delinquency will need to be remitted to the department.	According to s. 49.854 (1)(e) and (2), Stats., and DWD 43.03 (7), the child support lien is an encumbrance against property existing at the time of levy. If a financial institution removes funds from a collateral account prior to receiving a notice of levy, the funds will not have to be remitted to the department.
42	43.08 (3) 43.08 (5)	Clarify whether a child support lien affects the ability of financial institutions to repossess collateral to satisfy a loan default.	The rule does not affect the ability of financial institutions to repossess collateral to satisfy a loan. The institution must allocate proceeds from the sale of repossessed or foreclosed property to liens with priority over its collateral interest.
42	43.08 (3) 43.08 (5)	If an institution repossess a vehicle or forecloses on a property subject to a child support lien, indicate the requirements for payment of any liquidated amount to the state.	This is a procedural concern that will not be addressed in the rule. The institution will allocate proceeds from the sale of repossessed or foreclosed property according to lien priority.

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20/21	43.08 (5)	The calculation related to the seizure of real property is complicated and needs a better explanation.	The calculation has been modified in DWD 43.08 (3). In order for the department or child support agency to initiate real property seizure, the payer's equity in the property, minus expected levy fees, must exceed 10 percent of the property's fair market value. For example, a payer owns real property with a fair market value of \$100,000 with one other individual. The payer's equity in the property minus expected levy fees must exceed \$10,000. Total equity in the property is \$40,000; the payer's equity is \$20,000 assuming an equal pro-rata share. The payer's equity of \$20,000 minus expected levy fees of \$500 is \$19,500, which exceeds the threshold of \$10,000.
20, 21, 26	43.09	Notices sent to payees with domestic violence threats or protective orders should be mailed 30 days before the initiation of administrative enforcement activities.	The rule has been modified to require the department or child support agency to send notice of the initiation of administrative enforcement actions <i>at the same time</i> to payers and payees in cases in which the payer is subject to a protective order or there is otherwise reason to believe that a payee or child may be harmed. Notice will not be provided to the payee prior to notifying the payer. The payer may find out that an action will be initiated and, in the case of account and personal property seizure, abscond with the property. See previous response.
26	43.09	Notices sent to payees with domestic violence threats or protective orders should be mailed prior to the initiation of administrative enforcement activities.	
30	43.09	All payees should be notified of hearings or court hearings that may affect their rights so that they can protect their rights.	The rule has been modified to require the department or child support agency to provide notice of hearings to all payees when the payer in the cases requests a court hearing on mistake of fact or the reasonableness of an alternative payment plan, and a hearing has been scheduled.

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26	43.09	All payees should receive notice of administrative enforcement actions every step if the way unless notification is waived.	The department will not provide notice to all payees of administrative enforcement actions. There is no precedent in other child support administrative enforcement actions, such as tax intercept, to provide notice to the payee that an administrative action has been initiated. In addition, there are costs associated with notifying payees of each administrative enforcement action initiated, and county child support agencies may be overwhelmed with calls from payees requesting updates on the status of the administrative enforcement action.
10	43.09	All payees should be notified of hearings associated with administrative enforcement actions in advance to the payer.	The rule has been modified, however, to require the department or child support agency to provide notice of hearings to all payees when the payer in the cases requests a court hearing on mistake of fact or the reasonableness of an alternative payment plan, and a hearing has been scheduled. The rule has been modified to require the department or child support agency to provide notice of hearings to all payees when the payer in the cases requests a court hearing on mistake of fact or the reasonableness of an alternative payment plan, and a hearing has been scheduled. The payee will not receive advance notice of court hearings.
10, 20, 21, 34	43.09	The payee should receive notification of enforcement actions regardless of whether is a protective order filed.	The department will not provide notice to all payees when administrative enforcement actions have been initiated. There is no precedent in other child support administrative enforcement actions, such as tax intercept, to provide notice to the payee that an administrative action has been initiated. In addition, there are costs associated with notifying payees of each administrative enforcement action initiated, and county child support agencies may be overwhelmed with calls from payees requesting updates on the status of the administrative enforcement action.
			The rule has been modified, however, to require the department or child support agency to provide notice of hearings to all payees when the payer in the cases requests a court hearing on mistake of fact or the reasonableness of an alternative payment plan, and a hearing has been scheduled.

