**Section 160.65 Modification of Support Obligations**

a) Definitions

1) "Order for support" means any court or administrative order establishing the level of child support due to a child from the responsible relative.

2) "Income Withholding Notice" means the notice served on a payor, pursuant to entry of a court or administrative order for support, that directs the payor to withhold a part of a responsible relative's income for payment of child support.

3) "Assignment of support" has the meaning set forth in Section 160.5.

4) "Assignment of medical support" has the meaning set forth in Section 160.5.

5) "Health insurance" means health insurance or health plan coverage for the dependent child for whom support is sought.

6) "Review" means the CSS comparison of the responsible relative's current financial ability to the existing order for support, as described in subsection (f).

7) "Quantitative Standard for Review" means the current financial ability of the responsible relative, as determined through modification review, is at least 20 percent above or below the existing order for support and the change is an amount equal to at least $10 a month.

b) Review and Modification of Support Orders

1) The Department, beginning October 13, 1993, shall review child support orders in Title IV-D cases at 36 month intervals after establishment, modification or the last review, whichever was the last to occur, unless:

A) In a case in which there is an assignment of support or an assignment of medical support, the Department determines, in accordance with subsection (b)(3), that a review would not be in the best interests of the child and neither parent has requested a review; or

B) In a case in which there is no assignment of support or assignment of medical support, neither parent has requested a review; or

C) In a case in which there is an assignment of medical support but no assignment of support, the order for support requires health insurance for the child covered by the order and neither parent has requested a review.

2) Prior to the expiration of the 36 month period:

A) The Department, in a case in which there is an assignment of support or an assignment of medical support, shall review the order if:

i) an order for withholding has been served on the responsible relative's payor, and payments have been received by the Department within the 90 days prior to selection for review; and

ii) the order for support does not require the responsible relative to provide health insurance for the child covered by the order; and

iii) the Department has not determined that a review would not be in the best interests of the child.

B) In any case in which an administrative order for support has been entered, the Department shall review the order if either the custodial parent or the non-custodial parent files a sworn petition with the Department requesting review and modification of the administrative order for support either for the current support or, in the event that a current support obligation is no longer owed and only past due support remains, and the order requires periodic payments toward the past due support, the Department shall calculate the new support terms in accordance with the provisions of Section 160.60(c)(1), for support alleging:

i) that the Quantitative Standard of Review has been met; or

ii) that there has been a substantial change in circumstances since the entry of the last administrative order for support meriting modification of the existing order; or

iii) both, unless the Department has determined that a review would not be in the best interests of the child.

C) The Department may review any order for support, unless it has determined that a review would not be in the best interests of the child, whenever a change in financial circumstances of the responsible relative becomes known through representations of the relative or of the client or from independent sources, and the change would materially affect ability to support.

3) The Department shall determine that a review of an order for support would not be in the best interests of the child if there has been a finding of good cause, and it has been determined that support enforcement may not proceed without risk of harm to the child or caretaker relative.

c) Notice of the Right to Request a Review or File a Petition

1) In each Title IV-D case, the Department shall provide notice not less than once every three years to each parent subject to an order for support in the case. The notice may be included in the order and shall inform the parent of the right to request a review of the order or, as appropriate, to file a petition to modify an administrative order, where to request a review or file a petition, and the information that must accompany a request or petition.

2) The Department shall use the broadcast or print media at least twice a calendar year to publicize the right to request a review as part of the child support enforcement program, and include notice of this right as part of the information on IV-D services contained in its brochures, pamphlets and other printed materials describing the program.

d) Notice of Review

1) The Department shall notify the client and responsible relative that a review will be conducted at least 30 days before commencement of the review.

