

CHAPTER 98
SUPPORT ENFORCEMENT SERVICES

PREAMBLE

In addition to the enforcement services described in 441—Chapter 95, “Collections,” the child support recovery unit is charged with the responsibility to provide the services delineated in this chapter.

DIVISION I
MEDICAL SUPPORT ENFORCEMENT

441—98.1(252E) Definitions.

“*Medical support*” means either the provision of a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to Iowa Code chapter 514E to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid. Medical support is not alimony.

“*Obligee*” means a custodial parent or other natural person legally entitled to receive a support payment on behalf of a child.

“*Obligor*” means a noncustodial parent or other natural person legally responsible for the support of a dependent.

“*Reasonable in cost*” means that a health insurance is employment-related or other group health insurance regardless of the service delivery mechanism.

441—98.2(252E) Provision of services. The child support recovery unit shall provide medical support enforcement services to recipients of Medicaid for whom an assignment of support is in effect and shall provide these services to nonpublic assistance recipients upon their request.

98.2(1) Nonpublic assistance recipients.

a. Applicants for nonpublic assistance services shall be informed of the availability of medical support enforcement services at the time of application and shall be asked about their desire to receive these services on Form CS-3103-0, Application for Non-Assistance Support Enforcement Service. Applicants who do not desire medical support enforcement services at the time of application may request these services in writing at a later date by completing Form 470-2744, Nonpublic Assistance Medical Support Request.

b. The child support recovery unit shall inform recipients of nonpublic assistance services whose application forms did not contain notice of medical support enforcement services of the availability of these services in writing on Form 470-2744 prior to establishing or enforcing medical support, and shall not provide these services unless a written request is received.

98.2(2) Public assistance recipients. Unless good cause has been established, recipients of Medicaid are required to cooperate with the child support recovery unit as a condition of eligibility as prescribed in rule 441—75.14(249A). This includes completing and signing Form 470-2748, Public Assistance Medical Support Request, upon request of the child support recovery unit.

441—98.3(252E) Establishing medical support. In cases for which services are provided by the child support recovery unit, the unit shall seek medical support for persons receiving Medicaid benefits whose support is assigned and shall seek medical support upon the request of nonpublic assistance recipients, as follows:

98.3(1) *New or modified orders.* In new or modified court or administrative orders for support, unless the obligee and child have a health benefit plan other than Medicaid that is available at a reasonable cost, the child support recovery unit shall request through a petition or notice of support debt that the obligor provide an employment-related or other group health benefit plan whether or not:

- a. It is available to the obligor at the time the order is entered.
- b. Modification of current coverage to include the dependents in question is immediately possible.

98.3(2) *Existing orders.* The child support recovery unit may:

- a. Seek to modify or adjust an order for medical support through administrative process pursuant to 441—Chapter 99.
- b. Petition for a modification of a support order when a high potential for obtaining medical support exists and employment-related or other group health insurance is available.

98.3(3) *Other provisions.* Provisions for medical support through an individual health benefit plan, a plan provided pursuant to Iowa Code chapter 514E, or through a monetary amount in lieu of the health benefit plan shall not be specifically requested by the child support recovery unit until rules governing the establishment of these provisions are adopted. However, the child support recovery unit may ask the court to consider, and the court may choose to order these provisions.

441—98.4(252E) Accessibility of the health benefit plan. When a choice of employment-related or group health benefit plans is offered to the obligor, some of which are of little or no value to the dependents because the dependents reside outside the geographic area served by the health benefit plans, the child support recovery unit shall request through a petition or notice of support debt that the obligor provide a plan that is accessible to the dependents.

441—98.5(252E) Health benefit plan information. The unit shall gather information concerning a health benefit plan.

98.5(1) *Information from an employer.* The unit shall gather information concerning a health benefit plan an employer may offer an obligor as follows:

- a. The unit shall send Form 470-0177, Employment and Health Insurance Questionnaire, or Form 470-2240, Employer Health Insurance Questionnaire, whenever a potential employer is identified.
- b. The unit shall secure medical support information from a known employer on Form 470-2743, Employer Medical Support Information, when Form 470-3818, Medical Support Notice, or an order has been forwarded to the employer pursuant to Iowa Code section 252E.4.

98.5(2) *Information from an obligor.* The unit may secure medical support information from an obligor on Form 470-0413, Obligor Insurance Questionnaire.

98.5(3) *Disposition of information.* The unit shall provide the information:

- a. To the Medicaid agency and to the obligee when the dependent is a recipient of Medicaid.
- b. To the obligee when the dependent is not a recipient of Medicaid.

441—98.6(252E) Insurer authorization. When the obligor does not provide to the insurer the signed documents necessary to enroll and process claims for the dependent for whom support is ordered, the insurer is authorized to accept the signature of the obligee or the department's designee on necessary forms. For purposes of Division I of this chapter, the third-party liability unit is the department's designee when support is assigned.

441—98.7(252E) Enforcement.

98.7(1) Medical support enforcement. For the purposes of enforcement, medical support may be reduced to a dollar amount and collected through the same remedies available for the collection and enforcement of child support.

98.7(2) Health benefit plan or insurance.

a. If an obligor was ordered to provide a health benefit plan or insurance coverage under an order, but did not comply with the order, the child support recovery unit may implement the order by forwarding to the employer a copy of the order, an ex parte order as provided in Iowa Code section 252E.4, or Form 470-3818, Medical Support Notice.

b. If the child support recovery unit implements an order under this subrule, the unit shall send a notice to the obligor at the last-known address of the obligor by regular mail. The notice shall contain the following information:

- (1) A statement of the obligor's right to an informal conference.
- (2) The process to request an informal conference.
- (3) The obligor's right to file a motion to quash with the district court.

98.7(3) Termination of employment. When the child support recovery unit receives information indicating the obligor's employment has terminated, the unit shall secure the status of the health benefit plan by sending Form 470-3218, Employer Insurance Notification, to the employer.

If no response is received within 30 days of sending Form 470-3218, the unit shall send a second request on Form 470-3219, Employer Insurance Second Notification, to the employer. If the obligor does not notify the unit, or no response is received from the employer within 90 days of sending Form 470-3218, the unit shall notify the obligee that the health benefit plan may have terminated.

441—98.8(252E) Contesting the order. The obligor may contest the enforcement of medical support by means of an informal conference with the child support recovery unit, or by filing a motion to quash.

98.8(1) Motion to quash. Procedures for filing a motion to quash the order are specified under Iowa Code sections 252D.31 and 252E.6A.

98.8(2) Informal conference.

a. The obligor shall be entitled to only one informal conference for each new employer to which the unit has forwarded Form 470-3818, Medical Support Notice, or order under Iowa Code section 252E.4 to enforce medical support.

b. Procedures for the informal conference are as follows:

(1) The child support recovery unit shall inform the obligor in writing of the right to request an informal conference.

(2) The obligor may request an informal conference with the child support recovery unit if the obligor believes the enforcement was entered in error.

(3) The obligor shall request an informal conference in writing, within 15 calendar days from the date of the notice of the right to an informal conference, or at any time if a mistake of fact regarding the identity of the obligor is believed to have been made.

(4) The child support recovery unit shall schedule an informal conference within 15 calendar days of the receipt of a written request from the obligor or the obligor's representative.

