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CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 98-130

AN ORDER to renumber chapters HSS 80 to 82; and to create chapter DWD 43, relating to child support administrative enforcement.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

09-01-98 RECEIVED BY LEGISLATIVE COUNCIL.
09-25-98 REPORT SENT TO AGENCY.

RNS:RJC:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-130

Comments

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

I. Statutory Authority

a. SECTION 1 of the rule purports to renumber ch. HSS 82. However, that chapter relates to certified adult family homes pursuant to ch. 50, Stats., and is within the purview of the Department of Health and Family Services. Under what authority does the Department of Workforce Development seek to renumber ch. HSS 82?

b. According to s. DWD 43.07 (3), it appears that only if a payer submits a statement of alleged error, after making a written request for a financial records review, within a specified time frame, will the child support agency provide a written determination of the correctness of the lien amount. However, s. 49.854 (3) (ag), Stats., provides that if an obligor timely requests a review, the child support agency must conduct the review and issue a determination. The statute does not require the obligor to make a "statement of alleged error" as a condition of having a financial record review. Based on the clear statutory language, it appears that the rule's authority for requiring a statement of alleged error is questionable.

c. Generally, under current law, joint owners of property have an equal interest in the whole property for the duration of the tenancy, irrespective of unequal contributions at its creation. [See s. 700.17 (2), Stats.] Section DWD 43.08 (1) turns this maxim on its head when it requires the department and child support agencies, when seizing property subject to a child support lien, to presume that each owner of jointly owned property, has an equal pro rata share of the property. It can be argued that the Legislature was aware of the current state of the law (and s. 700.17 (2), Stats.) when it enacted 1997 Wisconsin Act 191, which allows for the seizure of property to satisfy a child support lien, and upon which the rule is based. In that Act, the

Legislature provided that joint owners of property could request a hearing to prove their contributions to the jointly held property when the department or child support agency took actions to seize the property to satisfy a child support debt. Given the existence of s. 700.17 (2), Stats., and the procedures in Act 191 to allow joint owners to protect their interests, one might argue that the Legislature intended that the department and child support agencies be able to seize the entire property of a child support obligor who is a joint owner of property, with the exception that other joint owners could take the initiative to protect their interests in the property. This would prevent a child support obligor from diluting his or her assets by simply titling all of his or her property jointly with a number of friends. Accordingly, s. DWD 43.08 (1) is arguably contrary to the Legislature's intent, which contemplated broader authority for the department and child support agencies, but balanced with a joint tenant's due process rights. In light of this comment, the provisions of sub. (1) should be reviewed.

d. Section 49.853 (2), Stats., requires the department to promulgate rules that provide for reimbursement of financial institutions for participating in the financial records matching program, in an amount not to exceed their actual costs of participation. Section DWD 43.16 (3) provides for reimbursement only for those institutions participating in a fully automated financial record matching program. The statute appears to require reimbursement of all financial institutions participating in the program. Under what authority are nonautomated financial institutions not reimbursed? Also, what is the procedure to ensure that the \$100 per quarter does not exceed the actual costs of participation, as required by the statute?

2. Form, Style and Placement in Administrative Code

a. SECTIONS 1 and 2 of the rule should be reversed so that the affected rules are in alphabetical order.

b. In s. DWD 43.03 (2) (intro.), the phrase "does any of the following" should be inserted before the colon.

c. In s. DWD 43.03 (3), pars. (a) through (f) should be physically set off from each other as paragraphs. In addition, each paragraph should end with a period rather than a semicolon and the word "and" before par. (f) should be deleted. The first letter of each paragraph should be capitalized.

d. In s. DWD 43.03 (13), (18) and (19), the bracketed references to former sections of the Administrative Code are unnecessary and should be deleted.

e. Generally, titles to subunits of rules are not part of the substantive content of a rule. Titles should not be relied on to impart any legal meaning to the substantive provisions of a rule. Accordingly, all of the paragraphs in s. DWD 43.04 (3) should be revised to make it clear in the substantive provisions what each paragraph is referring to. For example, par. (a) could be rewritten as follows: "(a) License suspension and denial. For a license suspension and denial under s. ____, Stats, to obtain and use . . ." This comment applies also to sub. (5).

f. In s. DWD 43.06 (4), either both pars. (a) and (b) should have titles, or neither should have a title. [See s. 1.05 (1), Manual.]

g. In s. DWD 43.06 (6) (a) (intro.), the phrase "do all of the following," or a similar phrase, should be inserted before the colon. In the alternative, par. (a) (intro.) and subs. 1. and 2. could be combined into a single sentence.

h. In s. DWD 43.09, the word "said" should be replaced by the word "the." [See s. 1.01 (9) (c), Manual.]

i. In ss. DWD 43.07 and 43.11 (8), "shall" should replace "must."

j. In s. DWD 43.11 (5) (b) to (d), "may not" should replace "shall not."

k. The numbering of ch. DWD 43 skips from s. DWD 43.11 to s. DWD 43.16. Was this intentional?