2) The notice of review shall:

A) Require completion of a financial affidavit and return of the affidavit to the Department within 15 calendar days after the date the client or relative received the notice; and

B) State that if, as a result of the review, action is taken to modify the order for support, the Department will order, or request the court to order, the responsible relative to provide health insurance. However, in cases in which the client is not receiving medical assistance, the notice shall state that health insurance may be ordered or requested only with the client's consent, as provided in Section 160.60(c)(7).

e) Information Gathering and Employer Contact

1) The Department shall capture all available responsible relative financial information from existing federal and State sources (for example, Illinois Department of Employment Security) through electronic data searches on all IV-D cases.

2) The Department may send a notice to the responsible relative's employer, in accordance with Section 10-3.1 of the Illinois Public Aid Code [305 ILCS 5/10-3.1]. The notice shall:

A) require the disclosure of responsible relative employment information, including but not limited to:

i) the period of employment;

ii) the frequency of wage payments;

iii) gross wages, net pay and all deductions taken in reaching net pay;

iv) the number of dependent exemptions claimed by the responsible relative; and

v) health insurance coverage available to the responsible relative through the employer.

B) require employer compliance within 15 calendar days after the employer's receipt of the notice.

3) If the responsible relative fails to return a completed financial affidavit within 15 calendar days after receipt of the notice of review, and the relative's employer is unknown, the Department may use available means for obtaining the relative's financial information, e.g., service of a subpoena upon the responsible relative.

f) Review of the Order for Support

1) The CSS shall review any financial information concerning the responsible relative. When the responsible relative's information is not verified through an employer, wage stubs or income tax returns, the CSS shall seek other verification, e.g., subpoena of the responsible relative's income tax return.

2) The CSS shall determine the responsible relative's current financial ability in accordance with the guidelines contained in Section 160.60(c).

3) The CSS shall compare the responsible relative's current financial ability to the amount of the existing order for support and determine if the Quantitative Standard for Review has been met.

4) The CSS shall determine if health insurance is being provided for the child under the order for support or whether the child's health care needs are being met through other means. In no event shall the CSS consider a child's eligibility for, or receipt of, medical assistance to meet the need to provide for the child's health care needs.

g) Notice of Review Results

The Department shall inform the client and responsible relative of the results of the review and provide a copy of the CSS calculation comparing the responsible relative's current financial ability to the amount of the existing order within 14 days after the review results are determined. The client and responsible relative will be advised whether or not the Department will take action to modify the existing order for support and of the right to contest the determination.

1) When the review indicates the Quantitative Standard for Review has not been met, the client and responsible relative, in both judicial and administrative cases, are advised as follows:

A) The Department will not take action to modify the order for support.

B) The Department will only take action to modify the order to require health insurance for the child covered by the order.

C) Either parent may request a redetermination within 30 calendar days after the date of the notice by:

i) signing and returning the request for a redetermination to the Department;

ii) providing financial documentation or information concerning the child's health care needs not furnished previously, which will substantiate the request; and

iii) in a case in which the Department has previously entered an administrative order for support, alleging on the request for redetermination that a substantial change in circumstances has occurred since the entry of the last support order meriting a modification of the support order.

2) When the review indicates the Quantitative Standard for Review has been met, the client and responsible relative will be advised that:

A) The Department will take action to modify the existing order for support in accordance with the review results.

B) In cases involving the judicial process, each parent will be informed 30 calendar days in advance of the hearing date and will have the opportunity to contest the review results at that time.

3) In cases in which an administrative order for support is entered in accordance with subsection (h) and in cases in which, after redetermination in accordance with subsection (h), the Department advises that it will take no action to modify an existing administrative order of support:

A) The client and responsible relative will be advised that he or she has until 30 calendar days after the date of mailing of the administrative order for support or the notice of modification review redetermination results in which to request a de novo modification hearing in accordance with 89 Ill. Adm. Code 104.102. The client will be further advised that he or she may provide financial documentation or information concerning the child's health care needs not furnished previously that will substantiate the requested relief.

B) When both the client and the responsible relative request a hearing, the two requests shall be merged and shall be disposed of simultaneously by the hearing proceeding. The parties shall be advised of the right to present evidence at the hearing, including the client's right to provide financial documentation or information concerning the child's health care needs not furnished previously that will substantiate the requested relief.

