

TITLE 465 DEPARTMENT OF CHILD SERVICES**Final Rule**

LSA Document #16-54(F)

DIGEST

Makes numerous changes to [465 IAC 1-1](#) to delete obsolete references, to define the "department" as the "Indiana department of child services", to define the terms "child support payment", "county child support office", and "overpayment", and to replace "division of family and children" with the "department" or "central collection unit" as appropriate throughout the rule. Amends [465 IAC 1-1-1](#) to include parent locator services as a part of child support services, to clarify "nonpublic assistance recipient", and to make other technical changes. Amends [465 IAC 1-1-2](#) regarding child support services fees paid by nonpublic assistance recipients. Adds [465 IAC 1-1-11.5](#) regarding recoupment of overpayments of child support. Repeals [465 IAC 1-1-3](#), [465 IAC 1-1-4](#), [465 IAC 1-1-7](#), [465 IAC 1-1-9](#), [465 IAC 1-1-10](#), and [465 IAC 1-1-11](#). Effective 30 days after filing with the Publisher.

[465 IAC 1-1-1](#); [465 IAC 1-1-2](#); [465 IAC 1-1-3](#); [465 IAC 1-1-4](#); [465 IAC 1-1-5](#); [465 IAC 1-1-6](#); [465 IAC 1-1-7](#); [465 IAC 1-1-8](#); [465 IAC 1-1-9](#); [465 IAC 1-1-10](#); [465 IAC 1-1-11](#); [465 IAC 1-1-11.5](#); [465 IAC 1-1-12](#); [465 IAC 1-1-13](#)

SECTION 1. [465 IAC 1-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-1](#) Definitions

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-14-10](#); [IC 31-14-11](#); [IC 31-25-1](#); [IC 31-25-3-1](#); [IC 31-25-3-2](#); [IC 31-25-4](#)

Sec. 1. The following definitions shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) "Child support payment" means any monies received and processed for distribution of payment to a child support recipient through the statewide child support system.

~~(1) (2) "Child support services" includes~~ **means** the legal activities necessary to establish or enforce a child support order, including:

(A) parent location efforts;

~~(A) (B)~~ enforcement of a prior support order secured in a divorce or paternity proceedings;

~~(B) (C)~~ establishment and enforcement of a support order in a case where the parents are separated but not divorced;

~~(C) (D)~~ establishment of paternity and securing a support order **and under [IC 31-14-10](#) or [IC 31-14-11](#);**

~~(D) (E)~~ modification of an existing support order in accordance with the Indiana child support rules and guidelines; **and**

(F) other services that might be allowed or encouraged under the federal Title IV-D program.

Child support services do not include involvement in child custody and/or visitation disputes **or the establishment or enforcement of postsecondary education expenses.**

~~(2) "Costs" includes administrative costs of the prosecuting attorney and the division of family and children filing fees, witness fees, jury fees, change of venue fees, deposition fees, genetic testing fees, and other items generally allowed as costs in Indiana trial courts.~~

~~(3) "Current support", for purposes of payment distribution, means all support collected in a given month from an obligor who is paying support pursuant to a court order, up to the amount of the monthly court ordered support obligation which is in effect during the month in which the payment is received.~~

(3) "County child support office" means the local government officials operating under a cooperative agreement with the department pursuant to [IC 31-25-4-13.1](#).

(4) "Department" means the Indiana department of child services established under [IC 31-25-1](#).

~~(4) (5) "Nonpublic assistance participant" in the child support program means a person who is not currently receiving assistance under Title IV-A, IV-E, or XIX of the federal Social Security Act. (federal public assistance programs), and who has executed a written application for child support services and paid the required state fee. This includes:~~

(A) a person who:

(i) never received assistance under Title IV-A, IV-E, or XIX of the federal Social Security Act;

(ii) has executed a written application for child support services; and

(iii) paid any required application fee, if applicable; or

(B) a person who:

(i) formerly received assistance under Title IV-A, IV-E, or XIX of the federal Social Security Act;

(ii) continues to receive child support services after the termination of the public assistance benefits; and

(iii) is not required to execute a written application for child support services or pay a fee.

(5) "Parent locator service" includes efforts to locate absent parents for the sole purpose of establishing and enforcing child support obligations. Parent location efforts are carried out by:

(A) the Indiana state parent locator service, administered by the division of family and children, child support bureau;

(B) the parent locator service administered by another state; and

(C) The federal parent locator service.

(6) "Support arrearage", for purposes of payment distribution, means all support collected in a given month from an absent parent who is paying support pursuant to a court order, but is in excess of the absent parent's current court ordered support obligation for that month and represents payment of a court ordered support obligation that had accrued in prior months.