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

a. A reference to s. 49.854 (2), Stats., should be included in the definition of "lien" in s. DWD 43.03 (7) since that is the law under which the lien arises.

b. In s. DWD 43.06 (6) (b), the term "par." should be inserted before the term "(a)."

c. The reference to s. 767.25 (6), Stats., in s. DWD 43.06 (6) (c) seems to be incomplete. It would appear that, at a minimum, the provision should also contain a cross-reference to s. 767.51 (5p), Stats. Also, is s. 46.10 (14) (f), Stats., applicable as well?

d. The reference to s. 49.853 (3) (ag), Stats., in s. DWD 43.07 (1), should, it appears, be a reference to s. 49.854 (3) (ag), Stats.

e. Section DWD 43.10 (1) to (5) should all contain cross-references to the statutory actions they make reference to. For example, sub. (1) could be rewritten substantially as follows: "A child support agency may initiate license suspension under s. _____, Stats., if"

f. The references in s. DWD 43.11 (2) to s. 49.854 (5) (b), Stats, should instead be a reference to s. 49.854 (5) (d), Stats.

g. Section DWD 43.16 (1) (e) refers to a "standard format" prescribed by the department. Where is this format prescribed? In another rule? In the agreement? The rule should be clarified. Also, what are the "federal specifications for automated financial record matching"? Can a federal law or regulation be cited?

h. Section DWD 43.16 (2) should contain a statutory cross-reference to the financial record matching program under s. 49.853, Stats.

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

a. In s. DWD 43.03 (3) (intro.), "Department" should not be capitalized.

b. In s. DWD 43.03 (4), the phrase "or a plan set by the court" is not a helpful clarification of the meaning of the term "plan." Perhaps the word "plan" in the above phrase could be replaced by the term "order."

c. In s. DWD 43.03 (5), is interest on arrears included in "arrearage debt"? In addition, in sub. (5) and numerous other places throughout the rule, the phrase "court case" is used. Since it appears that "court case" refers to a special type of court case, i.e., one involving a child or family support related obligation, the rule should contain a definition of the term "court case."

d. In s. DWD 43.03 (8), "Department of Workforce Development" should not be capitalized.

e. In s. DWD 43.03 (9), the phrase "of property" should be inserted after the term "value."

f. In s. DWD 43.03 (10), the word "equals" should be changed to "means." In addition, the phrase "of the payer" should be inserted after the word "income" in the first sentence. Also, all of the material after the first sentence is substantive material and should not be in a definition but should be placed in a separate substantive provision. [See s. 1.01 (7) (b), Manual.] When the material in the second sentence is moved to a separate substantive provision, effort should be made to define or otherwise better identify the term "reconciliation" which, in the context of the rule, appears to be a term of art in the child support context.

g. In s. DWD 43.03 (15), (16) and (22), the word "is" after the defined terms should be replaced with "means." Similarly, in sub. (17), the phrase "is defined as" should be changed to "means."

h. In the second sentence of s. DWD 43.04 (2), how does an address become "verified" in order to avoid contacting the postmaster? What is to be included in the "contact" with the postmaster? Finally, the last sentence refers to "notice to the employer" being returned. It appears that the phrase should be "notice to the payer mailed to the payer's employer" or a similar phrase that conveys the idea that the notice is still being mailed to the payer, as required by the statutes.

i. The Note to s. DWD 43.04 (2) indicates that s. 767.263 (2), Stats., requires certain information to be provided to child support agencies. However, prior to October 1, 1999, or the date stated in the notice in the Administrative Register, the information must be provided to the clerk of court. The Note should provide a complete and accurate portrayal of the statutes.

j. In s. DWD 43.04 (4), the provision should be modified to make it clear that the notice is to be sent to the payer. In addition, what are the "local locate resources and interfaces" that the department or child support agencies are supposed to use?

k. Section DWD 43.05 provides for the administrative imposition of a forfeiture. However, the rule does not specify the hearing or appeal procedure that would appear to be necessary to satisfy due process requirements. The rule should identify these procedures. If they are set forth in other rules, those rules should be cross-referenced.

l. In the second sentence of s. DWD 43.05 (2), the rule should be clarified to provide that the insulation from liability from the administrative forfeiture applies also to a subpoena respondent who fails to comply with an administrative subpoena.

m. The provisions of s. DWD 43.06 (4) (b) 1., relating to calculating the monthly amount due, seem to conflict with the definition of "monthly amount due" in s. DWD 43.03 (15) in that the definition of "monthly amount due" specifically includes the sum of "all" court-ordered provisions for periodic payments. In contrast, s. DWD 43.06 (4) (b) 1. provides that percentage-expressed orders are excluded from the calculation. This apparent contradiction should be corrected or better clarified in the rule.

