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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 98 ADM-6

TO: Commissioners of
 Social Services

DIVISION: Child Support
 Enforcement

DATE: May 5, 1998

SUBJECT: Procedures for Establishing Paternity with Acknowledgments
 and Administrative Orders for Genetic and/or DNA Tests

SUGGESTED

DISTRIBUTION: | Child Support Enforcement Coordinators
 | Support Collection Unit Supervisors
 | Accounting Supervisors
 | Public Assistance Directors
 | Medicaid Directors

CONTACT

PERSON: | OCSE - County Representative (800) 343-8859
 | Legal - Eileen Stack (518) 473-1949
 | Fiscal - Regions I-IV, Roland Levie (800) 343-8859
 | ext. 4-7549 Region V, Marvin Gold (212) 383-1733
 | Medicaid - Shari Niedbalic (518) 473-5531
 | Public Assistance - (800) 343-8859 Region extension

ATTACHMENTS:

| Order - Genetic Marker or DNA Tests (Attch. 1)
 | Affidavit - Certificate Lab Authentication (Attch. 2)
 | Affidavits- Sworn Statement (Attchs. 3 and 4)
 | List of laboratories (Attch. 5)
 | (all not available on line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref. SSL 111-k FCA 418 FCA 532 FCA 542 FCA 565 CPLR 4518	Manual Ref.	Misc. Ref.

I. PURPOSE

This directive advises social services districts of the procedures and forms for establishing paternity. The directive also provides an affidavit of certification which must be completed by the laboratory submitting test results, and a list of laboratories as of January 1, 1998 which have been approved to conduct such tests by the Commissioner of the New York State Department of Health and by an accrediting body identified by the Secretary of the Department of Health and Human Services for that purpose.

II. BACKGROUND

PRWORA of 1996 provides that states must have procedures to conduct genetic tests administratively to expedite the paternity establishment process. States' experience with providing multiple opportunities for parents to acknowledge paternity including conferencing cases after the administration of genetic tests has proven successful in establishing paternity in a timely manner.

Chapter 398 of the Laws of 1997 amended section 111-k of the Social Services Law (SSL) to provide that when the paternity of a child is contested, a social services official or designee is authorized to order the mother, alleged father, and child to submit to one or more genetic marker or DNA tests to aid in the determination of whether or not the alleged father is the father of the child.

Genetic marker or DNA tests administered in paternity proceedings pursuant to section 111-k of the Social Services Law and sections 418 and 532 of the Family Court Act require that such tests must be of a type generally acknowledged as reliable by an accreditation body and performed by a laboratory approved by such an accreditation body and by the New York State Department of Health.

III. PROGRAM IMPLICATIONS

The authority to administratively issue orders of genetic marker or DNA tests will increase the efficiency of the paternity establishment process by reducing the need to obtain a court order for such testing. The resultant decrease in the amount of time required to obtain an order of support will facilitate payments commencing sooner.

IV. REQUIRED ACTION

A. Applicable Cases.

The authority for social services districts to administratively issue genetic marker or DNA testing orders granted pursuant to revisions to SSL 111-k, is applicable to cases receiving child support enforcement services under the provisions of SSL Title 6-A (i.e., public and non-public assistance cases) in which:

1. the paternity of a child is contested and the paternity of a child has not been established;
2. there has not been a determination of good cause, attestation (reference 18NYCRR 369.2 (b)) or other exception as authorized by applicable regulations by the social services district; and
3. there has not been a written finding by the court that submitting to such tests is not in the best interest of the child on the basis of res judicata, equitable estoppel, or the presumption of legitimacy of a child born to a married woman.

B. Procedures.

In accordance with established procedures for intake and where the location of the alleged father is known and where the child support enforcement unit has made a determination in consideration of A. above to proceed to establish paternity, the child support enforcement unit must take the following actions as appropriate:

1. Contact the mother and alleged father.
 - a. Interview the mother to ascertain if she wishes to sign an acknowledgment of paternity. If she does not wish to sign an acknowledgment of paternity because e.g., she is not certain who the father is or does not believe the alleged father will acknowledge, file a paternity petition with the court and continue action as provided under 4. below to arrange for genetic and or DNA tests. Note: Whenever a paternity petition is filed the district must store a "P200" or "Paternity Petition Filed" on CSMS IVDJSI.
 - b. If the mother does wish to sign an acknowledgment of paternity, have her complete her part of the acknowledgment. Contact the alleged father by telephone or letter requesting him to come in and complete the acknowledgment in accordance with SSL 111-k, section 516-a of the Family Court Act (FCA), and section 4135-b of the Public Health Law. Note: based on local district procedures, the action to obtain an acknowledgment may occur concurrently with the filing of a paternity petition.

c. Review the case for contact from the alleged father. If the alleged father fails to respond or responds by denying paternity, file a paternity petition with the court and continue action as provided under 4. below.

2. Complete an acknowledgment of paternity.

a. If the alleged father indicates he wishes to acknowledge paternity, complete the father's part of the acknowledgment and file the acknowledgment with the birth registrar for the district in which the birth occurred and in which the birth certificate has been filed. Any time an acknowledgment of paternity is obtained by a local district the child record on CSMS IVDJCH or IVDCAB must be updated with the letter "A". This will result in the entry of a "P901 05" or "Pat Est. By Acknowledgment" on IVDJSI.