C) When the responsible relative requests a hearing and the client does not, the client shall again be advised of the right to present evidence at the hearing.

D) When the client requests a hearing and the responsible relative does not, the responsible relative shall again be advised of the right to present evidence at the hearing.

4) For purposes of calculating the 30 calendar day period in which to petition the Department for release from or modification of the administrative order for support or to request redetermination of the review results, the day immediately subsequent to the mailing of the order or determination shall be considered the first day and the day the request is received by the Department shall be considered as the last day.

5) In de novo hearings provided for in subsection (g)(3) and 89 Ill. Adm. Code 104.102, the Department's hearing officer shall determine whether the Quantitative Standard for Review has been met. If the hearing officer determines that the Quantitative Standard has not been met, determine, in accordance with Section 510 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/510] and the opinions of the Illinois Supreme Court or the Illinois Appellate Court construing Section 510, whether the party or parties requesting a de novo hearing have demonstrated the occurrence of a substantial change in circumstances since entry of the last administrative order for support warranting modification of that order.

6) If the Department's hearing officer determines that the Quantitative Standard for Review has not been met and that the party or parties requesting the hearing have not demonstrated the occurrence of a substantial change in circumstances since entry of the last administrative order for support warranting modification of that order, the hearing officer will recommend entry of a final administrative decision finding that modification of the existing support order is not warranted and denying the request for entry of a new order.

7) If the Department's hearing officer determines that the Quantitative Standard for Review has been met or that the party or parties requesting the hearing have demonstrated the occurrence of a substantial change in circumstances since entry of the last administrative order for support warranting modification of that order, the hearing officer will recommend entry of a final administrative decision resulting in entry of a new administrative order for support. In recommending terms of the new administrative order, either for current support or, in the event a current support obligation is no longer owed and only past due support remains, periodic payments toward the past due support, the hearing officer shall calculate the new support terms in accordance with the provisions of Section 160.60(c)(2).

8) After receipt of the hearing officer's recommendation as specified in subsections (g)(6) and (g)(7), the Department shall enter a final administrative decision that is reviewable in the Circuit Court only in accordance with the provisions of the Administrative Review law [735 ILCS 5/Art. III].

h) Further Actions Taken by the Department

1) The Department shall take the following action when the CSS has determined in accordance with subsection (f) that the Quantitative Standard for Review has been met or when the Quantitative Standard for Review has not been met, but there is a determination that the order for support needs to be modified to require provision of health insurance:

A) In a case involving an order for support entered by the court, the CSS shall:

i) prepare a petition to modify, and obtain or affix appropriate signature thereto;

ii) refer the case for legal action to modify the order for support pursuant to Section 510 of the Illinois Marriage and Dissolution of Marriage Act; and

iii) provide the client and responsible relative with the notice described in subsection (g)(2)(B).

B) In a case involving an administrative order for support established under Section 160.60(d), or modified under this Section, the CSS shall enter an administrative order for support incorporating the results of the review and containing the information specified in Section 160.60(d)(5). Any order for health insurance shall be entered in accordance with Section 160.60(c)(7).

i) The CSS shall effect income withholding in accordance with Section 160.60(d)(6).

ii) The CSS shall provide to the client and responsible relative copies of the administrative order for support, together with the notice described in subsection (g)(2)(C).

2) If the Department receives a written request for a de novo modification hearing as described in subsection (g)(3) within 30 calendar days after the date of mailing of a modified administrative order for support or notice described in subsection (g)(3)(A), the Department will provide a hearing in accordance with 89 Ill. Adm. Code 104.102. The 30 calendar day period shall be calculated in accordance with subsection (g)(4).