n. The clarity of the rule might be enhanced if a note were added explaining when it is "appropriate" to make the credits identified in s. DWD 43.06 (6) (d).

o. In s. DWD 43.07 (1), the parenthetical information should be deleted. If a "financial records and court order review" is to be called a "financial record review," then that fact should be made clear in a definition. In addition, sub. (1) should be revised to make it clear that the request for a review must be made in writing, as provided in s. 49.854 (3) (ag), Stats.

p. In s. DWD 43.08, "bound by" should replace "bound be."

q. In s. DWD 43.08 (2) (b), only funds in excess of \$500 "across all of a payer's accounts" may be seized. What does this mean? Does this mean that \$500 must be left to the payer in each account or that the payer must be left with a minimum of \$500 regardless of the number of accounts he or she maintains? The meaning of this provision should be clarified.

r. Section DWD 43.08 (3) provides that personal property cannot be seized unless the "lien exceeds \$500." However, this appears redundant in light of the directive in s. DWD 43.06 (4) (a) that the lien-eligible amount must be at least \$500. Perhaps the rule, in s. DWD 43.08 (3), intends to set the minimum value of the personal property that can be seized at \$500. This suggestion would appear to satisfy the department's duty in s. 49.854 (17), Stats., to prohibit a child support agency from seizing property under a certain value established by the department by rule. The rule should be clarified. Additionally, if the minimum value of the property to be seized is \$500, is that a cumulative total or a per item total? This should be clarified as well.

s. In s. DWD 43.08 (4), the parentheses should be replaced by commas. [See s. 1.02 (6), Manual.] Also, how is the "payer's proportionate share" of the property's equity to be determined? Finally, see comment l. c. above.

t. Although the first sentence of s. DWD 43.08 (6) alludes to a property seizure, the sentence should be modified so that it is clear that the request for a hearing is tied to a property seizure. For example, the phrase "and is the subject of a seizure by the department or a child support agency under s. _____, Stats.," or a similar phrase, could be added after the phrase "is jointly held."

u. In s. DWD 43.09, the term "protective order" should be defined or better identified.

v. When the department takes administrative enforcement actions, is it not bound by the thresholds in s. DWD 43.10? As drafted, that section applies only to child support agencies.

Since other provisions of the rule apply to the department as well as child support agencies, the applicability of the thresholds to the department should be clarified.

w. In s. DWD 43.10 (2), the word "an" should be inserted after the word "initiate."

x. In s. DWD 43.10 (5), the word "suspension" after the word "denial" should be deleted because it appears later in the sentence.

y. In s. DWD 43.11 (2), the phrase "court hearing on mistake of fact" is awkward and somewhat misleading. Act 191 provides that the payer may request a hearing and has the opportunity to establish that he or she does not owe the amount claimed to be owed. If the court finds that the payer does not owe the amount, or that the lien is not proper, because of a mistake of fact, the court may order an appropriate remedy. Perhaps, instead of trying to describe the hearing as a "mistake of fact" hearing, the rule could simply provide that the notice must inform the payer that he or she may request a hearing under the relevant statutory provisions.

Also, throughout s. DWD 43.11, the string of statutory references should be preceded by "s." rather than "ss." because of the use of the conjunction "or." In addition, "49.854" does not need to be repeated before each subsection number. For example, in s. DWD 43.11 (2) (a), the statutory references should be "s. 49.854 (5) (b), (6) (a) or (7) (a) or 49.857 (3) (a) or (am), Stats."

z. In s. DWD 43.11 (2) (c), the word "will" should be changed to "shall." Also, the clarity of the rule would be enhanced if instead of, or in addition to, the statutory reference to s. 767.30 (1), Stats., the phrase "in the amounts and at the times that it considers expedient" were added after the word "payments" in the last sentence.

aa. In s. DWD 43.11 (3), the phrase "review of mistake of fact" is difficult to understand. Should the phrase be "review of an alleged mistake of fact"?

ab. In s. DWD 43.11 (6) (b), the word "will" should be "shall."

ac. In s. DWD 43.11 (7), the terms "(2) (c)" and "(3)" should be preceded by the term "sub."

ad. Section DWD 43.11 (10) (a) 1. prohibits the periodic payment plan from decreasing the payer's gross income below a certain threshold. However, by its nature, gross income is what a payer has before support and other items like taxes are taken out. Thus, a negotiated payment plan will never reduce the payer's gross income. A payer's gross income will decrease if he or she is paid less. It appears that the intent of the rule is to provide that the negotiated payment plan, when subtracted from the payer's gross income, may not leave the payer below a certain threshold. If this is the case, the rule should be modified. In any event, it should be clarified. This comment applies also to par. (b).

