

Department of Children and Families

Statement of Scope

Rule Number: Chapter DCF 150

Relating to: Child support guidelines quadrennial review

Rule Type: Permanent

This statement of scope was approved by the governor on March 31, 2022.

1. Finding/nature of emergency (for emergency rules only)

Not applicable

2. Detailed description of the objective of the proposed rule

Federal regulations require that states review their child support guidelines every 4 years to determine whether the use of the guidelines results in appropriate child support order amounts. What is considered appropriate changes over time as states continue to research and analyze case data, labor market data, and other economic factors.

As part of this federally-required review, the department established a Child Support Guidelines Review Advisory Committee to provide input and recommendations on the use of the child support guidelines in ch. DCF 150. The committee included representatives from the judiciary, the Wisconsin bar, county child support agencies, and organizations representing parents and children.

Among other things, the scope of the quadrennial review included determining whether any revisions to ch. DCF 150 are needed to comply with a final federal rule published by the Administration for Children and Families on December 20, 2016, entitled *Flexibility, Efficiency, and Modernization in Child Support Enforcement Program*.

The proposed rule will be based on the Child Support Guidelines Advisory Committee's recommendations to the department made as part of the recent quadrennial review of ch. DCF 150. The proposed rule will include all of the following:

—Factors to be considered when imputing income based on a parent's earning capacity, including the factors specified in the 2016 federal rule.

—Incorporation of the 2016 federal rule provision that incarceration may not be considered voluntary unemployment when establishing or modifying a child support order.

—The appropriate application of the equivalent care credit when determining a parent's period of placement for the shared-placement formula.

—A clarification of the methodology for determining income available for child support for a serial-family parent.

—Modification of the medical support section based on the 2016 federal rule that establishes that publicly-funded health insurance is an appropriate substitute for private health insurance if neither parent has private health insurance available at a reasonable cost.

3. Detailed explanation of statutory authority for the rule

Section 49.22 (9), Stats., provides that the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. The rules shall provide for consideration of the income of each parent and the amount of physical placement with each parent in determining a child support obligation in cases in which a child has substantial periods of physical placement with each parent.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

300 hours

5. List with description of all entities that may be affected by the proposed rule

County child support agencies, judges, court commissioners, attorneys, children, and parents subject to a temporary or final order for support of a marital or nonmarital child in any action affecting the family under ch. 767, Stats., including stipulated child support settlements under s. 767.34, Stats.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule

45 CFR 302.56 (a) provides that, as a condition of approval of its state plan, each state must establish one set of child support guidelines for setting and modifying child support order amounts within the state.

45 CFR 302.56 (c) provides that a state's child support guidelines must at a minimum do all of the following:

- (1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
 - (i) Takes into consideration all earnings and income of the noncustodial parent.
 - (ii) Takes into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the state.

(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(2) Address how the parents will provide for the child's health care needs through private or public health care coverage or through cash medical support, or both.

(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

(4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

45 CFR 302.56 (e) provides that a state must review, and revise, if appropriate, its child support guidelines at least once every 4 years to ensure that their application results in the determination of appropriate child support order amounts.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small business):

The proposed rules will not affect small businesses as defined in s. 227.114 (1), Stats.

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