(5) The child support recovery unit may conduct the conference in person or by telephone.

(6) If the obligor fails to attend the conference, only one alternative time shall be scheduled by the child support recovery unit.

(7) The child support recovery unit shall issue a written decision to the obligor within ten calendar days of the conference.

c. The issues to be reviewed at the conference shall be as follows:

(1) Whether the identity of the obligor is in error.

(2) Whether the obligor is already providing health benefit plan coverage for the dependent.

(3) Whether the availability of dependent coverage under a health benefit plan is in error.

(4) Whether the obligor was ordered to provide a health benefit plan coverage under the support order.

d. The results in an informal conference shall in no way affect the right of the obligor to file a motion to quash the order under Iowa Code section 252E.4.

These rules are intended to implement Iowa Code sections 252A.4, 252B.5, 252C.1, 252C.3, 252C.4, 252C.9, 252D.1, 252D.30, 598.1, 598.21, 598.22 and 600B.25 and Iowa Code chapter 252E.

441—98.9 to 98.20 Reserved.

DIVISION II
INCOME WITHHOLDING
PART A
DELINQUENT SUPPORT PAYMENTS

441—98.21(252D) When applicable. When there is a delinquency in an amount equal to the support payable for one month as specified by an order for support or reimbursement order and the child support recovery unit is providing services under 441—Chapter 95, the unit shall enter an order to withhold the obligor's income not exempt by state or federal law to require the income withheld to be paid to the collection services center to pay the support obligation. An income withholding order shall also be entered to collect the unpaid balance of a judgment for the reimbursement of a support debt when a repayment schedule is not specified in the order establishing the judgment.

***441—98.22 and 98.23** Reserved.

441—98.24(252D) Amount of order. The child support recovery unit shall determine the amount to be withheld by the employer or other income providers as follows:

98.24(1) Current support obligation exists. When a current support obligation exists, the amount withheld shall be an amount equal to the current support obligation, and an additional amount equal to 50 percent of the current support obligation to be applied toward the liquidation of any delinquency.

Effective July 1, 1998, the amount withheld to be applied toward the liquidation of any delinquency shall be 20 percent of the current support obligation for any support order entered or modified on or after July 1, 1998, or for any support order entered or modified prior to July 1, 1998, for which no income withholding order has been filed by an Iowa CSRU prior to July 1, 1998.

a. The obligor may request a modification of the amount withheld as payment toward the arrearage or reimbursement on the grounds of hardship. The procedure for this request is described in rule 98.43(252D). Hardship exists if the obligor's income is 200 percent or less than poverty level for one person as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

b. If hardship is claimed by the obligor, the child support recovery unit may verify income from:

- (1) The employer or other income provider of the obligor.
- (2) The obligor.
- (3) The state employment security agency.
- (4) Other records available in accordance with Iowa Code section 252B.9.

c. If the hardship criteria are met, the amount withheld as payment toward the arrears may be modified as follows:

(1) The obligor's gross yearly income shall be divided by 200 percent of the established yearly gross poverty level income for one person. That amount shall be multiplied by .5. The resulting figure will be the percent of the current support order which shall be withheld for payment on the arrearage.

(2) The amount withheld on the arrearage shall not be less than \$5 per month.

(3) If criteria for withholding 20 percent toward liquidation of any delinquency are also met, the lesser of 20 percent or hardship is to be withheld.

98.24(2) *Current obligation ended.* When the current support obligation has ended or has been suspended, the income withholding order shall remain in effect until any delinquency has been satisfied. The amount withheld shall be equal to the amount of the most recent prior current support obligation which is greater than zero. Hardship criteria shall be applied in accordance with subrule 98.24(1). However, in the following circumstances, the amount withheld shall be 20 percent of the amount owed for current support at the time the obligation ended or was suspended; and, if hardship criteria are met, this amount shall be one-half of the amount established under the guidelines in subrule 98.24(1):

- a. There has been a change of legal custody from the obligee to the obligor.
- b. The obligee and obligor have reconciled and have obtained a modification ending the current support obligation.
- c. The current obligation is suspended through the suspension process.
- d. In a foster care case, the order for parental liability ended when the child left placement, or an order ending the liability has been entered and the child in foster care has returned to the home of a parent ordered to pay parental liability. In this situation, the amount withheld shall be reduced to 20 percent of the current support amount when the obligation ended, but only for the parent with whom the child resides.

98.24(3) *No support ordered.* When there is no current child support ordered and the obligation is solely the result of a judgment which does not specify a repayment schedule, the unit shall establish the amount to be withheld per month as follows:

- a. Initially the amount shall be set at the amount for one person from the ADC schedule of basic needs. Hardship may be asserted as set out in subrule 98.24(1).
- b. If hardship criteria are met in these circumstances, the amount withheld on reimbursement shall be determined by dividing the obligor's gross yearly income by 200 percent of the poverty level income for one person. The resulting number is the percent of the existing withholding order that will now be withheld. This amount will be reduced by one half if the obligor has legal custody of the child.

98.24(4) *Lump sum income source.* Notwithstanding subrules 98.24(1), 98.24(2), and 98.24(3), when the obligor is paid by a lump sum income source, the withholding order may include all current and delinquent support due through the current month. Lump sum income includes income received in a sole payment or in payments which occur at two-month or greater intervals.

441—98.25 to 98.30 Reserved.

PART B
IMMEDIATE INCOME WITHHOLDING

441—98.31(252D) *Effective date.* In cases for which the child support recovery unit is providing enforcement services, the income of the obligor is subject to immediate withholding pursuant to Iowa Code section 252D.8 without regard to the existence of a delinquency in the payment of support.

441—98.32(252D) *Withholding automatic.* Immediate withholding of income is automatic without additional notice to the obligor unless:

98.32(1) *Good cause exists.* Good cause is found to exist by the court or child support recovery unit. For purposes of this rule, "good cause" is defined as the posting of a secured bond by the obligor sufficient to pay all current and future child support obligations, including any arrearages which may accrue.

98.32(2) *Written agreement exists.* A written agreement is reached between both parties which provides for an alternative arrangement for payment of child support subject to the following conditions:

a. Unless approved by the child support recovery unit, written agreements between the obligee and obligor to waive immediate income withholding become void when child support is assigned to this state or to another state pursuant to a statute of that jurisdiction.

b. All payments pursuant to any written agreement shall be paid as directed in Iowa Code sections 252B.14 and 598.22.

***441—98.33** Reserved.

441—98.34(252D) **Approval of request for immediate income withholding.** When the obligee or other party to the proceeding requests immediate withholding, the child support recovery unit shall determine whether the request shall be approved.

98.34(1) *Basis for approval.* Approval of a request for immediate income withholding by the child support recovery unit may be based on:

a. Past payment record of the obligor which demonstrates an inconsistent compliance with the support order.

b. Whether the state of Iowa is providing public assistance.

98.34(2) *Request denied.* The child support recovery unit may not approve a request for immediate income withholding on cases where no public assistance has been expended and there is a prior written agreement between the obligee and obligor which has been approved by court order.

441—98.35(252D) **Modification or termination of order.** The court or the child support recovery unit may modify or revoke the income withholding order based on the criteria of Iowa Code chapter 252D. However, the income withholding may not be revoked or terminated if there is any current support owed.