ae. In s. DWD 43.11 (10) (b), the phrase "is not prohibited from negotiating" should be simplified to "may negotiate."

af. In s. DWD 43.11 (11), is the notice to the payer to be given in writing? The method of notification should be clarified.

ag. In s. DWD 43.11 (12) (intro.), the phrase "any of" should be inserted before the phrase "the following." Also, ", but is not limited to," is not necessary.

ah. Section DWD 43.11 (13) refers to a county initiating administrative enforcement actions. However, by definition, an administrative enforcement action is initiated by the department or child support agencies. Thus, it appears that the references to counties in sub. (13) should be a reference to child support agencies. Also, in par. (b), the phrase "property of" should be inserted after the word "against." Finally, the phrase "is not precluded from receiving" should be simplified to "may receive."

ai. In s. DWD 43.16 (1) (a) (intro.), what is an "automated financial institution"? The term should be defined. Also, "all of" should be inserted after "indicate."

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State of Wisconsin
Department of Workforce Development

Response to Legislative Council Clearinghouse Report

Clearinghouse Rule No.: 98-130
Rule No.: DWD 43
Relating To: Child Support Administrative Enforcement

Agency contact person for substantive questions.

Name: Connie Chesnik
Title: Attorney
Telephone No.: 267-7295

Legislative Council report recommendations accepted in whole.

Yes No

1. Review of statutory authority (s.227.15(2)(a))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

DEPARTMENT RESPONSE TO LEGISLATIVE CLEARINGHOUSE REPORT

1. Statutory Authority

Comment Letter	Status	Response
A	Accepted	The renumbering of HSS 42 has been removed from the rule.
B	Accepted in part	Section DWD 43.07 (3) has been modified to provide the payer with an opportunity to request a face-to-face meeting with a child support worker to review the financial records and to discuss any alleged error. 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. The review will be more meaningful, however, if the payer alleges an error.
C	Rejected	Even though the department may have the authority to seize the entire property of a child support payer who owns property with other individuals with a recorded ownership interest in the property, the department has chosen not to exercise this full authority. To be fair to individuals other than the payer with a recorded ownership interest in the property, the department will only freeze or seize the payer's ownership interest in the property based on the presumption that the payer's interest in the property is equal to a pro rata share based on the number of individuals with a recorded ownership interest. This presumption will most likely reduce the requests for a court determination of property rights.
D	Accepted in part	<ul style="list-style-type: none"> • The distinction between nonautomated and automated institutions has been removed from the rule. All financial institutions doing business in the state will be reimbursed for participation in the data matching program. • Based on the flat fees other states are reimbursing their financial institutions for conducting the data match, it is unlikely that \$100 per quarter will exceed a financial institution's actual costs of participating in the data match program. For example, Washington is reimbursing institutions \$200 per quarter, and New Hampshire is reimbursing institutions \$250 per quarter. In Georgia, it is estimated that that the quarterly cost of the data match will be \$150 or less for over 84 percent of its financial institutions.

2. Form, Style and Placement in Administrative Code

Comment Letter	Status	Response
A	Accepted	The rule has been modified to reverse Sections 1 and 2.
B	Accepted	Section DWD 43.03 (2)(intro) has been modified based on the Legislative Council's recommendation.
C	Accepted	The rule has been modified based on the Legislative Council's recommendations.
D	Accepted	The rule has been modified based on the Legislative Council's recommendation.
E	Accepted	Section DWD 43.04 (3) and s. DWD 43.08 (5) have been modified based on the Legislative Council's recommendation.
F	Rejected	Section DWD 43.06 (4)(b) has been eliminated and consolidated into s. DWD 43.03 (16).
G	Accepted	The rule has been modified based on the Legislative Council's recommendation. Section DWD 43.06 (5)(a)(intro), 1., and 2. have been combined into a single sentence.
H	Accepted	The rule has been modified based on the Legislative Council's recommendation.
I	Accepted	The rule has been modified based on the Legislative Council's recommendation.
J	Accepted	The rule has been modified based on the Legislative Council's recommendation.
K	Accepted	The rule has been modified to renumber s. DWD 43.16 as s. DWD 43.11.

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

Comment Letter	Status	Response
A	Accepted	The reference to s. 49.854 (2), Stats., has been added to s. DWD 43.03 (7).
B	Accepted	Section DWD 43.06 (5)(b) has been modified based on the Legislative Council's recommendation.
C	Accepted in part	If a payment toward a lien does not meet the conditions in s. DWD 43.06 (5)(a) or (b), the payment will be distributed within a case in the following order: current support, past-due support, and interest. Section 767.25 (6) specifies this hierarchy for applying payments. Sections 767.51 (5p), 767.261 and 767.62 (4)(g) also list this hierarchy and have been included in the rule at s. DWD 43.06 (5)(c). Section 46.10 (14)(f) has not been added to the rule because it does not list this hierarchy.
D	Accepted	The rule has been modified to cross-reference the appropriate statutory provision.