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34	43.09	The payee is an interested party in a child support case and should be notified especially if a compromise agreement is proposed.	The department will not provide notice when an alternative payment plan is negotiated with a payer. An alternative payment plan does not affect the underlying child support obligation. In addition, payees will not be adversely affected by an alternative payment plan. Because the payment plan is for arrears, the support received by the payee will most likely be more than the court ordered monthly amount.
20, 21	43.09	Section 304 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) requires that child support agencies notify payees of administrative enforcement actions.	Section 304 of PRWORA does not require that all payees receive notice of administrative enforcement actions. This section of PRWORA requires parties to a support case to be notified of all proceedings in which support obligations may be established or modified.
34	43.10 (3)	The threshold for real property seizure should be \$5000.	The rule has been modified, however, to require the department or child support agency to provide notice of hearings to all payees when the payer in the cases requests a court hearing on mistake of fact or the reasonableness of an alternative payment plan, and a hearing has been scheduled. The department has worked with the Child Support Policy Advisory Committee and the legislature to develop reasonable thresholds for initiating administrative enforcement actions. The thresholds for initiating administrative remedies are based on a given percentage of the monthly amount due in the court case. Basing the thresholds on the monthly amount due equalizes the thresholds across cases with different levels of child support due. Different thresholds creates a hierarchy of enforcement actions. As the severity of the administrative enforcement action increases, the percentage of the monthly amount due that arrears in a court case must meet or exceed also increases.
10, 34	43.11	Clarify whether the rule permits the court or child support agency to negotiate an agreement in which the noncustodial parent may wait to pay arrearages until after the youngest child reaches the age of majority. It should be made clear that the arrearages do not have to be paid before the child reaches the age of majority.	The rule has not been modified. The rule provides the flexibility for a payment plan to begin at a future date. Because the payment plan may be a lump sum, a periodic payment, or both, a child support agency may settle for a lump-sum payment immediately and wait to collect the remainder of the arrearage until the child reaches the age of majority.

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20/21	43.11 (2)	When an administrative enforcement action is initiated, the notice to payers must clearly inform them that the negotiation of an alternative payment plan does not toll the time limits for requesting a hearing.	The rule has not been modified. The notice to payers will inform them of the time frames for requesting a meeting with a child support worker to negotiate a payment plan and for requesting a hearing.
20/21	43.11(2)	The section of alternative payment plans should be expanded to include timelines that the department must follow when responding to a alternative payment plan request.	The negotiation of a payment plan does toll the time limits for requesting a hearing. The payer must request a hearing on the reasonableness of a payment plan or mistake of fact within 20 business days of receiving a notice of enforcement actions even if the payer has requested a meeting with the child support agency to negotiate a payment plan but will not meet with the agency until the 20 business days have passed. The rule has not been modified to include timelines that the department must follow when responding to a request to negotiate an alternative payment plan. When a payer makes a request to negotiate an alternative payment plan, administrative enforcement actions in the county initiating the action are halted against the payer. The absence of timelines does not hurt the payer except in cases of account seizure (the account has already been frozen) and personal property seizure (the property has already been seized). In these cases, if the payer requested a court review on the reasonableness of the payment plan, the plan will need to be negotiated prior to the court hearing. If a plan is not negotiated prior to the hearing, the court will order the child support agency to negotiate a plan with the payer.
20/21	43.11 (10)(a)(1)	The phrase " unless the payer agrees otherwise" should be deleted to insure that payers are not taken advantage of by the department or child support agency when entering into a fair, affordable alternate payment plan.	The purpose of using the phrase "unless the payer agrees otherwise" is to provide the payer with an opportunity to still negotiate a payment plan even if the plan, when subtracted from the payer's gross income, leaves the payer below 100 percent of the poverty line.
4	43.16	Clarify what is meant by an automated financial institution.	A definition of an automated financial institution has not been included to the rule. The distinction between an automated and nonautomated financial institution has been removed from the rule.
40	43.16	There are enough ways to obtain information on delinquent payers without implementing a financial data match system.	Federal and state law require the department to conduct a data match with financial institutions operating within the state to locate the assets of delinquent payers.