(6) "Overpayment", for the purposes of collections in the child support program, means any child support payments collected and distributed to an individual exceeding the amount the individual is entitled to receive, or to an individual not entitled to receive the payment; payments not completed as a result of insufficient funds from the payment source; or fraudulent payments.

(Department of Child Services; Title 2, Ch 7, Reg 2-700; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 732; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1283; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-1](#)) to the Department of Child Services ([465 IAC 1-1-1](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 2. [465 IAC 1-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-2](#) Eligibility and fees for child support services; collection processing service

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-25-4-19](#)

Sec. 2. Any person who, in the month of application, is ~~not a recipient of a federal public assistance program~~ a **nonpublic assistance participant** shall be eligible for parent locator and child support services **as requested**, upon the filing of an application with a county child support office. ~~A nonrefundable twenty-five dollar (\$25) An~~ application fee **not to exceed twenty-five dollars (\$25)** shall ~~accompany~~ **be assessed for** each application for services. **The application fee may be paid either by the applicant for services or from state funds.**

(Department of Child Services; Title 2, Ch 7, Reg 2-701; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 718; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 734; filed Jul 16, 1982, 1:58 p.m.: 5 IR 1827; filed Mar 29, 1985, 10:05 a.m.: 8 IR 992; filed Aug 13, 1991, 9:15 a.m.: 15 IR 7; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1284; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-2](#)) to the Department of Child Services ([465 IAC 1-1-2](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 3. [465 IAC 1-1-5](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-5](#) Funding and withholding of funds to the clerk of the circuit court

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-25-4-5](#); [IC 31-25-4-24](#)

Sec. 5. (a) ~~The division of family and children~~ **department** shall reimburse the clerk of the circuit court for the clerk's activities performed under the cooperative agreement between the ~~division of family and children~~ **department** and the clerk of the circuit court. The extent of this reimbursement shall be governed by the terms of the budget submitted by the clerk and approved by the ~~division of family and children.~~ **department**. In no case shall the reimbursement exceed the percentages allowed by federal law and regulations.

(b) In the event the clerk does not perform the activities required by the cooperative agreement, the ~~division of~~

~~family and children~~ **department** shall have the authority to withhold reimbursement funds due to the clerk of the circuit court. The ~~division of family and children~~ **department** shall not withhold such funds until the ~~division of family and children~~ **department** has forwarded written notice to the clerk sixty (60) days prior to the date upon which reimbursement will be withheld. Such notice shall contain the date reimbursement will be withheld and the reasons therefor.

(Department of Child Services; Title 2, Ch 7, Reg 2-707; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 721; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1285; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-6](#)) to the Department of Child Services ([465 IAC 1-1-5](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 4. [465 IAC 1-1-6](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-6](#) Cancellation of cooperative agreement with the prosecuting attorney; notice; withholding of reimbursement; failure to take legal action

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-25-4-13.1](#); [IC 31-25-4-20](#); [IC 31-25-4-25](#)

Sec. 6. (a) Either party to the cooperative agreement entered into between the ~~division of family and children~~ **department** and the prosecuting attorney may cancel that agreement prior to its expiration date by giving the other party to the agreement advance notice of the intention to cancel the agreement. Such notice shall be in writing and shall be forwarded to the other party to the agreement sixty (60) days prior to the date the agreement will be canceled. Such notice shall contain the date of the intended cancellation and the reason therefor.

(b) In the event the ~~division of family and children~~ **department** gives the prosecuting attorney prior notice of its intention to cancel the cooperative agreement, the ~~division of family and children~~ **department** shall have the right to withhold reimbursement funds due and owing to such prosecuting attorney on and after the date of intended cancellation.

(c) No prosecuting attorney shall be subject to cancellation of the **cooperative** agreement for breach of the provisions in the ~~cooperative~~ agreement, which require him or her to take legal action to establish and enforce support obligations, unless the failure to take legal action in a particular case is clear abuse of discretion.

(Department of Child Services; Title 2, Ch 7, Reg 2-708; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 721; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1285; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-7](#)) to the Department of Child Services ([465 IAC 1-1-6](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 5. [465 IAC 1-1-8](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-8](#) Requirements for converting support payments received directly by the recipient; condition for continuing eligibility for assistance

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-25-4](#)

Sec. 8. (a) As a condition of continuing eligibility for assistance, any temporary assistance to needy families (TANF) recipient who, after executing an assignment of support rights, to the ~~Indiana division of family and children~~ receives a direct court ordered child support payment from or on behalf of the obligor must:

- (1) convert that payment to the form prescribed by this section; and
- (2) promptly forward that converted payment to the Indiana ~~division of family and children~~ **state central collection unit** at the office of the child support bureau. ~~or the clerk of the circuit court.~~

(b) Any support payment received from an individual must be converted to a money order, cashier's check, or

certified check payable to the Indiana division of family and children or the clerk of the circuit court **state central collection unit** and contain or be accompanied by the following information:

- (1) The recipient's name.
- (2) The recipient's Title IV-D case number.
- (3) The obligor from whom or on whose behalf the support payment was made.