E	Accepted	The rule has been modified to cross-reference the appropriate statutory provisions.
F	Accepted	The rule has been modified to cross-reference the appropriate statutory provision.
G	Accepted in part	The rule has been modified to indicate that the standard format for providing information in the record matching program will be prescribed in the agreements with financial institutions. A note has also been added to the rule to clarify that the standard format for record matching will be based on specifications provided by the U.S. Department of Health and Human Services. States are not required to use this standard format; therefore, a federal law or regulation cannot be cited in the rule.
H	Rejected	Section DWD 43.16 (2) has been deleted from the rule. A distinction is no longer made between automated and nonautomated financial institutions.

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

Comment Letter	Status	Response
A	Accepted	Section DWD 43.03 (3) has been modified based on the Legislative Council's recommendation.
B	Accepted	Section DWD 43.03 (4) has been modified to replace the word "plan" with the term "order" in the definition of an alternative payment plan.
C	Accepted in part	<ul style="list-style-type: none"> The definition of arrearage debt at s. DWD 43.03 (5) has been modified to exclude interest on arrears. A definition of the term "court order" has also been added to the rule at s. DWD 43.03 (8) instead of a definition of "court case." The term court order is used where appropriate in the rule instead of court case.
D	Accepted	Section DWD 43.03 (9) has been modified based on the Legislative Council's recommendation.
E	Accepted	Section DWD 43.03 (10) has been modified to include the phrase "of property" after the term "value."
F	Accepted	The definition of the expected amount due has been moved to s. DWD 43.10 (5). The word "equals" has been changed to "means," and the phrase "of the payer" has been inserted after "income." A definition of the term "reconciliation" has been added to the rule at s. DWD 43.03 (23)..
G	Accepted	The rule has been modified based on the Legislative Council's recommendations. The word "is" and the phrase "is defined as" have been changed to "means."

H	Accepted in part	<ul style="list-style-type: none"> • Section DWD 43.04 (2) has been modified to indicate that notice will be sent to the payer at the address of the payer's employer. • In addition to postmaster verification, a payer's address is verified if it is provided by the payer, the payee, the payer's current employer, or the State New Hire Directory. The county child support agency will send the postmaster a <i>Postmaster Address Verify</i> document in order to verify an address. This form specifies the address the child support agency has located for a payer and asks the postmaster to confirm whether mail is delivered to the payer that address. If mail is not delivered to the payer at the address provided, the postmaster will indicate whether a forwarding address is available and, if it is available, provide the forwarding address. If the address on the form is a post office box, the postmaster will provide the street address.
I	Rejected	The statute requiring parties to a child support order to provide location information to the child support agency became effective on January 1, 1999.
J	Accepted in part	<p>The rule has been modified to make it clear that s. DWD 43.04 applies to notices sent to the payer. The rule has also been modified to include locate resources in the definition of diligent effort. All appropriate automated federal, state, and local locate resources will be used to ascertain a mailing address if notice sent to the payer is returned. The appropriate automated state and federal resources for locating a payer's address include the following:</p> <ul style="list-style-type: none"> • Client Assistance for Re-employment and Economic Support (CARES) • Unemployment Compensation Benefits (UCB) • Workers Compensation (WC) • Department of Corrections (DOC) • Department of Natural Resources (DNR) • Federal Parent Locator Service (FPLS) • Human Services Reporting System (HSRS) <p>At this time, there are no automated local locate resources that can be assessed through the Kids Information Data System (KIDS).</p>
K	Accepted	Subpoena respondents who want to challenge an administrative subpoena may quash an administrative subpoena using the procedure outlined in s. 805.07 (3) for quashing a judicial subpoena. A note has been added to s. DWD 43.05 (1) to cross-reference this provision.

L	Accepted	Section DWD 43.05 (2) has been modified to exempt a subpoena respondent who fails to comply with an administrative subpoena from the 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 subpoena.
M	Accepted	The definition of the monthly amount due at s. DWD 43.03 (16) has been modified to mean 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. A note has also been added to the definition to clarify that 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 is the fixed amount that is used to calculate the monthly amount due when a provision is expressed only as a percentage of income. Section DWD 43.06 (4)(b) has been deleted from the rule.
N	Accepted	A note has been added to s. DWD 43.06 (5) to clarify that 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. In addition, 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.
O	Accepted	The rule has been modified based on the Legislative Council's recommendations. A definition of financial records and court order review has been created at DWD 43.03 (13). Section DWD 43.07 (1) has been modified to require the request for a financial record review to be in writing.
P	Rejected	Section DWD 43.08 has been rewritten. As a result, the phrase "bound by" is no longer used in the section.
Q	Rejected	This provision has been removed from the rule.
R	Accepted	DWD 43.08 (2) has been modified to specify that the value of personal property must exceed \$500 per item before it can be subject to seizure. Based on the Legislative Council's recommendation, the requirement that the lien exceed \$500 before personal property seizure may be initiated has been eliminated.
S	Accepted in part	The rule has been clarified to indicate that payer's proportionate share of the property's equity will be equal to the payer's pro-rata share of the equity based on the number of individuals with a recorded ownership interest in the property. See response I.c. above.
T	Accepted	The rule has been modified to clarify that the request for a hearing under s. DWD 43.08 (6) is tied to property seizure.

