

(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
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Vice President - Legal
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| 2. Thomas Knabel
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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
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7. Leslie L. Lord
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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
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13. Beth Trembl
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14. Ric Doran
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15. Fredrick J. Sense
S. Mueller St.
Appleton, WI 54911
16. Ann Biersteker
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Appleton, WI 54914
17. Kathy Walsh Nufer
Elm Street
Menasha, WI 54952
18. K.L. Kortness
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19. Tim Bloch
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20. Roberta M. Rieck
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21. Jessica Barwig
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24. Robyn A. Schuchardt
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25. Jack B. Oates
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26. Lucy Cooper
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27. Lauren Lehaberg
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28. Burton Davis
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29. Nola Vander Meulen
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30. Michael P. Sullivan
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31. Teresa Cole
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32. Joseph Donnelly
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33. Andrew Kellner
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34. Lisa Stark
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35. Jo L. Kutzner, Director
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36. Gretchen Meierotto
St. Croix County Child Support Agency
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37. T. Lynn Holmes
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38. Renee Lyon, Director
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Whitehall, WI 54773
39. Jeanne Stevenson
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40. Ms. Carole J. Elbe, President
Valley Health Credit Union
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41. Ms. Doris M. Shouldice
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42. Mr. Michael J. DeGrand, President
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43. SOLHEIM BILLING & GRIMMER, S.C.
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44. Ms. Susan Taylor Campbell
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45. Mr. J. Bushnell Nielson
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46. Ms. Debra A. Bougie
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SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

RULE

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

<u>RESPONDENT</u>	<u>RULE NUMBER</u>	<u>COMMENTS</u>	<u>DEPARTMENT RESPONSES</u>
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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

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

<u>RESPONDENT</u>	<u>COMMENTS</u>	<u>DEPARTMENT RESPONSES</u>
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44	General	<p>The payment of child support needs to be enforced. This rule may be the answer to increased enforcement</p>	<p>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.</p>
46	General	<p>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.</p>	<p>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.</p>
46	General	<p>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.</p>	<p>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.</p>
34	General	<p>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.</p>	<p>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.</p>

SUMMARY OF PUBLIC HEARING TESTIMONY AND WRITTEN COMMENTS AND DEPARTMENT COMMENTS

DWD 43 - Child Support Administrative Enforcement

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3	43.03 (1)	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.	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. 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.
4	43.03 (7)	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	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.
20/21	43.03 (10)	The expected income amount due should be based upon the most current income information available, especially when the income of the payer fluctuates.	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).
20/21	43.03 (14)	The definitions of "lien eligible amount" should be expanded to include the definition given under DWD 43.06(3).	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.
20/21	43.03 (21)	Clearly define the word "person."	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.

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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	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>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	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.	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.
33	43.06	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.	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.
20/21	43.06	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.	The Bureau of Child Support will establish policy advising counties to consolidate child support orders involving the same payer and payee.

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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 register of deeds in which real or personal property of the person who owed support is located. Instead of filing a satisfaction with the register 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)	<p>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.</p>	<p>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.</p>
26, 34	43.06 (4) and 43.10	<p>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.</p>	<p>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.</p>
32	43.07	<p>Computer printouts are worthless and cannot be understood.</p>	<p>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.</p> <p>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.</p>