3) Upon receipt of a request for a redetermination as set forth in subsection (g)(1) within 30 calendar days after the date of mailing of the notice, the Department shall conduct such redetermination. The 30 calendar day period shall be calculated in accordance with subsection (g)(3).

i) Timeframes for Review and Modification

1) In any case in which there is an assignment of support or an assignment of medical support, the Department shall determine within 15 calendar days after October 13, 1993, or the date the order is 36 months old, whichever is later, whether a review should be conducted as provided in subsection (b)(1).

2) Subsequent determinations about whether to review an order for support in a case in which there is an assignment of support or an assignment of medical support shall be made by the Department in accordance with subsection (b)(1), at 36 month intervals based upon:

A) the date the order for support was modified; or

B) the date an order was entered determining that the order for support would not be modified; or

C) the date the period expired for requesting redetermination of the Department's review decision not to seek modification of the order for support.

3) Within 15 calendar days after receipt of a request for a review or sworn petition requesting review and modification of an administrative order for support, the Department shall determine whether a review should be conducted in accordance with subsection (b)(2).

4) Within 180 calendar days after determining that a review should be conducted or locating the non-requesting parent, whichever occurs later, the Department shall:

A) send the notice of review in accordance with subsection (d);

B) conduct a review of the order in accordance with subsection (f);

C) send the notice of review results in accordance with subsection (g); and

D) conclude any action to modify the order for support.

j) Interstate Review and Modification

1) Initiating Cases

A) In any case in which there is an assignment of support or an assignment of medical support, the Department shall determine, within 15 calendar days after October 13, 1993, or the date the order for support is 36 months old, whichever date occurs later, whether a review should be conducted, as required under subsection (b)(1), and whether the review should be conducted by the Department or another state.

B) Subsequent determinations about whether to conduct a review shall be made in accordance with subsection (b)(1), at 36 month intervals based upon:

i) the date the order for support was modified; or

ii) the date an order was entered determining that the order for support would not be modified; or

iii) the date the period expired for requesting redetermination of a review decision not to seek modification of the order for support.

C) Within 15 calendar days after receipt of a sworn petition requesting review and modification of an administrative order for support or an intergovernmental request for a review, the Department shall determine whether a review should be conducted, as required under subsection (b)(1), and whether the review should be conducted by the Department or another state.

D) Prior to the expiration of the 36 month period, the Department:

i) shall review or request another state to review an order for support under the circumstances set forth in subsections (b)(2)(A) and (B); and

ii) may review or request another state to review an order for support as provided in subsection (b)(2)(C).

E) The Department shall determine in which state a review should be conducted after considering all relevant factors, including but not limited to:

i) the location of existing orders;

ii) the present residence of each party; and

iii) whether a particular state has jurisdiction over the parties.

F) In any case coming under the provisions of subsections (j)(1)(A), (B) and (C), in which the Department has determined to request a review of an order for support in another state, the Department shall:

i) send a request for review to that state within 20 calendar days after receipt of sufficient information to conduct the review and provide that state with sufficient information on the requestor of review to act on the request; and

ii) send to the parent in Illinois a copy of any notice issued by the responding state in connection with the review and modification of the order, within five working days after receipt of the notice by the Department.

2) Responding Cases

A) Within 15 calendar days after receipt of a request for a review of an order for support in Illinois as the responding state, the Department shall determine whether a review should be conducted in accordance with subsection (b)(1).

B) Within 180 calendar days after determining that a review should be conducted or locating the non-requesting parent, whichever occurs later, the Department shall take the actions specified in subsection (i)(4).

k) Consolidation of Administrative Orders

Notwithstanding any other provision of this Section, at any time the Department determines that a non-custodial parent subject to an administrative order for support is responsible for any child or children residing with the same custodian, other than the child for whom the administrative order for support imposes a support obligation, the Department may enter a new support order for the children subject to notice requirements and determination of financial ability to pay support set forth in Section 160.60. Any order so entered shall be considered a prospective modification of any administrative order or orders for support previously entered by the Department with regard to the children covered by the new order subject to the same right of review as any other modified administrative order for support.

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