U	Accepted	A definition of "protective order" has been added to s. DWD 43.03
V	Accepted	Section DWD 43.10 has been modified to make the thresholds for administrative enforcement actions applicable to the department and county child support agencies.
W	Accepted	Section DWD 43.10 (2) has been modified based on the Legislative Council's recommendation.
X	Accepted	The reference to s. DWD 43.10 (5) in the report is incorrect. The word "suspension" has been deleted from s. DWD 43.11 (1).
Y	Accepted	The rule has been modified based on the Legislative Council's recommendations. The notice to the payer must inform the payer that he or she may request a hearing under s. 49.854(5)(f), (6)(c), (7)(c), or 49.857(3)(ac) or (ar), Stats. References to s. 49.854 have been consolidated throughout the rule.
Z	Accepted	Section DWD 43.11 (2)(c) has been modified based on the Legislative Council's recommendations. The word "will" has been changed to "shall." The court, if it determines that a payment plan is unreasonable, may order a plan by setting payments pursuant to s. 767.30 (1), Stats., in the amounts and at the times it considers expedient.
AA	Accepted	Section DWD 43.11 (3) has been modified based on the Legislative Council's recommendation to replace "review of mistake of fact" to "review of an alleged mistake of fact."
AB	Accepted	Section DWD 43.11 (6)(b) has been modified based on the Legislative Council's recommendation to replace "will" with "shall."
AC	Accepted	Section DWD 43.11 (7) has been modified based on the Legislative Council's recommendation.
AD	Accepted	Section DWD 43.11 (10) has been modified to state that 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.
AE	Accepted	Section DWD 43.11 (10)(b) has been modified based on the Legislative Council's recommendation.
AF	Accepted	Section DWD 43.11 (11) has been modified to clarify that the notice provided after the default on an alternative payment plan will be in writing.
AG	Accepted	Section DWD 43.11 (12)(intro) has been modified based on the Legislative Council's recommendations.
AH	Accepted	Section DWD 43.11 (13) has been modified based on the Legislative Council's recommendations.

AI	Accepted in part	Because the distinction between an automated and nonautomated financial institutions has been removed from the rule, a definition of "automated financial institution" is not provided. The phrase "all of" has been inserted after "indicate" in s. DWD 43.12 (1)(a)(intro).
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FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Workforce Development

CLEARINGHOUSE RULE NO.: 98-130

RULE NO.: DWD 43

RELATING TO: Child Support Administrative Enforcement

Final regulatory flexibility analysis not required. (Statement of determination required.)

As stated in the initial regulatory flexibility analysis, the administrative rule will have no impact on small businesses. The rule mainly affects individuals.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.
3. Nature and estimated cost of preparation of any reports by small businesses.
4. Nature and estimated cost of other measures and investments required of small businesses.
5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small business.
6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	1999 Session LRB or Bill No. -- Adm. Rule No. DWD 43 -- Amendment No. if Applicable
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FISCAL ESTIMATE
DOA-2048 N(R10/94)

Subject
RULE

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local: <input type="checkbox"/> No local government costs 1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input checked="" type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations:
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Assumptions Used in Arriving at Fiscal Estimate

This rule implements various provisions of 1997 Wisconsin Act 191, related to the child support enforcement program, including forfeitures for failing to comply with a subpoena, liens, and notice and service of process requirements.

Counties may realize cost savings by switching to mailing of notices of administrative enforcement instead of using service of process. The amount of savings cannot be determined at this time. Although the \$25 forfeiture for noncompliance with administrative subpoenas and requests for information may be imposed in a few cases, the amount of revenue generated is not expected to be significant. Local postage costs for liens are expected to be offset by the new enforcement tool. Agency workload may increase due to requests for financial records and court order review, however, these costs should be able to be absorbed.

Long-Range Fiscal Implications

Ongoing costs include \$409,200 annually beginning in SFY 2002 for reimbursement of financial institutions. This cost includes reimbursement of 1023 financial institutions in Wisconsin at the rate of \$100/quarter for data matching. Annual postage costs of \$17,375 are also expected.

