



Nathan Deal, Governor

Robyn A. Crittenden, Commissioner

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Georgia Department of Human Services ▪ Suite 29.250 ▪ Two Peachtree Street, NW ▪ Atlanta, Georgia 30303-3142 ▪ Phone: 404-463-0539

**Date:** October 27, 2015

**Action:** Notice of Public Hearing to Consider the Adoption of Amendments to Chapter Sections 290-7-1-.04 and 290-7-1-.05 related to Recovery and Administration of Child Support.

**To All Interested Persons and Parties:**

The Georgia Department of Human Services, Division of Child Support Services (the “Department”), proposes amendments to Chapter 290-7-1 of the Rules of the Georgia Department of Human Services related to Recovery and Administration of Child Support. The proposed amendments affect chapter sections 290-7-1-.04 and 290-7-1-.05. Adoption of these amendments will assist the Department in providing enforcement services. First, amendments to 290-7-1-.04 and 290-7-1-.05 will enable the Department to comply with HB 568 by instituting procedures that assist with the requirement of genetic testing prior to establishment of child support cases. Secondly, amendments to 290-7-1-.05 will set out administrative changes concerning review and modifications. The Department will be accepting written comments from October 27, 2015, to close of business (4:30 p.m. EDT) on November 30, 2015.

This notice, together with an exact copy of the proposed amended rule and a synopsis of the proposed amended rule, is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, an exact copy of the proposed amended rule, and a synopsis of the proposed amended rule may be reviewed during normal business hours of 8:00 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Department of Human Services, Office of General Counsel,

2 Peachtree Street NW, Atlanta, Georgia 30303. These documents will also be available for review on the Division of Child Support Services' web page at <http://ocss.dhs.georgia.gov>.

A public hearing is scheduled to begin at 10:00 a.m. on December 2, 2015, in the Board Room on the 29<sup>th</sup> floor of 2 Peachtree Street to provide the public an opportunity to comment upon and provide input into the proposed amended rule. At the public hearing anyone may present data, make a statement, comment or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to 5 minutes per person. Additional comments should be presented in writing. Written comments are welcome. To ensure their consideration, written comments must be received on or before November 30, 2015. Written comments should be addressed to Tonya Cureton Curry, General Counsel, 2 Peachtree Street NW, Suite 29-201, Atlanta, Georgia 30303. FAX: 404-657-1123.

The proposed amended rule will be considered for adoption by the Board at its meeting scheduled to begin at 1:00 PM. on December 9, 2015, in the Board Room on the 29<sup>th</sup> floor of 2 Peachtree Street.

**Comment Period and Additional Information:**

The Department will be accepting written comments from October 27, 2015, to close of business (4:30 p.m. EDT) on November 30, 2015. Please submit written comments to:

Tonya Cureton Curry, Office of General Counsel  
Georgia Department of Human Services  
2 Peachtree Street NW, Suite 29-201  
Atlanta, Georgia 30303  
Telephone Number: (404) 463-0590  
FAX Number: (404) 657-1123

Ageing Services | Child Support Services | Family & Children Services

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Interested persons may call or submit a written request to obtain a copy of the proposed rule(s). A copy of the synopsis and the proposed rule(s) may be downloaded from the Georgia Department of Human Services, Division of Child Support Services website at <http://ocss.dhs.georgia.gov>.

This notice is given in compliance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-4.



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## **RULES OF THE GEORGIA DEPARTMENT OF HUMAN SERVICES**

### **CHAPTER 290-7-1**

#### **RULES AND REGULATIONS FOR RECOVERY AND ADMINISTRATION OF CHILD SUPPORT**

#### **PROPOSED RULE AMENDMENT**

##### **290-7-1-.04 Establishment of Child Support Obligation.**

(a) Initial investigation. In cases in which no child support order already exists, the Department may conduct an investigation in accordance with O.C.G.A. § 19-11-10 to determine the ability of a putative obligor to support his/her child(ren). The Department will calculate the amount of the support award based on the standards set forth at O.C.G.A. § 19-6-15. An obligor shall not be relieved of his/her duty of support when he/she has brought about his/her own unstable financial condition or when it is determined that he/she is underemployed. If paternity is contested, the Department shall pursue a determination of paternity as permitted by law.

