

Dear Senators LODGE, Broadsword & Werk, and
Representatives BLOCK, Nielsen & Henbest:

The Office of the Legislative Services, Research and Legislation, has received the enclosed rules of the Dept. of Health & Welfare: IDAPA 16.03.03 - Rules Governing Child Support Services (Docket No. 16-0303-0801) (Proposed).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 5-23-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 6-20-08.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: May 6, 2008

SUBJECT: Department of Health and Welfare - IDAPA 16.03.03 - Rules Governing Child Support Services (Docket No. 16-0303-0801) (Proposed)

The Department of Health and Welfare submits this proposed rule (Docket No. 16-0303-0801) (hereinafter “proposed rule”) to amend IDAPA chapter 16.03.03 dealing with rules governing child support services. A similar rule docket was promulgated last year as a proposed and temporary fee rule (Docket No. 16-0303-0701). That proposed and temporary rule was withdrawn by the Governor and replaced by a temporary rule published in volume 08-02 in the Idaho Administrative Bulletin (Docket No. 16-0303-0801), effective December 6, 2007.

According to the Department, the proposed rule is authorized pursuant to sections 32-1214G and 56-203A, Idaho Code. Section 32-1214G, Idaho Code, gives the Department authority to promulgate rules necessary to implement and enforce orders for medical insurance. Section 56-203A, Idaho Code, provides the Department with the authority to enforce child support orders, including the authority to charge reasonable fees to compensate for services rendered in establishment of or enforcement of support obligations.

According to the Department, the proposed rule imposes a new \$25 annual fee upon the noncustodial parent paying “enforced” child support payments. The proposed rule promulgated last year under Docket No. 16-0303-0701 called for collection from the custodial parent. The Department explains that the Federal Budget Deficit Reduction Act of 2005 mandates that the \$25 fee be imposed in each child support case in which an individual has never received assistance under TANF, Title IV-A of the Social Security Act, and where the state has collected more than \$500 in child support during the Federal Fiscal Year. Failure to implement this program will result in the loss of TANF funds.

The Department has not provided copies of the specific federal law or proposed temporary regulations upon which it relies for proposed rule as required by section 67-5223(1), Idaho Code.

Child Support Services is required to pay this \$25 fee to the federal government whether or not the fee is collected. The Department estimates that advanced payment of the fee to the federal government will impact the General Fund in the amount of \$399,674 in fiscal year 2009. In addition, the Department states that system modification costs will be \$192,960, of which \$86,746 is the responsibility of Child Support Services.

For each \$25 fee collected, the Department will be allowed to retain one third of the fee or approximately \$8.50 which will be used to help cover the federal share of the fee on cases in arrear where collection of the fee cannot be applied. The Department has not provided an estimate of how much of the fee it will collect from the noncustodial parent or how much of the General Fund advance fee payment it will recover. Under the Families First Program, where there are child support arrearages, all child support payments collected by the Department go to the custodial parent.

According to the Department, negotiated rulemaking was not conducted because the rulemaking is being made to comply with a federal mandate. The Department states that public hearings will be scheduled if requested in writing by 25 persons, a political subdivision or agency not later than June 25, 2008. All written comments must be delivered to the Department on or before June 18, 2008.

ANALYSIS

Existing fees collected by Child Support Services include a \$25 application fee for child support services, a \$25 deduction each time child support is collected as a result of an income tax offset, a \$122.50 fee charged for a referral to the Internal Revenue Service for full collection of the child support obligation and a \$10 late fee that may be charged an applicant/recipient for referral to FPLS for location of a noncustodial parent when no other child support services are being provided. Sections 304.01 through 04.

The proposed rule requires the Child Support Services to charge a noncustodial parent in a title IV-D enforcement case \$25 once \$500 of support has been collected during the relevant federal fiscal year. The fee will not be collected if the applicant/recipient (custodial parent) has ever received assistance under a state or tribal title IV-A program or if the child support obligor (noncustodial parent) is currently required to participate in Title IV-D services as an eligibility requirement for Food Stamps participation. Section 304.05.

SUMMARY

This proposed rule should be designated as a fee rule since it requires the Department to impose a \$25 fee on noncustodial parents paying enforced child support payments, unless otherwise exempted. The fee is already in effect pursuant to a temporary rule.

The Federal Register, Vol. 72, No. 15 (January 24, 2007), pp. 3093 - 3102, provides an explanation of this \$25 fee. The \$25 annual fee is required under the Deficit Reduction Act of 2005, Pub. L. 109-171. The statutory effective date of that Act was October 1, 2006. The January 24th Federal Register published proposed rules to implement this fee requirement which have not, as yet, become final.

The \$25 fee will apply to any case that is a new or existing title IV-D case where \$500 in support payments have been distributed to a family within the federal fiscal year (October 1 through September 30). No fee will be imposed if an individual has received assistance under a state or Tribal title IV-A cash assistance program or some other type of TANF assistance. Title IV-D cases are those which involve child support enforcement services. If the Department simply collects and remits the child support payment (non title IV-D cases, totaling approximately 16,000 to 17,000 cases), no \$25 fee will be imposed. In October of 2007, the Department estimated that approximately 38,000 out of 50,000 child support cases meet the federal criteria for imposing the \$25 fee.

