

STATE OF KANSAS

Department for Children and Families

Notice of Hearing on Proposed Administrative Regulation 30-44-6 and Proposed Changes to Administrative Regulations 30-44-2 and 30-46-10

A public hearing will be conducted at 9:00 a.m., Tuesday, January 19, 2016 in the DCF Conference Room, 555 S. Kansas Ave., 1st Floor, Topeka, Kansas to consider the adoption of a new regulation and the adoption of amendments to existing rules and regulations on a permanent basis effective 15 days after publication in the Kansas Register. Telephone conference is not available. This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulation. All interested parties may submit written comments prior to the hearing to Beth Lange, Legal Division, DCF, 555 S. Kansas Ave. 6th Floor, Topeka, Kansas 66603 or by email to Beth.Lange@dcf.ks.gov . All interested parties will be given a reasonable opportunity to present their views at the hearing. It may be necessary to request each participant limit any oral presentation to five minutes. Copies of the regulation and the economic impact statement may be obtained by contacting Beth Lange at Beth.Lange@dcf.ks.gov.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Patti Cazier at (785) 296-3274 or Patti.Cazier@dcf.ks.gov.

These regulations are proposed for adoption on a permanent basis. A summary of proposed regulations and their economic impact follows:

K.A.R. 30-46-10. The amendment adds the definition of abandonment and changes the burden of proof for a substantiated finding of abuse or neglect by the agency from clear and convincing to preponderance. There is no economic impact as a result of these amendments.

K.A.R. 30-44-2. The amendment gives the Secretary discretion to reduce or remove the enforcement fee that Child Support Services (CSS) currently takes from all child support payments made to custodial parents in non-public-assistance (non-PA) cases. Currently there is an enforcement fee of 4% for such cases in effect, however, if the Secretary determines that Child Support Services has sufficient funding for support enforcement activities, this fee may be reduced or removed entirely. The 4% enforcement fee generated \$2.49 million in FY 2015, however Kansas Child Support Services only retains 34% (\$820,000) of the enforcement fee collected. 66% (\$1.64 million) of this amount is required to be returned to the federal government by virtue of the IV-D program cooperative agreement. If the enforcement fee were to be removed, Kansas families would receive an estimated additional \$2.49 million each calendar year, at an estimated cost of \$820,000 in lost enforcement fees to Kansas Child Support, resulting in a net positive of roughly \$1.64 million for Kansas. There is no economic impact to other state agencies.

K.A.R. 30-44-6. This is a new regulation which allows Child Support Services (CSS) to adjust arrears owed by noncustodial parents to the Secretary of the Department for Children and Families. By participating in an authorized arrears adjustment program which provides employment readiness services and parenting skills training, or by contributing to a college education savings account for the child through the Child Support Savings Initiative Program, CSS may adjust these arrears according to internal guidelines. This regulation will increase the contributions to Kansas children's postsecondary education savings accounts, giving them the financial means to further their education. Between July, 2013 and June 2015, there

have been 140 education savings accounts established and nearly \$150,000 deposited in these accounts through the program. Noncustodial parent contributions have also exceeded the amount of matching arrears forgiveness offered by the state, meaning that parents continue to contribute even after they have taken full advantage of state arrears forgiveness. This number should continue to increase significantly as CSS continues to expand efforts to encourage contributions to education savings programs. There is no economic impact to DCF or other state agencies.

Phyllis Gilmore

Secretary

30-44-2. Standardized cost recovery fee. (a) As used in this regulation, the following definitions shall apply:

(1) "Applicant or recipient" means a person who has applied for or is receiving support enforcement services from the department of ~~social and rehabilitation services~~ for children and families pursuant to Part D of Title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended.

(2) "IV-D case" means a case in which the department of ~~social and rehabilitation services~~ for children and families is providing child support enforcement services pursuant to Part D of Title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended.

(3) ~~As used in this rule and regulation, the following definitions shall apply:~~

(A) "Non-PA case" means a case in which the applicant or recipient or the child, as appropriate, has not received and is not currently receiving public assistance from the state of Kansas, including the following:

(1) ~~(i) Aid to families with dependent children (AFDC) or Temporary assistance to needy families (TANF), regardless of how designated;~~

~~(2) (ii) medical services;~~

~~(3) (iii) care due to placement under chapter 38 of the Kansas statutes annotated K.S.A. 38-2201 et seq. and K.S.A. 38-2301 et seq., and amendments thereto; or~~

(4) (iv) care in a state institution, as defined in K.S.A. 59-2006b and amendments thereto;

(5) (v) supplemental nutrition assistance program (SNAP); and

(vi) child care assistance.