These rules are intended to implement Iowa Code chapter 252D.

441—98.36(252D) **Immediate income withholding amounts.** The amount withheld shall be the amount of the current support obligation as specified in the support order. If a judgment for accrued support is established in the support order, the amount withheld shall be the amount due for current support and the periodic payment amount due for the accrued support as specified in the order. If no periodic payment for the accrued support is established in the support order, the amount withheld shall be the amount due for current support plus 10 percent of the amount of the current obligation to be applied to the accrued support.

441—98.37(252D) Immediate income withholding amounts when current support has ended.

When the child support obligation has ended, the amounts to be withheld shall be in accordance with subrule 98.24(2).

441—98.38 Reserved.

PART C
INCOME WITHHOLDING—GENERAL PROVISIONS

441—98.39(252D,252E) Provisions for medical support. An income withholding order or notice of income withholding may also include provisions for enforcement of medical support when medical support is included in the support order. The income withholding order or notice of income withholding may require implementation of dependent coverage under a health benefit plan pursuant to Iowa Code chapter 252E or the withholding of a dollar amount for medical support. Amounts withheld for medical support shall be determined in the same manner as amounts withheld for child support.

441—98.40(252D,252E) Maximum amounts to be withheld. An income withholding order entered by the child support recovery unit shall require that the employer or other income provider withhold no more than the maximum amounts allowed under the Federal Consumer Credit Protection Act, 15 U.S.C. 1673(b).

98.40(1) The amount of income subject to withholding shall be limited to 50 percent of the nonexempt disposable income of the obligor unless there is more than one support order for which the obligor is obligated and the criteria of 15 U.S.C. 1673(b) are met, or the obligor agrees to a greater amount within these limits.

98.40(2) Disposable income shall mean the nonexempt income of the obligor minus lawful deductions as prescribed by 42 U.S.C. Section 662(G).

441—98.41(252D) Multiple obligations. In the event that an obligor has more than one support obligation that is being enforced by the child support recovery unit, an income withholding order may be entered by the unit to enforce each obligation. The amount specified to be withheld on the arrearage under the income withholding order shall be determined in accordance with rule 441—98.24(252D).

441—98.42(252D) Notice to employer and obligor. The child support recovery unit shall send the obligor and the employer or other income provider a notice of income withholding as follows:

98.42(1) Notice to employer. The unit may send notice to the employer or other income provider by regular mail or by electronic means in accordance with Iowa Code chapter 252D. If the unit is sending notice by regular mail, it shall send Form 470-3272, Order/Notice to Withhold Income for Child Support, or a notice in the standard format prescribed by 42 U.S.C. §666(b)(6)(A). If the unit is sending the notice by electronic means, it may include notice of more than one obligor's order and need only state once provisions which are applicable to all obligors, such as the information in paragraphs "d," "f," "g," and "i," of this subrule. The statement of provisions applicable to all obligors may be sent by regular mail or electronic means. The notice of income withholding shall contain information such as the following:

- a. The obligor's name and social security number.
- b. The amount of current support to withhold.
- c. The amount of support to withhold for payment of delinquent support, if any.

- d. The amount an income provider may deduct for costs of processing each support payment.
- e. The child support case number.
- f. The location to which payments are sent.
- g. The maximum amount that can be withheld for payment of support as specified in rule 441—98.40(252D).
- h. The method to calculate net income.
- i. Responsibilities of the income provider as specified in Iowa Code section 252D.17.
- j. Responsibility, if any, of the income provider to enroll the obligor's dependent for coverage under a health benefit plan.

98.42(2) Notice to obligor. Form 470-2624, Initiation of Income Withholding, shall be sent to the last-known address of the obligor by regular mail. The notice shall contain the following information:

- a. A statement of the obligor's right to an informal conference.
- b. The process to request an informal conference.
- c. The obligor's right to claim hardship criteria and the process for a claim.
- d. The obligor's right to file a motion to quash the income withholding order with the district court.
- e. The information provided to the employer or other income provider, or a copy of the notice sent to the employer or other income provider.

98.42(3) Standard format. As provided in Iowa Code section 252D.17 as amended by 1997 Iowa Acts, House File 612, section 61, an order or notice of an order for income withholding shall be in a standard format prescribed by the child support recovery unit. Form 470-3272, Order/Notice to Withhold Income for Child Support, is the standard format prescribed by the child support recovery unit, and the unit shall make a copy available to the state court administrator and the Iowa state bar association.

441—98.43(252D) Contesting the order. The obligor may contest the income withholding by means of an informal conference with the child support recovery unit or by filing a motion to quash.

98.43(1) Motion to quash. Procedures for filing a motion to quash the order are specified in Iowa Code chapter 252D.

98.43(2) Informal conference.

- a. The obligor shall be entitled to only one informal conference for each new or modified income withholding order entered by the child support recovery unit.
- b. Procedures for the informal conference are as follows:
 - (1) The child support recovery unit shall inform the obligor in writing of the right to request an informal conference.
 - (2) The obligor may request an informal conference with the child support recovery unit if the obligor believes the withholding was entered in error or meets the hardship criteria defined by subrule 98.24(1).
 - (3) The obligor shall request an informal conference in writing, within 15 calendar days from the date of the notice of the right to an informal conference, or at any time, if a mistake of fact regarding the identity of the obligor or the amount of the delinquency is believed to have been made.
 - (4) The child support recovery unit shall schedule an informal conference within 15 calendar days of the receipt of a written request from the obligor or the obligor's representative.
 - (5) The child support recovery unit may conduct the conference in person or by telephone.

(6) If the obligor fails to attend the conference, only one alternative time shall be scheduled by the child support recovery unit.

(7) The child support recovery unit shall issue a written decision to the obligor within ten calendar days of the conference.

(8) If the child support recovery unit has not complied with subrule 98.24(1), it shall then adjust the income withholding order.

c. The issues to be reviewed at the conference shall be as follows:

(1) For all income withholding orders, whether:

1. The identity of the obligor is in error.
2. The amount of the current support obligation is in error.

(2) For orders resulting from the existence of a delinquency, whether:

1. The amount of delinquent support is in error.
2. The hardship criteria are met.

3. For income withholding orders entered after November 1, 1990, whether the guidelines described in rule 441—98.24(252D) were followed.

(3) For immediate income withholding orders, whether the criteria of rules 441—98.32(252D) and 441—98.34(252D) were appropriately applied.

(4) For income withholding orders which include implementation of an order for provisions of a health benefit plan pursuant to Iowa Code chapter 252E, the issues in paragraph 98.8(2)“c” shall be reviewed.

d. The results of an informal conference shall in no way affect the right of the obligor to file a motion to quash the income withholding order with the court.

98.43(3) *Income withholding order issued from another state.* The child support recovery unit shall only follow procedures for a motion to quash or conduct an informal conference based on an income withholding order issued in another state if it is providing services under 441—Chapter 95.

441—98.44(252D) Termination of order. The child support recovery unit may, by ex parte order, terminate an income withholding order under the following conditions:

98.44(1) *Order entered in error.* The child support recovery unit shall terminate an income withholding order upon determination that the order was entered in error as follows:

a. The person named as the obligor in the income withholding order is not the person required to provide support under the support order being enforced.

b. For orders resulting from the existence of a delinquency, the required minimum delinquency did not exist at the time the income withholding order was entered.