The proposed federal regulations offer states four options in collecting the \$25 fee: (1) Retain the fee from support collected; (2) Collect the fee from the individual applying for the title IV-D services (the custodial parent); (3) Recover the fee from the noncustodial parent; or (4) Pay the fee from the state General Fund. Retaining the fee from the support collected is viewed as the least administratively burdensome method. Recovering the fee from the noncustodial parent is problematic since there is no direct way to get the noncustodial parent to pay and the state would have to collect any uncollected sums from the custodial parent or from the collected support payment or pay the balance out of the General Fund. Any fee collected from the custodial parent, the noncustodial parent or support payment is deemed to be program income. The state is allowed to retain 1/3 of program income to cover administrative expenses. If payment to the federal government is made from the General Fund, the amount required to be remitted would be two-thirds of \$25 or \$16.50 for each qualifying case.

The Department's fee rule change appears to be authorized under section 56-203A, Idaho Code.

cc: Sherri Kovach & Kandance Yearsley

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 32-1214G and 56-203A, Idaho Code, and mandated by the Federal Deficit Reduction Act (DRA) of 2005.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 25, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule implements a federal mandate from the Deficit Reduction Act (DRA) of 2005. Each state is required to set up a process to collect a \$25 annual fee for each enforced child support case that has never participated in a cash assistance program. Collection of this annual fee is to take place once \$500 in support payments has been collected on each case, each year. For every \$25 collected, the federal government receives \$16.50 and states receive \$8.50. Idaho is planning to use the \$8.50 collections to help cover the federal share of the fee on cases in arrears where collection of the fee cannot be applied. Idaho must implement this program or face loss of federal TANF funds.

In February 2008, the Department of Health and Welfare adopted this rule as a temporary rule with an effective date of December 6, 2007. The temporary rule was published in the Idaho Administrative Bulletin, Volume 08-02, February 6, 2008, pages 21 through 22.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

This rulemaking imposes a new \$25.00 dollar annual fee upon the non-custodial parent paying "enforced" child support payments. The Federal Budget Deficit Reduction Act of 2005 mandates that this fee be imposed in each child support case in which an individual has never received assistance under a program funded by the Temporary Assistance for Needy Families (TANF) program (Title IV-A of the Social Security Act) and where the state has collected more than \$500 in child support during the Federal Fiscal Year (FFY). Despite the fact that the federal law requiring this fee was passed during the 2005 Federal Legislative Session, the proposed federal regulation governing the application and imposition of this fee was not published until January 24, 2007.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The projected fiscal impact for SFY 2009 is \$399,674 general fund dollars, which will be required in order to advance the payment of the federal share of the fee on cases which qualify for the fee, but on which collections cannot be applied to the fee due to existing case arrearages and inability to collect. (Not included in this fiscal impact statement is the total cost to the Department for system modification of \$192,960. Of this total, \$86,746 is the Child Support Program's responsibility.)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because a federal mandate required this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kandace Yearsley at (208) 334-0620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 18, 2008.

DATED this _____ day of _____, 2008.

Sherri Kovach
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-0801

304. FEES.

01. Application Fee. At the time of application for child support services, a written application must be completed and a fee of twenty-five dollars (\$25) must be paid. The fee must be paid in advance of any services to be provided and is not refundable. (7-1-98)

02. Income Tax Offset Fees. A fee of twenty-five dollars (\$25) will be deducted each time child support is collected as a result of an income tax offset. (7-1-98)

03. Internal Revenue Service (IRS) Referral Fees. A fee of one hundred twenty-two dollars and fifty cents (\$122.50) shall be charged for a referral to the IRS for full collection of the child support obligation. (7-1-98)

04. Locate Fees. Child Support Services may charge an applicant/recipient a fee of ten dollars (\$10) for referral to FPLS for location of a non-custodial parent when no other child support services are being provided. Child Support Services may also charge a fee of four dollars (\$4) for referral to the FPLS for a social security number search. Child Support Services may charge a fee of seventy cents (\$.70) for referral to FPLS for location of a non-custodial parent. (7-1-98)

05. Federally Mandated Annual Service Fees. Child Support Services must charge an annual fee of twenty-five dollars (\$25) for each Title IV-D enforcement case in which Child Support Services has collected and disbursed five hundred dollars (\$500) of support in the federal fiscal year. The fee will be billed to the child support obligor once five hundred dollars (\$500) of support has been collected during the relevant federal fiscal year provided the case otherwise qualifies. The fee will not be collected on any case in which the applicant/recipient has ever received benefits under a State or Tribal Title IV-A program, or from any child support obligor who is currently required to participate in Title IV-D services as an eligibility requirement for Food Stamps participation.

(12-6-07)F(____)