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2	43.16	The rule should include informational notes that comment on the confidentiality of both the matching options.	A note has been added to the rule to reference the confidentiality provisions in s. 49.853 (3) and (4).
42	43.16	Reporting child support payments to credit bureaus would help to confirm the creditor's obligations and indicate whether creditors are up to date on payments.	Federal law requires states to report delinquent child support payments to credit bureaus. The department will report child support liens, which represent unpaid child support amounts, to credit bureaus.
44	43.16	Non-payment of child support should show up on a non-custodial parent's credit report as an unpaid debt.	The department will report child support liens, which represent unpaid child support amounts, to credit bureaus.
3, 4, 43	43.16 (2)	DWD 43 appears to require nonautomated institutions to use the state matching option. However, s. 49.853(2), Wis. Stats., permits institutions to elect either the state matching or financial matching options. A non-automated institution may prefer the financial match option because it offers greater protection to the clients, and it may require lower unreimbursed costs.	The rule has been modified to remove the distinction between automated and non-automated financial institutions. All institutions will be able to select either the state match option or the financial institution match option for participating in the record matching program.
3, 4, 40, 43	43.16 (3)	DWD 43 limits reimbursement to institutions that participate in the record matching program in a fully automated manner. This provision does not conform to s. 49.853(2), Wis. Stats., which states that all institutions participating in the data match are eligible for reimbursements.	The rule has been modified to remove the distinction between automated and non-automated financial institutions. All institutions participating in the data match will be reimbursed.
4, 43	43.16 (3)	By state and federal law, all institutions are entitled to be reimbursed for their actual costs incurred in conducting the data match. The \$100 per quarter reimbursement for conducting the data match in an automated fashion is contrary to statute, and is unreasonable as compared to the actual costs involved for institutions. Financial institutions should be allowed to calculate the actual costs they will likely incur and provide this information to the department.	According to federal law, states have the option to reimburse financial institutions for participating in a financial record matching program. Wisconsin law requires the department to reimburse financial institutions in an amount not to exceed their actual costs of a data match. The department selected a flat rate of \$100 for several reasons. First, negotiating actual costs with each of the state's 1,000 financial institutions will be administratively difficult. Second, the department believes that \$100 per quarter will not exceed an institution's actual cost of the data match. Finally, the financial institutions will most likely select the matching option that will result in the lower unreimbursed cost.
40	43.16 (3)	Indicate how the state will fund the \$100 per quarter reimbursement and the administrative costs of the data matching.	It is beyond the scope of the rule to identify funding sources for the financial institution record matching program.
45	Miscellaneous	Clarify how the notice of intent to levy under s. 49.854 (7)(a) is extinguished and released.	This concern will not be addressed in the rule. The department will develop procedures for extinguishing a notice of intent to levy real property.

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26	Miscellaneous	Parents signing a paternity acknowledgment should be provided with a notice of the responsibilities and liabilities associated with acknowledging paternity.	The rule does not address voluntary paternity acknowledgment. However, the department has modified the voluntary paternity acknowledgment form.
46	Miscellaneous	Payers were not given notification that the department was considering developing these rules or conducting public hearings.	In accordance with statutory requirements, the department provided the Revisor of Statutes a notice of public hearing on DWD 43 which was published in the Administrative Register. In addition, the department released a news item on the public hearings that listed the times and locations of the hearings and encouraged individuals who were unable to attend the hearings to submit written comments on the rule to the department by November 6, 1998.