Agency/Prepared by:(Name & Phone No.) DWD / Nikolay, Bob (266-9475)	Authorized Signature/Telephone No. 	Date 03/08/99
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FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect DOA-2047(R10/94)	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB or Bill No./Adm Rule No. DWD 43 /	Amendment No.
	<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental		

Subject
RULE

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
Postage cost of \$69,000 for one-time mailing of approximately 152,500 pieces.

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$426,600	- \$0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs	\$0	- \$0
Local Assistance	\$0	- \$0
Aids to Individuals or Organizations	\$0	- \$0
TOTAL State Costs by Category	\$426,600	- \$0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$145,000	- \$0
FED	\$281,600	- \$0
PRO/PRS	\$0	- \$0
SEG/SEG-S	\$0	- \$0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	- \$0
GPR Earned	\$0	- \$0
FED	\$0	- \$0
PRO/PRS	\$0	- \$0
SEG/SEG-S	\$0	- \$0
TOTAL State Revenues:	\$0	- \$0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
Net Change in Costs:	\$426,600	\$0
Net Change in Revenues:	\$0	\$0

Agency/Prepared by:(Name & Phone No.) DWD / Nikolay, Bob (266-9475)	Authorized Signature/Telephone No. 	Date 3/8/99
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Bonnie L. Ladwig

Assembly Children and Families Committee, Chairperson

TO: Members of the Assembly Children and Families Committee

Representative Sue Jeskewitz, Vice-Chair Representative Mark Miller
Representative Rob Kreibich Representative Spencer Coggs
Representative Steve Freese Representative Pedro Colon
Representative Steve Kestell Representative Christine Sinicki

FROM: Representative Bonnie Ladwig, Chair

DATE: March 30, 1999

RE: Clearinghouse Rule 98-130

On March 30, 1999, the following clearinghouse rule was referred to the Assembly Children and Families Committee:

Clearinghouse Rule 98-130, relating to child support administrative enforcement.

The deadline for committee action on this rule is **April 30, 1999**. If you would like a copy of the rule, please contact Janine Stippich in my office at 266-9171. If you are interested in requesting a hearing and/or submitting comments, please do so prior to the deadline date.

BLL:jls



STATE BAR OF WISCONSIN

402 W. Wilson Street
P.O. Box 7158
Madison, WI 53707-7158

April 7, 1999

State Representative Bonnie Ladwig
Assembly Committee on Children and Families
State Capitol, Room 113 West
Madison, Wisconsin 53708

Dear Representative Ladwig:

The State Bar's Family Law Section is asking you to consider recommending several changes to Assembly Clearinghouse Rule 98-130 which was recently referred to Assembly Children and Families Committee.

The Family Law Section has been very involved in the development of new child support enforcement laws (1997 Wis. Act 191) proposed by the Department of Workforce Development last session. In addition, members of the Family Law Section appeared at public hearings across the state as the Department collected testimony on their proposed administrative rules implementing the new child support enforcement laws, Assembly Clearinghouse Rule 98-130.

While the Section commends the Department on their work on the rule, there are still two areas where the Section feels the rule requires changes:

1. **DWD 43.07 (2) Financial record review.** The State Statutes in s. 49.854 (3)(ag) require a financial records and court order review. Family law practitioners feel that it is crucial to not only review the financial records but also the court order. Many mistakes are made as the court orders are added to the statewide automated child support enforcement system. There is no way to catch a conversion error if there is not a review of the court order.

The Family Law Section recommends that on page 14, DWD 43.07 (2) require that the relevant financial records shall include the account history report and (any county records.)

The statutes are certainly clear in that they require BOTH a financial records and court order review.

? just say court order



2. **DWD 43.09 Notice to the payee of enforcement proceedings.** This provision helps protect victims of domestic violence who may become a target of more harm as the Department takes measures against the payer under the new child support enforcement provisions. The Section feels that the payee in these abusive circumstances should receive copies of all notices sent to the payer, not just the notice of enforcement proceedings.

*too
bureaucratic*

The Family Law Section would be happy to meet with you regarding these changes and to work with you and the Department on these issues.

Please let me know if we can be of any assistance. My telephone number is 250-6140.

Thank you for your consideration.

Sincerely,

Linda

Linda Barth
Public Affairs Directors

cc: Attorney Dan Dillon, Chair
Family Law Section Board

Lucy Cooper
Asst. Family Court Commissioner

Attorney Connie Chesnik
Department of Workforce Development

Hartig, Bjelajac, Swanson & Koenen

Attorneys at Law

Judith M. Hartig-Osanka, S.C.