(c) Any support payment received from the clerk of the court or any payment in the form of a military allotment must be endorsed by the recipient and contain or be accompanied by the following information:

- (1) The recipient's name.
- (2) The recipient's Title IV-D case number.
- (3) The obligor from whom or on whose behalf the support payment was made.

(Department of Child Services; Title 2, Ch 7, Reg 2-722; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 738; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1286; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-12](#)) to the Department of Child Services ([465 IAC 1-1-8](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 6. [465 IAC 1-1-11.5](#) IS ADDED TO READ AS FOLLOWS:

[465 IAC 1-1-11.5](#) Recoupment of child support overpayments from subsequent child support payments

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-25-4](#)

Sec. 11.5. (a) When the department determines that a child support payment processed through the statewide child support system has resulted in an overpayment to an individual, such overpayment may be recouped from the individual by the department.

(b) Upon determination by the department that child support payment(s) resulted in an overpayment to an individual, the department shall:

- (1) provide the individual with notice of intent to recoup the overpayment, in accordance with subsections (d) and (e); and
- (2) attempt to obtain the individual's written consent for recoupment of the overpayment.

(c) If the individual fails to respond after three (3) notices provided by the department in accordance with subsections (d) and (e), the individual's consent to recoupment may be presumed, and the department may proceed to recoup the overpayment by the withholding of subsequent child support payments up to the amount of overpayment distributed to the individual.

(d) Notice(s) required under this section shall specify:

- (1) that a child support payment was distributed in error to the individual;
- (2) the amount of the payment(s) and the date(s) the payment(s) were distributed to the individual;
- (3) the address to which the individual should send a response to the notice;
- (4) that the individual has fifteen (15) days from the date the notice is mailed in which to respond in writing to the notice; and
- (5) that, if the individual fails to respond after the third notice, the individual's consent may be presumed and the department may proceed to recoup the overpayment by the withholding of subsequent child support payments up to the total amount of the overpayment(s) distributed to the individual.

(e) Notice(s) provided under this section will be sent no earlier than thirty (30) days after any prior notice under this section has been provided.

(f) Nothing in this section shall be interpreted to preclude or prevent the department from entering into an agreement with the individual or pursuing any other criminal, civil, or administrative remedies to recover an overpayment of child support.

(Department of Child Services; [465 IAC 1-1-11.5](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#))

SECTION 7. [465 IAC 1-1-12](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-12](#) Withdrawal from nonpublic assistance child support services; notice and payment of charges

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 31-25-4-19](#)

Sec. 12. A nonpublic assistance participant in the child support program who receives parent-locator and/or child support services may withdraw from the program by notifying the local county child support enforcement office, in writing, of the intention to withdraw from participation in the program. Upon the effective date of withdrawal, as determined by the ~~Indiana division of family and children,~~ **department**, the individual will no longer be entitled to any child support services.

(Department of Child Services; Title 2, Ch 7, Reg 2-760; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 744; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1288; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-20](#)) to the Department of Child Services ([465 IAC 1-1-12](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 8. [465 IAC 1-1-13](#) IS AMENDED TO READ AS FOLLOWS:

[465 IAC 1-1-13](#) State income tax refund intercept

Authority: [IC 31-25-2-18](#); [IC 31-25-4-27](#)

Affected: [IC 6-8-1-9.5](#)

Sec. 13. Whenever the ~~division of family and children,~~ **department**, pursuant to [IC 6-8-1-9.5](#), intercepts a state income tax refund for child support owed, and the amount offset is found to be in error or to exceed the amount of overdue support, the ~~division~~ **department** shall promptly refund the appropriate excess amount to the ~~absent parent.~~ **obligor**.

(Department of Child Services; [465 IAC 1-1-13](#); filed May 8, 1986, 1:45 p.m.: 9 IR 2200; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1288; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#); filed Oct 26, 2016, 1:50 p.m.: [20161123-IR-465160054FRA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-22](#)) to the Department of Child Services ([465 IAC 1-1-13](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.

SECTION 9. THE FOLLOWING ARE REPEALED: [465 IAC 1-1-3](#); [465 IAC 1-1-4](#); [465 IAC 1-1-7](#); [465 IAC 1-1-9](#); [465 IAC 1-1-10](#); [465 IAC 1-1-11](#).

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