(B) "Non-PA case" shall also mean, in any IV-D case in which the applicant or recipient or the child previously received but is not currently receiving public assistance from the state of

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Kansas, that portion of the case not subject to any assignment of support rights for reimbursement of public assistance.

(C) In an interstate IV-D case referred to Kansas by another state, unless the other state clearly designates otherwise, "non-PA case" shall mean a case, or that portion of a case, designated as ~~IV-D non-AFDC or IV-D non-TANF~~.

(D) "Non-PA" case shall not include any IV-D case referred to Kansas from a foreign country.

(b) A cost recovery fee ~~shall~~ may be collected in all non-PA cases. If a fee is required pursuant to subsection (c), the fee shall be retained from support collections made on behalf of the applicant or recipient. If any fee remains unpaid and the applicant or recipient will receive no further support collections in the non-PA case, the fee shall be remitted by the applicant or recipient upon demand.

(c) ~~Except as otherwise provided in subsection (d),~~ The fee shall be in an amount equal to the basic rate times the amount of support collections distributed to the applicant or recipient. The date of collection shall determine the applicable basic rate. ~~The basic rate shall be two percent through December 31, 1999. Beginning January 1, 2000, The basic rate shall be four percent.~~ If the secretary determines that the department for children and families' funds for support enforcement services are sufficient to pay for some or all of the costs associated with all non-PA cases, then the basic rate for all non-PA cases may be reduced by an amount commensurate with the department's available funds or not collected.

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~~(d)(1) As needed, but no more frequently than annually, Kansas counties shall be identified in which the average fee income per case will exceed the average actual cost of required activities. The counties shall be identified in consultation with the judicial administrator. The average fee income per case shall be estimated by first multiplying the fee rate established in subsection (c) of this regulation times the estimated average of current monthly support obligations for the county and then multiplying the result by 12. The average cost per case of required activities shall be based upon the estimated actual cost of providing services during the next 12 months using state employees. Costs for activities required less frequently than annually shall be prorated.~~

~~(2) A special fee rate shall be established for each county identified under paragraph (d)(1) of this regulation. The special fee rate shall be in an amount likely to produce average fee income per case less than, but as close as possible to, the average cost per case of required activities. If there is a district court trustee for the county, the special fee rate shall be the same as the rate charged by the district court trustee in non IV-D cases pursuant to K.S.A. 23-497 and amendments thereto, if the trustee's fee rate does not exceed the fee rate established in subsection (c) of this regulation.~~

~~(3) Any county that has had a special fee rate in effect may be reevaluated to determine whether the special fee rate is still needed and, if so, the appropriate fee rate. The reevaluation shall not occur more frequently than annually.~~

~~(4) A list shall be maintained of the special fee rates currently in effect and the counties to which the special fee rates apply. (Authorized by and implementing K.S.A. 2015 Supp. 39-756; effective Feb. 6, 1995; amended Jan. 3, 2000; amended P-_____.)~~

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30-44-6. Support arrears forgiveness. (a) If a child's parent or parents are liable to repay the secretary for state assistance expended on the child's behalf pursuant to K.S.A. 39-718b and amendments thereto, the amount due may be offset by one of the following:

(1) The parent's or parents' participation in an arrears adjustment program; or
(2) the parent's or parents' contributions to a Kansas postsecondary education savings account established on behalf of the child through the child support savings initiative program.

(b) All arrears adjustment programs shall be approved by the department's child support services and shall include programs designed to provide job skills, further education, and enhance parenting skills.

(c) The arrears adjustments earned through participation in an arrears adjustment program or contributions to the child support savings initiative program shall be applied to offset the amount owed to the secretary. The department's child support services shall have the authority to determine any arrears adjustment rates and to determine whether participation in a particular class or program qualifies a participant for any arrears adjustments. (Authorized by and implementing K.S.A. 2015 Supp. 39-753; effective P-_____.)

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30-46-10. Definitions. For the purpose of the child abuse and neglect registry, the following definitions shall apply:

(a) “Abandon” and “abandonment” have the meaning specified in K.S.A. 38-2202, and amendments thereto.

(b) “Abuse” means “physical, mental or emotional abuse” or “sexual abuse,” as these two terms are defined in K.S.A. 38-2202 and amendments thereto and as “sexual abuse” is further defined in this regulation, involving a child who resides in Kansas or is found in Kansas, regardless of where the act occurred. The term “abuse” shall include any act that occurred in Kansas, regardless of where the child is found or resides, and shall include any act, behavior, or omission that impairs or endangers a child’s social or intellectual functioning.