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John M. Bjelajac

Court Commissioner

Robert L. Swanson

e-mail rswanson@execpc.com

Rod J. Koenen

601 Lake Avenue, P.O. Box 38

Racine, Wisconsin 53401-0038

Telephone: (414)633-9800

FAX: (414)633-1209

April 12, 1999

State Representative Bonnie Ladwig
Wisconsin State Assembly
Post Office Box 8952
Madison, Wisconsin 53708

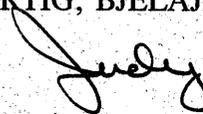
Dear Representative ~~Ladwig~~: *Bonnie*,

Family law lawyers are in the trenches daily trying to apply the laws to the diversity of individual situations. We experience how they really work. The requested changes in DWD 43.07(2) and DWD 43.09 referred to in recent correspondence to you by Linda Barth are good examples and I would urge you to support them. The financial record review needs to include a review of the court orders underlying them. The change in DWD 43.09 is a version of victim rights to notice in family law.

Thanks for your hard work.

Sincerely,

HARTIG, BJELAJAC, SWANSON & KOENEN



Judith M. Hartig-Osanka

JMH-O/bd

*PS. You don't need to call
re this —*



Testimony before the
Assembly Children and Families Committee

DWD 43 – Child Support Data Match Rules

10:00 am, April 29, 1999
by Kurt R. Bauer
Wisconsin Bankers Association

Representative Ladwig and members of the Committee, my name is Kurt Bauer. I am the director of government relations for the Wisconsin Bankers Association. WBA represents 400 commercial bank and thrift institutions of all sizes throughout the state.

WBA has worked with the Department of Workforce Development and members of the Legislature for nearly two-years on the child support data match legislation and subsequent rules. Our goal all along has been to minimize the burdens of complying with this federal mandate for both our member institutions and the state. That has not been an easy task given the complexity of the legislation and the sensitive nature of it's requirements. Still, I believe we have largely accomplished that goal.

WBA does, however, have one major concern with DWD 43.

The federal Welfare Reform Act that created the child support data match requirement allows each state to reimburse financial institutions for the costs of conducting the match. Accordingly, DWD 43 provides a flat rate of \$100 per quarter, per financial institution to off-set those costs (DWD 43.12(2)). That comes to \$400 per year, per financial institution. After consulting with our member institutions as well as with industry data processing vendors, WBA has come to the conclusion that \$400 per year is a grossly insufficient sum to cover the costs of conducting the search for child support obligors.

Under DWD 43, financial institutions have a choice; they can either send their depositor database information to the Department of Workforce Development to conduct the search; or they can receive a list of obligors from the state and conduct the search themselves in the bank.

For obvious customer confidentiality concerns, WBA believes the vast majority of all financial institutions will decide to conduct the search for obligors themselves. At that point, financial institutions will again have a choice; they can either conduct the match via computer; or do it manually.

(More)

ONE EAST MAIN STREET
SUITE 200
MADISON, WI 53703

P.O. BOX 1667
MADISON, WI 53701

608-256-0673
FAX 608-256-7162

www.wisbank.com

If they go the computer route, they will need customized software capable of conducting the match. According to industry data processing vendors, that will cost anywhere from \$5,000 to \$25,000 per financial institution.

If they decide to conduct the search manually, we estimate labor costs alone at around \$1,300 to \$1,600 per year, depending on the size of the financial institution.

Either way, the \$400 per year doesn't come close to covering the actual costs to financial institutions for conducting the search.

WBA realizes that the state is unable to reimburse every cost associated with the child support obligor search. That means that financial institutions will be forced to absorb most of the costs themselves. We simply ask that the state adjust the reimbursement rate to more accurately reflect the true costs to financial institutions for complying with this federal mandate.

WBA believes that \$250 per quarter, per financial institution – which comes to \$1,000 per year – is a reasonable compromise.

State of Wisconsin



GARY R. GEORGE
SENATOR

May 13, 1999

Dr. Linda Stewart, Secretary
Department of Workforce Development
GEF 1 Building, Room 400X
201 E. Washington Avenue
Madison, WI 53707

Dear Secretary Stewart:

A handwritten signature in cursive script that reads "Linda".

The Senate Committee on Judiciary and Consumer Affairs is currently reviewing Clearinghouse Rule 98-130, relating to child support administrative enforcement. Although we have not held a hearing on this particular rule, we have followed with interest the actions of the Assembly Committee on Children and Families regarding this rule.

On Tuesday, the Assembly Committee on Children and Families voted to request your Department to consider making specific modifications to Clearinghouse Rule 98-130. These modifications address concerns raised by the State Bar's Family Law Section and the Wisconsin Bankers Association.

As Chairperson of the Senate Committee on Judiciary and Consumer Affairs I would encourage you to support these modifications. I believe they represent a fair compromise. If these modifications are made I believe my committee would waive its jurisdiction over the rule and allow promulgation to proceed.

Please feel free to contact me if you would like to discuss this request or if you have any questions.

Most Sincerely,

A handwritten signature in cursive script that reads "Gary".

GARY R. GEORGE
State Senator
Sixth Senate District

Cc: Atty. Connie Chesnik, DWD
Division of Trade and Consumer Protection