98.44(2) *No support due.* In cases for which services are being provided by the child support recovery unit, the child support recovery unit shall terminate an income withholding order previously entered by the unit when the current support obligation has terminated and when the delinquent support obligation has been fully satisfied as applicable to all of the children covered by the income withholding order. In no case shall payment of overdue support be the sole basis for termination of withholding.

a. to d. Rescinded IAB 9/1/93, effective 11/1/93.

98.44(3) *Other circumstances.* The child support recovery unit may revoke an income withholding order under other circumstances provided the conditions of Iowa Code chapter 252D are met.

441—98.45(252D) Modification of income withholding order. The child support recovery unit may, by ex parte order, modify a previously entered income withholding order to add or amend health insurance provisions as provided in Iowa Code section 252E.4 as amended by 1997 Iowa Acts, House File 612, section 74. The child support recovery unit may, by ex parte order, also modify a previously entered income withholding order according to the guidelines established under rule 441—98.24(252D) if it is determined that:

98.45(1) *Current support obligation changed.* There has been a change in the amount of the current support obligation.

98.45(2) *Amount in error.* The amount required to be withheld under the income withholding order is in error as follows:

a. The amount required to be withheld as current support is not the amount specified in the order for support being enforced.

b. The guidelines established in rule 441—98.24(252D) were not followed.

98.45(3) *Past due support paid.* Any past due support debt has been paid in full. The withholding order shall be modified to require that only the current support obligation be withheld from the income of the obligor. Should a delinquency later accrue, the withholding order may again be modified to secure an additional payment toward the delinquency. The amount of the arrears payment shall be set at 20 percent of the current support amount.

98.45(4) *Income withholding order and determination of controlling orders.* An obligation amount different than what CSRU has been enforcing is established upon the determination of controlling order as allowed in Iowa Code section 252K.207. Upon the change to the new obligation amount, the amount withheld to be applied toward the liquidation of any delinquency shall be 20 percent.

98.45(5) *Income withholding order and review and adjustment of orders.* If CSRU has initiated a review and adjustment of the obligation pursuant to 441—Chapter 99, Division IV, CSRU shall modify the amount withheld to be applied toward the liquidation of any delinquency to 20 percent upon completion of the process.

441—98.46(252D) Refunds of amounts improperly withheld. The child support recovery unit shall refund to the obligor any amounts improperly withheld and received by the department under an income withholding order entered by the unit, subject to the following:

98.46(1) *Services provided by the department.* Only those amounts received by the department during the period enforcement services are being provided are subject to refund.

98.46(2) *Satisfaction of amount ordered.* No refund shall be made unless amounts have been collected which fully satisfy the amount ordered in the mandatory income withholding order for the withholding period during which income has been generated.

98.46(3) *When issued.* Any amounts received in excess of those ordered to be withheld shall be issued to the obligor within 30 days of discovery by the child support recovery unit, unless the obligor requests in writing that these amounts be credited toward the arrearage or future child support. If there is a dispute regarding whether there is an overpayment, the obligor may request an informal conference by following the procedures set out in subrule 98.43(2)“a”(3) through 98.43(2)“a”(7). This procedure shall not preclude the obligor from utilizing other civil remedies.

98.46(4) *Recovery by department.* The department may recover payments from the obligee in excess of those described in subrule 98.46(2) which have been received by the department and improperly forwarded to the obligee.

These rules are intended to implement Iowa Code Supplement chapters 252D and 252E.

441—98.47 to 98.50 Reserved.

DIVISION III
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS

441—98.51 to 98.60 Renumbered as 99.61 to 99.70, IAB 9/1/93, effective 11/1/93.

DIVISION IV
PUBLICATION OF NAMES

441—98.61(252B) List for publication. The department may compile and make available for publication a list of cases in which no payment has been credited to an accrued or accruing support obligation during a previous three-month period, subject to the following:

98.61(1) *Support order entered in Iowa.* The list shall include cases with a support order entered in Iowa which is being enforced by the child support recovery unit.

98.61(2) *Support order entered in another state.* The list may include cases with a support order entered in another state, if another state has requested this service, has demonstrated that the provision of this service is not in conflict with the laws of the state where the support order is entered, and the order is being enforced by the child support recovery unit.

98.61(3) *When compiled.* The department shall determine when to compile the list, but shall not be required to do so.

98.61(4) *Case selection.* Case selection shall be based on the records of the department at the time the list is compiled. The three-month period of nonpayment shall end no earlier than one month prior to the date the list is compiled. When an obligor has multiple orders on a case, all orders contained in the child support recovery unit record may be listed.

98.61(5) *Good cause.* The name of the obligor shall not be included when there has been a finding of good cause for noncooperation with the child support recovery unit in a public assistance case pursuant to 441—subrule 41.2(8) or 441—subrule 75.14(1) and a determination has been made that enforcement may not proceed without risk of harm to the child or caretaker.

441—98.62(252B) Releasing the list. The department may release the information, no more than twice annually, as follows:

98.62(1) *Release to media.* The department shall issue a press release to the weekly and daily newspapers in Iowa describing the manner in which a copy of the list may be obtained. Cost of producing the list shall be borne by the department. Costs of producing and transmitting a copy of the list shall be borne by the recipient of the copy.

98.62(2) *Availability of list.* Once released, the list shall be provided to other persons upon payment of an amount to cover the cost of producing a copy as specified in 441—subrule 9.3(7). Requests shall be directed to the Bureau of Collections, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114.

These rules are intended to implement Iowa Code section 252B.9.

441—98.63 to 98.70 Reserved.

DIVISION V
ADMINISTRATIVE SEEK EMPLOYMENT ORDERS

441—98.71(252B) Seek employment order. The child support recovery unit (CSRU) may enter an ex parte order requiring the obligor to seek employment if employment of the obligor cannot be verified and if the obligor has failed to make support payments. Any obligor who has failed to make support payments and for whom employment cannot be verified is subject to issuance of an administrative order to seek employment.

441—98.72(252B) Effective date of order. The seek employment order shall be effective 15 days after issuance of the order to the obligor. This 15-day period shall serve as advance notice to the obligor.

441—98.73(252B) Method and requirements of reporting. The obligor shall complete Form 470-3155, Report of Seek Employment Activity, which shall be submitted to the unit on a weekly basis throughout the duration of the order unless the obligor has a valid reason for not complying with the order. The obligor shall document at least five new attempts to find employment on the form each week. The same employer may not be reported more than once per week.

The obligor shall include the names, addresses, and the telephone numbers of each of the five employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom the inquiry was directed.

441—98.74(252B) Reasons for noncompliance. Upon verification, certain conditions shall be considered valid reasons for noncompliance. At the request of the child support recovery unit (CSRU), the obligor shall provide verification of any reason for noncompliance with the order when the information is not available to CSRU through on-line sources. Valid reasons for noncompliance and acceptable verification are:

98.74(1) Receipt of social security, supplemental security income (SSI), or the family investment program (FIP). Receipt of social security, SSI, or FIP is considered a valid reason for noncompliance when verified by information contained in on-line sources available to CSRU or written verification from the agency providing the benefits.

98.74(2) Temporary illness or disability. Temporary illness or disability of the obligor or other household member is considered a valid reason upon receipt of completed Form 470-3158, Physician's Statement, verifying the obligor's inability to seek or accept employment.