The term “abuse” may include the following:

(1) Terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child’s presence that demonstrates a flagrant disregard for the child;

(2) emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child; and

(3) corrupting a child, by teaching or rewarding the child for unlawful, antisocial, or sexually mature behavior.

(b) (c) “Alleged perpetrator” means the person identified in the initial report or during the investigation as the person suspected of perpetrating an act of abuse or neglect.

(e) (d) “Child” means anyone under the age of 18 or anyone under the age of 21 and in the custody of the secretary pursuant to K.S.A. 38-2255, and amendments thereto.

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(d) (e) "Child abuse and neglect registry" means the list of names for individuals identified by the department as substantiated perpetrators.

(e) (f) "Child care facility" has the meaning specified in K.S.A. 65-503, and amendments thereto.

(f) (g) "Department" means the Kansas department for children and families.

(g) (h) "Investigation" means the gathering and assessing of information to determine if a child has been harmed, as defined in K.S.A. 38-2202 and amendments thereto, as the result of abuse or neglect, to identify the individual or individuals responsible, and to determine if the individual or individuals identified should reside, work, or regularly volunteer in a child care facility.

(h) (i) "Neglect" has the meaning specified in K.S.A. 38-2202, and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act or failure to act occurred. This term shall include any act or failure to act that occurred in Kansas, regardless of where the child is found or resides.

(i) (j) "Sexual abuse" has the meaning specified in K.S.A. 38-2202, and amendments thereto, and shall include contact solely between children only if the contact also involves force, intimidation, difference in maturity, or coercion.

(j) (k) "Substantiated perpetrator" and "perpetrator" mean a person who has been validated by the secretary or designee, using ~~clear and convincing~~ a preponderance of evidence, to have committed an act of abuse or neglect, regardless of where the person resides and who is prohibited from residing, working, or volunteering in a child care facility pursuant to K.S.A. 65-516, and amendments thereto. These terms shall replace the term "validated perpetrator."

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(Authorized by K.S.A. ~~2011~~ 2015 Supp. 38-2225 and ~~K.S.A.~~ 39-708c; implementing K.S.A. ~~2011~~ 2015 Supp. 38-2226 and 38-2230; effective Jan. 2, 1989; amended Jan. 2, 1990; amended Oct. 1, 1993; amended Jan. 1, 1997; amended Oct. 3, 1997; amended July 9, 2004; amended July 6, 2009; amended, T-30-6-1-12, June 1, 2012; amended Sept. 14, 2012; amended P-_____.)

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KANSAS DEPARTMENT FOR CHILDREN AND FAMILIES – CHILD SUPPORT SERVICES
ECONOMIC IMPACT STATEMENT
K.A.R. 30-44-2

I. Summary of Proposed Regulation

K.A.R. 30-44-2 gives the Secretary discretion to reduce or remove the enforcement fee that Child Support Services (CSS) currently takes from all child support payments made to custodial parents in non-public-assistance (non-PA) cases. Currently there is an enforcement fee of 4% for such cases in effect, however, if the Secretary determines that Child Support Services has sufficient funding for support enforcement activities, this fee may be reduced or removed entirely.

II. Why this Regulation is Necessary and Desired

This enforcement fee is designed to allow CSS to recover some of its costs in the administration of the IV-D Child Support program pursuant to Federal Regulation 45 C.F.R. 302.33(d). However, if the Secretary determines that Child Support Services is adequately funded to provide support enforcement activities without the need for these additional funds, this money would then go directly to the family receiving child support.

No such fee is required under federal law, it is an option that is available should the state choose to elect it. Thus, this regulation does not exceed the requirements of federal law. Kansas is one of only several states nationwide that continues to charge a fee.

III. Expected Economic Impact on Child Support Services (CSS)

This regulation merely gives the Secretary discretion to reduce or remove the fee. It is anticipated that the Secretary would not reduce or remove the fee if the program were unable to conduct its necessary mission without these funds.

The 4% enforcement fee generated \$2.49 million in FY 2015, however Kansas Child Support Services only retains 34% (\$820,000) of the enforcement fee collected. 66% (\$1.64 million) of this amount is required to be returned to the federal government by virtue of the IV-D program cooperative agreement. If the enforcement fee were to be removed, Kansas families would receive an estimated additional \$2.49 million each calendar year, at an estimated cost of \$820,000 in lost enforcement fees to Kansas Child Support, resulting in a net positive of roughly \$1.64 million for Kansas.

IV. Expected Economic Impact on Other State Agencies and Private Businesses

There is no expected economic impact upon other state agencies. It is likely that families receiving these additional child support amounts each month will circulate this money into the local economy, providing a positive impact for local businesses.