##### **(b) Genetic Testing**

(1) In accordance with Georgia law as amended in 2015, The Department will generally pursue genetic testing will be required in any case in which paternity is at issue and a child support obligation has not previously been established. In such instances, the Department will issue an order for genetic testing, which will be provided to both putative parents of the child at issue. The order shall specify the time and place for genetic samples to be obtained. An applicant for services who fails to comply with the order for genetic testing is failing to cooperate with the Department, and his/her case is subject to administrative closure. An application will not be deemed complete unless accompanied by an applicant's sworn statement alleging or denying paternity. The sworn statement is required by law, O.C.G.A. § 19-11-43(e), and is needed to provide the foundation that the efforts to establish paternity and child support are proceeding against the proper party. A defendant in a paternity case who fails to comply with the departmental genetic testing order

on more than two (2) occasions shall be held to have waived any right to genetic testing in the case or in any proceedings involving the Department. The Department may initiate litigation prior to the completion of genetic testing, in which case the testing shall take place as ordered by the court. because, in the majority of cases, it is in the best interest of the child(ren) to know the identity of both biological parents; however, genetic testing will normally not be pursued in cases involving adoption or the use of reproductive assistance techniques which would negate biological relations (such as embryo donation, egg donation, sperm donation, etc.). Genetic testing will also generally not be pursued in the case of married persons. The decision regarding whether or not to seek genetic testing shall be at the sole discretion of the Department based upon the facts known to it at the time. The cost of genetic testing shall be cast upon the defendant if the results show that the defendant is the biological parent of the child.

- (2) Any genetic material collected for a paternity test shall be destroyed by the Department and any contractor, vendor, or laboratory authorized to do testing for the Department no earlier than one year but no later than two years from the date that the result of such test is transmitted to the Department. The Department may extend this period of time if needed due to a continuing court action or legal dispute by notice to the contractor, vendor, or laboratory. Neither the Department nor any contractor, vendor, or laboratory authorized to do testing for the Department may share the genetic material with any other person or agency, or use the genetic material for any purpose other than the determination of paternity. The contractor, vendor, or laboratory must agree to comply with terms and conditions set forth within a contract for services with the department including but not limited to liquidated damages due to the improper release, use, or failure to destroy information or materials associated with paternity testing services.
- (c.b.) Consent agreement. When the investigation is complete, the Department will request that the putative obligor enter into a consent agreement to provide child support (including medical support) and to provide medical insurance when available to the putative obligor in accordance with O.C.G.A. § 19-11-26. Subsequently, the Department will submit a signed consent agreement to OSAH for the issuance of a support order and will issue an FIW after entry of the consent order if the obligor is employed.
- (d.e.) Establishment at Hearing. If the Department is unable to secure a consent agreement from the putative obligor, the Department will file a request for hearing before an administrative law judge appointed by OSAH to determine the duty of and ability of the putative obligor to provide child support. The amount of the support shall be determined in accordance with O.C.G.A. § 19-6-15 and shall include medical insurance for his/her children when available at reasonable cost pursuant to O.C.G.A. § 19-11-26. A putative obligor shall not be relieved of his/her duty of support when the administrative law judge determines that the obligor is underemployed or has brought about his/her own unstable financial condition. An administrative hearing and any appeal therefrom under this Rule

shall be in accordance with the procedures set forth at Rule 290-7-1-.19.

- (e.) If a nonparent custodian is the party seeking establishment, the Department may proceed against all natural or adoptive parents of the child in the same proceeding unless jurisdictional defects require separate proceedings. Although a nonparent custodian applying for services may seek establishment against only one parent, the Department in its sole discretion may choose to proceed against both parents of the child(ren).
- (f.) As required by federal law, when TANF, Medicaid, or other public assistance is paid by the State of Georgia on behalf of a child, a referral is automatically made to the Department for establishment services. In such public assistance cases, the Department may proceed without an application for services in order to collect a public debt owed to the State of Georgia. In such public assistance cases only, the Department may seek to establish a support obligation even though the custodian of the child does not have legal custody.
- (g.) The Department may, in its sole discretion, elect to proceed in superior court to establish any child support obligation rather than proceed through OSAH.

AUTHORITY: O.C.G.A. §§ 19-6-15, 19-6-17, 19-7-43, 19-11-8, 19-11-10, 19-11-15.