98.74(3) High school student. Attending high school is considered a valid reason upon verification from the high school.

98.74(4) Incarceration. Incarceration is considered a valid reason when verified through on-line information available to CSRU or on receipt of verification from the institution.

98.74(5) Substance abuse treatment. Participating in a supervised substance abuse treatment program that is associated with a treatment center is considered a valid reason upon verification from the treatment center.

98.74(6) Job training. Participation in a job training or job seeking program through the department of employment services as a result of receiving food stamps is considered a valid reason upon receipt of verification from the department of employment services.

98.74(7) Employment or self-employment. Employment or self-employment is considered a valid reason upon verification through the employer for those employed or through tax documents or business records for those self-employed.

98.74(8) Payment of support. Payment on the account equal to the amounts prescribed for income withholding in accordance with rule 441—98.24(252D) throughout the duration of the seek employment order is considered a valid reason upon verification of payments posted to the Iowa collection and reporting (ICAR) system.

441—98.75(252B) Method of service. The seek employment order shall be served on the obligor by regular mail. Proof of service shall be completed in accordance with Iowa Rules of Civil Procedure, Number 82.

441—98.76(252B) Duration of order. The seek employment order shall remain in effect for three months from the date of issuance unless CSRU determines the obligor has a valid reason for noncompliance as specified at rule 441—98.74(252B), at which time the order becomes unenforceable.

Upon acceptance of the reason for noncompliance, CSRU shall notify the obligor that the obligor is no longer required to comply with the seek employment order. Upon denial of the reason for noncompliance, CSRU shall notify the obligor that the obligor shall comply with the existing seek employment order. The notice shall be filed with the clerk of the district court. If the obligor disputes this decision, the obligor shall have recourse through the district court.

These rules are intended to implement Iowa Code section 252B.21.

441—98.77 to 98.80 Reserved.

DIVISION VI
DEBTOR OFFSET

441—98.81(252B) Offset against payment owed to a person by a state agency. A claim shall be made by the department against a payment owed to an obligor by a state agency when support payments are delinquent as set forth in Iowa Code subsection 421.17(29). A claim against a payment owed to an obligor shall be applied to court-ordered support which the department is attempting to collect pursuant to Iowa Code chapter 252B.

98.81(1) Case selection. The department shall submit to the department of revenue and finance, at least monthly, a list of obligors who are delinquent at least \$50 in support payments.

98.81(2) Notification of offset. The department shall mail a preoffset notice to an obligor and the department of revenue and finance within ten days of receiving notification from the department of revenue and finance that the obligor is entitled to a payment. The preoffset notice shall inform the obligor of the amount the department intends to claim and apply to the support obligation and shall contain all information required by Iowa Code subsection 421.17(29) and 701—subrule 150.4(4).

98.81(3) Appeal process. An obligor may contest the department's claim by submitting a written request to the department. A hearing shall be granted pursuant to rules in 441—Chapter 7 if the obligor's request is submitted within 15 days of the date of the preoffset notice.

98.81(4) Final disposition of offset. The department shall notify an obligor of the final decision regarding the claim against the offset by mailing a final disposition of support recovery claim notice to the obligor.

98.81(5) Distribution of offset amount. Offsets shall be applied in accordance with rules 441—95.3(252B) and 441—95.4(252B).

98.81(6) Percentage of payment offset. The amount of offset shall be 50 percent of the total payment due the obligor, unless the payment results from lottery winnings, in which case the amount of offset shall be 100 percent of the payment. The amount taken shall not exceed the amount due on the case.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4 and Iowa Code subsection 421.17(29).

441—98.82 to 98.90 Reserved.

DIVISION VII
ADMINISTRATIVE LEVY

441—98.91(252I) Administrative levy. When there is a delinquency in an amount equal to the ordered support payable for one month, the child support recovery unit may issue an administrative levy to the obligor's financial institution.

***441—98.92** Reserved.

441—98.93(252I) Verification of accounts. The unit may contact a financial institution to obtain verification of the account number, the names and social security numbers listed on the account, and the account balance for an obligor's account. This contact may be by telephone or written communication on Form 470-3170, Asset Verification Form, or by computer printout.

441—98.94(252I) Notice to financial institution. The unit may send a notice to the financial institution with which the account is placed, directing that the financial institution forward to the collection services center all or a portion of the moneys in the obligor's account or accounts on the date the notice is received. The notice shall be sent by first-class mail, with proof of service completed according to rule of civil procedure 82. The notice to the financial institution shall contain all of the information specified in Iowa Code chapter 252I.

441—98.95(252I) Notice to support obligor. The unit shall notify an obligor, and any other party known to have an interest in the account, of the action. The notice shall contain all of the information specified in Iowa Code chapter 252I. The unit shall forward the notice by first-class mail within two working days of sending the notice to the financial institution. Proof of service shall be completed according to Iowa Rules of Civil Procedure 82.

441—98.96(252I) Responsibilities of financial institution. Upon receipt of the notice of administrative levy, the financial institution shall follow procedures specified in Iowa Code section 252I.7 for encumbering and forwarding funds to collection services center. The financial institution shall encumber only the funds in the obligor's account on the day the notice is received. Any deposits made by the obligor after notice is received by the financial institution are not subject to the administrative levy process unless another notice is issued to the financial institution.

441—98.97(252I) Challenging the administrative levy. An obligor or an account holder of interest may challenge the administrative levy by submitting a written challenge to the person identified as the contact for the unit in the notice, within ten working days of the date of the notice to the obligor as specified in rule 441—98.95(252I). Upon receipt of a challenge, the unit shall follow criteria and procedures specified in Iowa Code section 252I.8 for resolving the challenge.

98.97(1) Review of facts. The unit shall, upon receipt of a written challenge, review the facts of the case with the challenging party. Only a mistake of fact including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount of delinquent support due shall be considered as a reason to dismiss or modify the proceeding. If the unit determines that a mistake of fact has occurred, the unit shall proceed as follows:

a. If a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month, the unit shall notify the financial institution and the obligor that the administrative levy has been released.

b. If the amount of support due was incorrectly overstated, the unit shall notify the financial institution to release the excess moneys to the obligor and remit the remaining moneys.

98.97(2) Refunds of amounts improperly held. If a mistake of fact has occurred and money has already been forwarded from the financial institution, the unit shall proceed as follows:

a. If a mistake in identity has occurred or the obligor is not delinquent in an amount equal to the payment for one month, the unit shall refund the funds to the account and reimburse the account for any fees assessed by the financial institution.

b. If the amount of support due was incorrectly overstated, the unit shall refund a portion to the account. The unit is not required to reimburse the account for fees.

98.97(3) Request for district court hearing. If no mistake of fact is found, the unit shall send a notice to the challenging party by first-class mail. An obligor or an account holder may submit a second written challenge to the person identified as the contact for the unit in the notice, within ten working days of the date of the notice. The unit shall request a hearing before the district court in the county the support order is filed. Procedures for filing a hearing are specified in Iowa Code chapter 252I.

98.97(4) Request for withdrawal. The challenging party may withdraw the challenge by submitting a written withdrawal to the person identified as the contact person for the unit in the notice at any time prior to the court hearing. The unit may withdraw the administrative levy at any time prior to the court hearing. The unit shall provide notice of the withdrawal to the financial institution and any account holder of interest by first-class mail.