V. Expected Economic Impact for Families Receiving Child Support

If the Secretary uses the authority within this regulation to reduce or remove the 4% enforcement fee, the money that state Child Support Services collects would go directly to the families receiving support. For example, if the Secretary were to reduce the enforcement fee to 2%, families receiving child support would receive an additional 2% in their monthly child support amounts totaling approximately \$1.25 million per year. If the Secretary were to remove the fee, these families would see their child support amounts increase by 4%, or approximately \$2.49 million per year. This would provide a sizeable economic benefit to these families, making it less likely that they will need to rely on public assistance.

VI. Other Measures Were Considered but Rejected, and Reason for Rejection

CSS has considered other methods to increase the amount of support obtained by Kansas families in need of support. Reducing or removing the 4% fee is the most direct and effective way to ensure that administrative needs are being met by CSS while passing the savings directly on to Kansas families in need.

KANSAS DEPARTMENT FOR CHILDREN AND FAMILIES – CHILD SUPPORT SERVICES
ECONOMIC IMPACT STATEMENT
K.A.R. 30-44-6

I. Summary of Proposed Regulation

K.A.R. 30-44-6 is a new regulation which allows Child Support Services (CSS) to adjust arrears owed by noncustodial parents to the Secretary of the Department for Children and Families. By participating in an authorized arrears adjustment program which provides employment readiness services and parenting skills training, or by contributing to a college education savings account for the child through the Child Support Savings Initiative Program, CSS may adjust these arrears according to internal guidelines.

II. Why this Regulation is Necessary and Desired

Arrears forgiveness is a powerful incentive for parents to become involved in parenting skills and job training programs aimed at helping them establish better familial relationships and obtain steady employment. These types of programs have proven beneficial to noncustodial parents as well as their children and family units. Arrears forgiveness is also a great incentive to help noncustodial parents become involved in saving for their children's future education needs.

III. Expected Economic Impact on Child Support Services (CSS)

This regulation would reduce the amount of arrears owed by noncustodial parents to the state when children receive TANF or are or have been in state custody. History has shown that the overwhelming majority of arrears owed to the state are never repaid, and the total amount of anticipated adjustments is negligible in light of the increasing amount of arrears owed the state, which is approximately \$767 million as of September, 2015. Therefore, this regulation has no expected economic impact upon CSS or DCF as a whole.

IV. Expected Economic Impact on Other State Agencies and Private Businesses

There is no expected economic impact upon other state agencies. However, the regulation could have a benefit to Kansas public and private schools, colleges and universities in terms of additional enrollment since beneficiaries of these accounts have a strong incentive to utilize their savings accounts.

V. Expected Economic Impact for Families and Children Receiving Child Support

This regulation will increase the ability of noncustodial parents to obtain employment through participation in an arrears adjustment program, making it more likely the

noncustodial parent will be able to pay consistent child support. These families, in turn, will see economic benefits and will be less likely to depend upon public assistance programs.

This regulation will also increase the contributions to Kansas children's postsecondary education savings accounts, giving them the financial means to further their education. Between July, 2013 and June 2015, there have been 140 education savings accounts established and nearly \$150,000 deposited in these accounts through the program. Noncustodial parent contributions have also exceeded the amount of matching arrears forgiveness offered by the state, meaning that parents continue to contribute even after they have taken full advantage of state arrears forgiveness. This number should continue to increase significantly as CSS continues to expand efforts to encourage contributions to education savings programs.

VI. Other Measures Were Considered by Rejected, and Reason for Rejection

The programs referenced in this regulation are among the many methods CSS employs to increase child support collections and improve the lives of children and their families. By leveraging what is essentially uncollectable debt into an incentive for family and personal betterment, this program will provide a direct and immediate benefit for Kansas families.

KANSAS DEPARTMENT FOR CHILDREN AND FAMILIES ECONOMIC IMPACT STATEMENT

K.A.R. 30-46-10

I. Summary of Proposed Regulation

K.A.R. 30-46-10 adds abandonment to the list of defined terms and changes the burden of proof for an agency substantiated finding of abuse or neglect from clear and convincing to preponderance of the evidence.

II. Why this Regulation is Necessary and Desired

This amendment reflects current agency practice.

III. Expected Economic Impact on DCF

There is no expected economic impact on DCF.

IV. Expected Economic Impact on Other State Agencies and Private Businesses

There is no expected economic impact upon other state agencies.

V. Other Measures Were Considered but Rejected, and Reason for Rejection

No other measures were considered.