### **290-7-1-.05 Fees and Collection Procedures.**

#### (d.) Other Fees

- (1) For any person not currently receiving TANF or Family Medicaid assistance, or whose gross monthly income is not less than an amount determined by the Department and set by policy based upon the current minimum wage, \$1,000.00, a non-refundable fee of up to \$100.00 is required for review and modification pursuant to code section 19-11-12, payable upon completion of the review process, except in cases proceeding under UIFSA.
- (2) A fee of \$15.00 shall be retained and deducted from any intercept of federal tax refunds, as required by federal law.
- (3) A fee of \$12.00 shall be retained and deducted from any intercept of state tax refunds.
- (4) Genetic testing will often ~~may~~ be utilized as required by law in appropriate circumstances to establish a putative parent's biological relationship to a child. The genetic testing fee will be based on the contracted rate at the time the test is administered. If the putative obligor is confirmed as a parent and paternity is established, the obligor is responsible for paying the genetic

testing fee at the time the court or administrative tribunal enters an order. If the putative father is excluded as a possible parent then the person who named the putative father shall be liable to the department for reimbursement of the paternity testing fee.

- (5) The Department shall charge a fee of up to \$10.00 for each certification regarding entries on the putative father registry (see O.C.G.A. § 19-11-9(f)).

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- (f.) An applicant for services who closes his/her case after a civil action has been initiated by the Department shall be responsible for reimbursing the Department for any court costs or service fees arising from said civil action for which the Department was required by law to pay.

AUTHORITY: O.C.G.A. §§ 19-6-33.1, 19-7-43, 19-11-6, 19-11-9.3, 19-11-12, 50-16-18.



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## **RULES OF THE GEORGIA DEPARTMENT OF HUMAN SERVICES**

### **CHAPTER 290-7-1**

#### **RULES AND REGULATIONS FOR RECOVERY AND ADMINISTRATION OF CHILD SUPPORT**

##### **SYNOPSIS OF PROPOSED RULE CHANGES**

The Georgia Department of Human Services, Division of Child Support Services (the “Department”), proposes amendments to Chapter 290-7-1 of the Rules of the Georgia Department of Human Services related to Recovery and Administration of Child Support. The proposed amendments affect chapter sections 290-7-1-.04 and 290-7-1-.05. Adoption of these amendments will assist the Department in providing enforcement services. First, amendments to 290-7-1-.04 and 290-7-1-.05 will enable the Department to comply with HB 568 by instituting procedures that assist with the requirement of genetic testing prior to establishment of child support cases. Secondly, amendments to 290-7-1-.05 will set out administrative changes regarding fees for reviews and modifications.

The passing of HB 568 requires the Department to establish procedures to ensure that genetic testing is completed prior to the establishment of a child support case. Amendments to 290-7-1-.04 set out the requirement for genetic testing in cases where paternity is at issue or has not been previously established as a pre-requisite for establishment of a child support case. 290-7-1-.04 will now require a sworn statement alleging or denying paternity as a part of the application for enforcement services, and the amended rule will include a provision that the costs of such testing be borne by the proven parent or the mistaken declarant. Additionally, 290-7-1-.04 provides for the

timely destruction of genetic material (no earlier than one year but no later than two years from the date that the result of such test is transmitted to the Department), and the rule prohibits genetic material from being shared with any other entity other than the paternity testing laboratory or from being used for any purpose other than paternity testing. The latest proposed addition to 290-7-1-.04 (b) (2) allows for remedies against laboratory vendors contracting with the Department who improperly release, use, or fail to destroy information or materials associated with paternity testing services. Finally, amendments to 290-7-1-.05 identify how fees will be collected in providing the required genetic testing.

Administrative changes in 290-7-1-.05 will affect how reviews and modifications are completed. 290-7-1-.05(d) will be amended to allow the Department to waive fees associated with review and modifications for individuals whose monthly gross income falls at or below the minimum wage. Previously, these fees were waived for individuals with gross monthly income below \$1,000. This change will allow for a waiver of fees for individuals whose income falls below the established minimum wage. This change will allow for a waiver of fees for individuals earning at or less than minimum wage and will take into account changes in the minimum wage standard.

### **MAIN FEATURES OF THE PROPOSED AMENDMENT:**

The amendment to 290-7-1 will include the following features:

- Administrative and Procedural Changes:
  - Allows waivers of the fee related to reviews and modification for low income customers.
- Changes related to HB 568 and Genetic Testing
  - Ensures that paternity is established in cases where it is in question or has not been established.
  - Sets time sensitive standards for destroying genetic material collected for paternity testing.
  - Obligates the parent who named an incorrect putative obligor to reimburse the Department for the paternity testing fee.

- Allows the Department to contractually include a remedy against a laboratory due to the improper release, use or failure to destroy information or materials associated with paternity testing services.