These rules are intended to implement Iowa Code chapter 252I.

441—98.98 to 98.100 Reserved.

DIVISION VIII
LICENSE SANCTION

441—98.101(252J) Referral for license sanction. In the process referred to as license sanction, the child support recovery unit (CSRU) may refer an individual to a licensing agency for the suspension, revocation, nonissuance, or nonrenewal of a variety of licenses including, but not limited to, motor vehicle registrations, driver's licenses, business and professional licenses, and licenses for hunting, fishing, boating, or other recreational activity. In order to be referred to a licensing agency for license sanction, one of the following must apply:

98.101(1) *Delinquent support payments.* An obligor's support payments must be delinquent in an amount equal to the support payment for three months. CSRU may first refer for license sanction those obligors having the greatest number of months of support delinquency. CSRU shall not refer obligors whose support payments are being made under an income withholding order.

98.101(2) *Subpoena or warrant.* An individual must have failed to comply with a subpoena or warrant, as defined in Iowa Code chapter 252J, relating to a paternity or support proceeding. If a subpoena was issued, the individual must have failed to comply with either Form 470-3413, Child Support Recovery Unit Subpoena, or an Interstate Subpoena as provided in paragraph 96.2(1) "a" within 15 days of the issuance of the subpoena, and proof of service of the subpoena was completed according to Rule of Civil Procedure 82.

441—98.102(252J) Reasons for exemption. Certain conditions shall be considered valid reasons for exemption from the license sanction process. Upon verification of these conditions, CSRU shall bypass, exempt, or withdraw the individual's name from referral to licensing agencies for the purpose of applying a license sanction. When the information to verify the exemption is not available to CSRU through on-line sources, CSRU shall request, and the individual shall provide, verification of the reason for exemption. Valid reasons for exemption for failure to comply with a subpoena or warrant and acceptable verification are those listed in subrules 98.102(2), 98.102(3), 98.102(5), and 98.102(6). Valid reasons for exemption for delinquent support payments and acceptable verification are any of the following:

98.102(1) *Receipt of social security, supplemental security income (SSI) or the family investment program (FIP).* Receipt of social security, SSI, FIP, or county assistance (general relief, general assistance, community services, veteran's assistance), based upon the eligibility of the obligor, is considered a valid reason for exemption when verified by information contained in on-line sources available to CSRU or written verification from the agency providing the benefits.

98.102(2) *Temporary illness or disability.* Temporary illness or disability of the individual or illness or disability of another household member which requires the presence of the individual in the home as caretaker is considered a valid reason for exemption upon receipt of a completed Form 470-3158, Physician's Statement, verifying the individual's or household member's inability to work.

98.102(3) *Incarceration.* Incarceration is considered a valid reason for exemption when verified through on-line information available to CSRU or upon receipt of verification from the institution.

98.102(4) *Job training.* Participation in a job-training or job-seeking program through the department of employment services as a result of receiving food stamps is considered a valid reason for exemption upon receipt of verification from the department of employment services or verification through on-line information available to CSRU or upon receipt of a written statement from an income maintenance worker.

98.102(5) *Chemical dependency treatment.* Participation in a chemical dependency treatment program that is licensed by the department of public health or the joint commission on the accreditation of hospitals (JCAH) is considered a valid reason for exemption upon receipt of written verification from the professional staff of the program that participation in the program precludes the individual from working.

98.102(6) *Contempt process.* Involvement in a contempt action dealing with support issues is considered a valid reason for exemption from the license sanction process during the pendency of the contempt action.

441—98.103(252J) Notice of potential sanction of license. When an individual meets the criteria for selection, CSRU may issue a notice to the individual of the potential sanction of any license held by the individual, using Form 470-3278, Official Notice of Potential License Sanction.

98.103(1) *Delinquent support payments.* CSRU shall inform the obligor that the obligor may make immediate payment of all current and past due child support, schedule a conference to review the action of CSRU, or request to enter into a payment agreement with the unit. CSRU shall follow the procedures and requirements of Iowa Code chapter 252J regarding the issuance of the notice and the holding of a conference.

98.103(2) *Subpoena or warrant.* CSRU shall inform the individual that the individual may comply with the subpoena or warrant, or schedule a conference to review the action of CSRU. CSRU shall follow the procedures and requirements of Iowa Code chapter 252J regarding the issuance of the notice and the holding of a conference.

98.103(3) *Certificate of noncompliance.* If an individual fails to respond in writing to the notice within 20 days, or if the individual requests a conference and fails to appear, the unit shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities in accordance with Iowa Code section 252J.3.

441—98.104(252J) Conference.

98.104(1) *Scheduling of conference.* Upon receipt from an individual of a written request for a conference, CSRU shall schedule a conference not more than 30 days in the future. At the request of either CSRU or the individual, the conference may be rescheduled one time. When setting the date and time of the conference, if notice was sent to an obligor under subrule 98.103(1), CSRU shall request the completion of Form 470-0204, Financial Statement, and other financial information from both the obligor and the obligee as may be necessary to determine the obligor's ability to comply with the support obligation.

98.104(2) *Payment calculation.* If notice was sent to an obligor under subrule 98.103(1) during the conference held in compliance with the provisions of Iowa Code section 252J.4, CSRU shall determine if the obligor's ability to pay varies from the current support order by applying the mandatory supreme court guidelines as contained in 441—Chapter 99, Division I, with the exception of subrules 99.4(3) and 99.5(5). If further information from the obligor is necessary for the calculation, CSRU may schedule an additional conference no less than ten days in the future in order to allow the obligor to present additional information as may be necessary to calculate the amount of the payment. If, at that time, the obligor fails to provide the required information, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities. If the obligee fails to provide the necessary information to complete the calculation, CSRU shall use whatever information is available. If no income information is available for the obligee, CSRU shall determine the obligee's income in accordance with 441—subrules 99.1(2) and 99.1(4). This calculation is for determining the amount of payment for the license sanction process only, and does not modify the amount of support obligation contained in the underlying court order.

98.104(3) Referral for review and adjustment. If the amount calculated in subrule 98.104(2) meets the criteria for review and adjustment as specified in rule 441—99.62 (252B,252H), or administrative modification as specified in rule 441—99.82(252H) and 441—subrules 99.83(1), 99.83(2) and 99.83(6) at the time CSRU provides the payment agreement to the obligor, CSRU shall also provide the obligor with any necessary forms to request a review and adjustment or administrative modification of the support obligation. The payment agreement remains in effect during the review and adjustment or administrative modification process.

441—98.105 (252J) Payment agreement. The License Sanction Payment Agreement, Form 470-3273, shall require the obligor to pay the lower of the amount calculated in subrule 98.104(2) or the maximum amount payable under an income withholding order as specified in rule 98.24(252D).

98.105(1) Duration of payment agreement. The License Sanction Payment Agreement signed under this division shall remain in effect for at least one year from the date of issuance unless CSRU determines the obligor has a valid reason for exemption as specified in rule 98.102 (252J). Except in those cases in which review and adjustment are in process, CSRU may, at the end of the year, begin the process of reviewing the case to ensure that the payment amount continues to accurately reflect the obligor's ability to pay as calculated in subrule 98.104(1).

