

45 CFR 303.8

TITLE 3 MATERIALS HAVE BEEN EXTRACTED FROM THE FEDERAL REGISTER

Code of Federal Regulations > TITLE 45 -- PUBLIC WELFARE > SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE > CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES > PART 303 -- STANDARDS FOR PROGRAM OPERATIONS

§ 303.8 Review and adjustment of child support orders.

(a)Definition. For purposes of this section, Parent includes any custodial parent or noncustodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(b)Required procedures. Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1)The State must have procedures under which, within 36 months after establishment of the order or the most recent review of the order (or such shorter cycle as the State may determine), if there is an assignment under part A, or upon the request of either parent, the State shall, with respect to a support order being enforced under title IV-D of the Act, taking into account the best interests of the child involved:

(i)Review and, if appropriate, adjust the order in accordance with the State's guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(ii)Apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(iii)Use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(2)The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review and, if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section.

(3)If the State elects to conduct the review under paragraph (b)(1)(ii) or (iii) of this section, the State must have procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and,

if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 467(a) of the Act.

(4)If the State conducts a guideline review under paragraph (b)(1)(i) of this section:

(i)Review means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(A)The appropriate support award amount; and

(B)The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(ii)Adjustment applies only to the child support provisions of the order, and means:

(A)An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(B)Provision for the child's health care needs, through health insurance coverage or other means.

(5)The State must have procedures which provide that any adjustment under paragraph (b)(1)(i) of this section shall be made without a requirement for proof or showing of a change in circumstances.

(6)The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.

(7)The State must provide notice--

(i)Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order.

(ii)If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV-D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law.

(c)Standard for adequate grounds. The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of

support determined as a result of a review is adequate grounds for petitioning for adjustment of the order. Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

(d) Health care needs must be an adequate basis. The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary.

(e) Timeframes for review and adjustment. Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: Conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

(f) Interstate review and adjustment.

(1) In interstate cases, the State with legal authority to adjust the order must conduct the review and adjust the order pursuant to this section.

(2) The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with § 302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, takes place.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

(42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k), and 25 U.S.C. 1603(12) and 1621e.)

History

[57 FR 30681, July 10, 1992, as amended at 57 FR 61581, Dec. 28, 1992; 58 FR 7040, Feb. 3, 1993; 64 FR 6237, 6250, Feb. 9, 1999, as confirmed and revised at 68 FR 25293, 25303, May 12, 2003; 69 FR 77659, 77661, Dec. 28, 2004, as confirmed at 71 FR 29590, 29592, May 23, 2006; 73 FR 74898, 74920, Dec. 9, 2008; 81 FR 93492, 93564, Dec. 20, 2016]

Annotations

Notes

[EFFECTIVE DATE NOTE:

73 FR 74898, 74920, Dec. 9, 2008, amended paragraph (b), effective Feb. 9, 2009; 81 FR 93492, 93564, Dec. 20, 2016, amended this section, effective Jan. 19, 2017.]

Case Notes

LexisNexis® Notes

Case Notes Applicable to Entire Part

Family Law : Child Support : Obligations : Enforcement : General Overview

Family Law : Child Support : Obligations : Modification : General Overview

Family Law : Paternity & Surrogacy : Establishing Paternity : General Overview

Case Notes Applicable to Entire Part

Part Note

Family Law : Child Support : Obligations : Enforcement : General Overview

Collier v. Collier, 702 N.E.2d 351, 1998 Ind. LEXIS 599 (Ind Dec. 4, 1998).

***Overview:** The State, acting through a county prosecutor hired by the Indiana Child Support Bureau, had the statutory authority to represent parents in child support modification actions as well as in proceedings to obtain support orders.*

- Federal statutes prescribe that state plans for child support must provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations. 42 U.S.C.S. § 654(4)(A). Federal regulations require state programs to implement a process for review and adjustment of support orders. 45 C.F.R. § 303.8. In sum, federal laws and regulations clearly anticipate that adjustments may be made to support orders and that state programs will have a role in securing those adjustments. Go To Headnote

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Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at 66 FR 39450, 39452, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at 64 FR 6237, 6249, Feb. 9, 1999.]

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