98.105(2) Failure to comply. If at any time following the signing of a payment agreement the obligor fails to comply with all the terms of the agreement, CSRU shall issue a Certificate of Noncompliance, Form 470-3274, to applicable licensing authorities in accordance with the provisions of Iowa Code chapter 252J.

441—98.106(252J) Staying the process due to full payment of support. If the obligor, at any time, pays the total support owed, both current and past due, or an individual complies with the subpoena or warrant, CSRU shall stay the process, and any Certificate of Noncompliance, Form 470-3274, which has been issued shall be withdrawn by CSRU.

441—98.107(252J) Duration of license sanction. The Certificate of Noncompliance, Form 470-3274, shall remain in effect until the obligor pays all support owed, both arrears and current; or the obligor enters into a payment agreement with CSRU; or the obligor meets one of the criteria for exemption specified at subrules 98.102(1), 98.102(2), and 98.102(4); or the individual complies with the subpoena or warrant.

These rules are intended to implement Iowa Code chapter 252J as amended by 1997 Iowa Acts, House File 612, division X.

441—98.108 to 98.120 Reserved.

DIVISION IX
EXTERNAL ENFORCEMENT

PREAMBLE

This division implements provisions of 1997 Iowa Acts, House File 612, sections 35 and 244, which provide for enforcement of child support arrearages by external sources. These sources are entities under contract to collect difficult-to-collect arrearages and private attorneys acting independently of the unit but with the unit's consent. The rules provide criteria and procedures for referral of delinquent support to collection contractors, assessment of the statutory surcharge, and opportunity for the delinquent parent to contest. The rules also provide a procedure to allow state payment to private attorneys enforcing child support recovery unit (CSRU) cases and provide criteria to exempt cases from the procedure.

441—98.121(252B) Difficult-to-collect arrearages. The child support recovery unit may refer difficult-to-collect arrearages to a collection entity under contract with the unit or with another state entity. Upon referral, a surcharge, in addition to the support, shall be due and payable by the obligor as provided in 1997 Iowa Acts, House File 612, section 244.

98.121(1) *Difficult-to-collect arrearage.* A difficult-to-collect arrearage is one based upon a court or administrative order which meets all the following criteria:

- a. There is no order for current support and only an arrearage is owing.
- b. There has been no payment, except for federal or state tax refund offset payments, in the past three months.
- c. There is no valid reason for exemption from the referral and surcharge process. Valid reasons for exemption and acceptable verification are those listed in subrules 98.102(1), 98.102(3), and 98.102(6). Upon verification of those conditions, the child support recovery unit shall bypass or exempt the obligor's arrearages from the referral and surcharge process. When the information to verify the exemption is not available to the child support recovery unit through on-line sources, the child support recovery unit shall request, and the obligor shall provide, verification of the reason for exemption.

98.121(2) *Notice of the possibility of referral and surcharge.* The child support recovery unit shall provide notice of the possibility of a referral and surcharge to the obligor as required by 1997 Iowa Acts, House File 612, section 244. The notice shall be provided at least 15 days before the unit sends the notice of referral and surcharge to the obligor, subject to the following:

- a. *Notification contained in order.* When the support order under which the arrearage has accrued contains language advising of statutory provisions for referral and surcharge, no other preliminary notice shall be required.
- b. *Notification issued by the child support recovery unit.* When the support order under which the arrearage has accrued does not contain language regarding the statutory provisions for referral and surcharge, or was entered under a foreign jurisdiction and notification was not included in the support order or provided as a separate written notice, the child support recovery unit shall issue Form 470-3412, Legal Notice of Referral and Surcharge, to the obligor. The notice shall be sent by regular mail to the obligor's last-known address.

98.121(3) *Notice of referral and surcharge.* The child support recovery unit shall send notice of a referral and surcharge to the obligor by regular mail to the obligor's last-known address, with proof of service completed according to Rule of Civil Procedure 82. The notice shall contain all the information required by 1997 Iowa Acts, House File 612, section 244. The notice shall be sent at least 30 days before the unit refers the arrearage to the collection entity.

98.121(4) *Contesting the referral and surcharge.* An obligor may contest the referral and surcharge. The right to contest is limited to a mistake of fact including but not limited to a mistake in the identity of the obligor, a mistake as to whether there was a payment in the three months before the date of the notice specified in subrule 98.121(3), a mistake as to whether an exemption in paragraph 98.121(1) "c" applies, or a mistake in the amount of arrearages.

a. An obligor may contest the referral and surcharge by submitting a written request for a review to the unit within 20 days of the date on the notice of referral and surcharge specified in subrule 98.121(3). Upon receipt of a written request for review, the unit shall follow the criteria and procedures specified in 1997 Iowa Acts, House File 612, section 244, for resolving the request.

(1) If the unit determines there is a mistake in the identity of the obligor, if there was a payment, other than a federal or state income tax offset, within the three months before the date of the notice specified in subrule 98.121(3), or if there is another mistake of fact and the arrearage does not meet the criteria for referral, the unit shall issue a written notice to the contestant or obligor of the determination and not refer the arrearages. If the unit later determines an arrearage may be subject to referral, it shall issue a new notice as provided in subrule 98.121(3).

(2) If the unit determines there was a mistake in the amount of arrearages, but the corrected amount of arrearages will still be referred, or if the unit determines there is no mistake of fact, the unit shall issue a written notice of the determination of the review to the obligor by regular mail to the last-known address of the obligor. The notice shall include the amount of the arrearages that will be referred and the surcharge which will be assessed. The notice shall also include information on requesting an additional review by the bureau chief, and on requesting a judicial hearing. For purposes of this rule, bureau chief shall mean "bureau chief" as defined in rule 441—95.1(252B).

b. An obligor may contest the notice of determination of review by submitting a written request for an additional review by the bureau chief within 20 days of the date of the notice of determination of the review issued under paragraph "a." Upon receipt of the written request for additional review, the bureau chief shall review the facts of the case.

(1) If the bureau chief determines a mistake in the identity of the obligor has occurred, if there was a payment, other than a federal or state income tax offset, within the three months before the date of the notice specified in subrule 98.121(3), or if there is another mistake of fact and the arrearage does not meet the criteria for referral, the bureau chief shall issue a written notice to the contestant or obligor of the determination and the arrearages shall not be referred. If the unit later determines an arrearage may be subject to referral, it shall issue a new notice as provided in subrule 98.121(3).

(2) If the bureau chief determines that there was a mistake in the amount of the arrearage but the corrected amount of arrearages will still be referred, or if there is no mistake of fact, the bureau chief shall send a written notice of the additional review determination to the obligor by regular mail to the last-known address of the obligor. The notice shall include the amount of the arrearage that will be referred and the surcharge which will be assessed. The notice shall also include information on requesting a judicial hearing.

c. Following the issuance of a notice of determination of a review under paragraph “a,” or issuance of a notice of determination of an additional review under paragraph “b,” the obligor may request a district court hearing. The obligor shall make a request by sending a written request for a hearing to the unit within ten days of the date of the unit’s written determination of the review, or within ten days of the date of the bureau chief’s written determination of an additional review, whichever is later. Procedures for a district court hearing are specified in 1997 Iowa Acts, House File 612, section 244.

d. The unit shall not refer arrearages and assess a surcharge until after completion of any review, additional review or judicial hearing process.

98.121(5) Referral and surcharge.

a. If the obligor has not paid the arrearage, has not contested the referral, or if, following the unit’s review, the bureau chief’s additional review, and any judicial hearing, the unit, bureau chief, or court does not find a mistake of fact, the arrearage shall be referred to the collection entity.

b. The amount of the arrearage referred shall be the amount that is unpaid as of the date of the referral. The amount of the surcharge shall be an amount equal to the amount of the arrearage unpaid as of the date of the referral, multiplied by the percentage specified in the contract with the collection entity.

c. The child support recovery unit shall file Form 470-3411, Notice of Surcharge, with the clerk of the district court in the county in which the underlying support order is filed.

This rule is intended to implement 1997 Iowa Acts, House File 612, section 244.

441—98.122(252B) Enforcement services by private attorney entitled to state compensation. An attorney licensed to practice law in Iowa may utilize judicial proceedings to collect support, at least a portion of which is assigned support, and be entitled to compensation by the state as provided in 1997 Iowa Acts, House File 612, section 35.

98.122(1) Eligible cases. To be eligible for attorney services with compensation under this rule, a case must meet all of the following:

a. The child support recovery unit is providing services under Iowa Code chapter 252B.

b. The current support obligation is terminated and only arrearages are due under the administrative or court order.

c. There has been no payment under any order in the case for at least a 12-month period prior to the provision of the notice from the attorney to the unit under paragraph “f.”

d. At least a portion of the arrearages due under any order in the case is assigned to the state because cash assistance was paid under 1997 Iowa Acts, Senate File 516, sections 2 through 24 and 35.

e. The case does not have any of the following characteristics:

(1) There has been a finding of good cause or other exception pursuant to Iowa Code section 252B.3 as amended by 1997 Iowa Acts, House File 612, section 26.

(2) A portion of the arrears is assigned to another state because of public assistance provided by that state.

(3) Another attorney has already notified the unit of the intent to initiate a judicial proceeding to collect support due under any order in the same case under this rule, and either the time to receive the collection has not expired or the unit has not received a notice from the other attorney that the judicial proceeding has concluded prior to the expiration of the time period.

(4) If the notice from the attorney under paragraph “f” specifies contempt of court as the judicial proceeding, and the unit has generated a seek employment order to the obligor under Iowa Code section 252B.21 less than nine months prior to the date on the notice from the attorney.

(5) The case or arrearages have been referred by the child support recovery unit to a collection entity under Iowa Code section 252B.5, subsection 3, as amended by 1997 Iowa Acts, House File 612, section 30, or 1997 Iowa Acts, House File 612, section 244, less than nine months prior to the date on the notice from the attorney.

(6) The obligor has filed for bankruptcy and collection activities are stayed.

(7) The notice from the attorney under paragraph “f” lists a specific judicial proceeding and the unit has already initiated the same type of proceeding in court.

(8) The case has been referred to the U.S. Attorney’s office and is still pending at that office.

f. The attorney has provided written notice to the central office of the child support recovery unit in Des Moines, as specified in subrule 98.122(2), and to the last-known address of the obligee of the intent to initiate a specified judicial proceeding to collect support on any identified court or administrative order involving the obligor and obligee in the case.

g. The attorney has provided documentation of insurance to the unit as required by 1997 Iowa Acts, House File 612, section 35.

h. The collection must be received by the collection services center within 90 days of the notice from the attorney in paragraph “f,” or within a subsequent 90-day extension period.

98.122(2) Procedure.

a. To begin the process under this rule, the attorney shall submit the following to the External Services Process Specialist, Bureau of Collections, Iowa Department of Human Services, Hoover Building, Fifth Floor, Des Moines, Iowa 50319-0114 at least 30 days prior to initiating the specified judicial proceeding:

(1) A dated, written statement which lists the specific judicial proceeding which the attorney intends to initiate, any court or administrative order under which the arrearages accrued identified by the order number, and the names of the obligor and obligee.

(2) Documentation that the attorney is insured as required by the statute. Documentation shall be either a copy of the attorney’s policy from the insurer, or a letter from the insurer verifying insurance coverage as required by the statute.

(3) Documentation that the attorney is licensed to practice law in Iowa.

b. The unit shall mail a response to the attorney within ten days of receipt of the notice from the attorney. All of the following shall apply to the unit’s response:

(1) If the case meets the requirements of this rule, the notice shall list the case number, any order numbers, the judicial proceeding specified by the attorney, the balance due the state of Iowa, the balance due an obligee, and the date that is 90 days from the date of the notice from the attorney. The notice shall also contain a statement that any compensation due the attorney as a result of application of this rule will be calculated on the amount of support credited to arrearages due the state at the time the support paid as a result of the judicial proceeding is received by the collection services center. The notice shall also contain a statement that any support collected shall be disbursed in accordance with federal requirements, and any support due the obligee shall be disbursed to the obligee prior to disbursement to the attorney as compensation.

(2) If the case does not meet the requirements of this rule, the notice shall list the case number, any order number, and the reason the case does not meet the requirements.

c. If the case is eligible under this rule, the attorney may initiate judicial proceedings after 30 days after providing the notice to child support recovery unit in paragraph “a.” Section 35 of 1997 Iowa Acts, House File 612, defines “judicial proceedings.”

d. The attorney may extend the time to complete the judicial proceeding or to allow for receipt of the collection by the collection services center by submitting a notice requesting a 90-day extension to the address in paragraph “a.” This or any subsequent notice must be received by the unit before expiration of the current 90-day time frame. The child support recovery unit shall acknowledge receipt of the subsequent notice and list on the acknowledgment the date that is 90 days from the date of the attorney’s subsequent notice.

98.122(3) Collection and payment to attorney.

a. Upon compliance with the requirements of 1997 Iowa Acts, House File 612, section 35, and this rule, the attorney shall be entitled to compensation from the state as provided for in this rule.

b. Upon receipt of a file-stamped copy of a court order which identifies the amount of support collected as a result of the judicial proceeding and which does not order the payment of attorney fees by the obligor, and the receipt of the collection by the collection services center, all the following apply:

(1) Section 35 of 1997 Iowa Acts, House File 612, specifies the formula to calculate the compensation due the attorney from the state. The child support recovery unit shall calculate the compensation due the attorney based upon the amount of support which is credited to arrearages due the state at the time the collection is received by the collection services center. After calculating the amount due the attorney, the unit shall reduce the amount due the attorney by the amount of any penalty or sanction imposed upon the state as a result of any other judicial proceeding initiated by that attorney under 1997 Iowa Acts, House File 612, section 35. The child support recovery unit shall send the attorney a notice of the amount of the compensation due from the state.

(2) The collection services center shall disburse any support due an obligee prior to payment of compensation to the attorney.

(3) The child support recovery unit shall not authorize disbursement of compensation to the attorney until the later of 30 days after receipt of the collection and the file-stamped copy of the order, or resolution of any timely appeal by the obligor or obligee.

(4) The amount of compensation due the attorney is subject to judicial review upon application to the court by the attorney.

This rule is intended to implement 1997 Iowa Acts, House File 612, section 35.

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†See 2005 Iowa Acts, Senate File 350, section 20.