3. File a support petition.

If an acknowledgment of paternity is obtained, proceed to obtain an order of support by attempting to secure a support agreement in accordance with SSL 111-k and FCA 425, or by filing a support petition with the family court in the event a support agreement cannot be reached or it is determined impractical and/or inefficient to do so.

4. Arrange for genetic or DNA tests.

a. If an acknowledgment of paternity is not obtained, arrange for genetic or DNA tests by obtaining a sworn statement using Attachment 3 or Attachment 4 as appropriate:

Attachment 3 "Affidavit Alleging Paternity" alleges paternity and sets forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

Attachment 4 "Affidavit Denying Paternity" denies paternity and sets forth facts establishing a reasonable possibility that the party is not the father.

b. In assisting the mother in preparing the sworn statement alleging paternity, care must be exercised to not disclose the mother's address where domestic violence or good cause has been determined but the child support enforcement unit has still been authorized to proceed to establish paternity.

- c. Schedule the date and time of the genetic and or DNA tests with the paternity testing laboratory and with the mother and putative father for the parties and child. Note: when scheduling the tests with the parties ensure that it is appropriate for the parties to appear at the same time or make arrangements for different times.
- d. Ensure that the laboratory has been provided with a copy of Attachment 2, "Affidavit Certification Pursuant to CPLR 4518 (c) and (d)" which the laboratory should complete and forward with any records or reports of genetic marker or DNA test results which are forwarded to the SCU or to the court. This certification will ensure the admissibility of such reports into evidence in court if necessary.

5. Complete Attachment 1 "Order For Genetic or DNA Tests.

Complete the order and serve the order and sworn statement on the parties by certified mail. Whenever an order for genetic or DNA tests is served store a "P2001 06" "Admin Order For Genetic Testing on IVDJSI. Once the the order is available on CSMS Document Generation Module a "P201 06" status will be stored automatically on IVDJSI whenever the document is generated.

6. Review the case for the return of the test results.

- a. If the putative father fails to appear for the paternity tests and, as a result, the tests are not completed proceed to file a paternity petition as set forth in B.2. above. Also include in the petition a request for an order of temporary support based on the alleged father's failure to comply with the "Order - Genetic marker or DNA Tests" pursuant to section 542 of the Family Court Act.
- b. If the test results have been received provide a copy of the test results to each party.
- c. If the test results indicate paternity, again attempt to obtain an acknowledgment of paternity (Note: test results indicating at least a 95% probability of paternity create a rebuttable presumption of paternity) by conferencing the case with the parties or each of them separately as is appropriate.
- d. If the parties agree, complete an acknowledgment of paternity. If an acknowledgment of paternity is obtained, proceed to obtain an order of support as set forth in B.3. above.

- e. If an acknowledgment of paternity is not obtained, complete and file a paternity petition with the Family Court (if one has not already been filed) and attach to the petition: the original of the record or report of test results, the genetic test order, and the sworn statement affidavit.
- f. If the test results indicate exclusion of paternity, child support enforcement unit staff should store a "P801 05 "Paternity Excluded" for that child on IVDJSI. The child support enforcement unit staff must re-interview the mother and take such other steps as necessary to identify and locate an alleged father.

7. Cooperation with child support.

In public assistance cases and medicaid cases (except for pregnant women), applicant/recipients are required to cooperate with child support in establishing paternity and securing support absent good cause, attestation or other exception. As such, applicant/recipients must cooperate except as noted with all procedures provided in this ADM. Notification of cooperation or noncooperation must be promptly made to the income maintenance or medical assistance unit.

8. Challenges to administrative order.

- a. If the "Order - Genetic Marker or DNA Tests" is challenged by the party on a motion to the court pursuant to section 565 of the Family Court Act, the child support enforcement unit must appear in court with respect to such motion. Since the case will now be before the court, the child support enforcement unit should file a petition to establish paternity as noted in B.1. above if a paternity petition has not already been filed.
- b. The child support enforcement unit staff should appear in court to testify with regard to any CSMS records.

9. Other actions.

The child support enforcement unit should promptly take action to modify CSMS record or take other such action as necessary as a result of any court order.

C. Tests and Laboratory.

1. Genetic marker or DNA tests which are administratively or judicially ordered must be of a type generally acknowledged as reliable by an accreditation body designated by the Secretary of the U.S. Department of Health & Human Services, and must be performed by a laboratory approved by such accreditation body and by the Commissioner of the Department of Health. A list of laboratories approved for paternity testing is included as Attachment 5.
2. CPLR 4518 (d) and (e) provide that such test records and reports are admissible provided that they bear certification or authentication by the laboratory which conducted the tests. A copy of an affidavit of certification is provided as Attachment 2. Laboratories have been provided this form to use under separate cover.

D. Cost of Tests.

1. The cost of any test ordered pursuant to this directive shall be paid by the social services district, provided however, that the alleged father shall reimburse the district for the cost of such test at such time as his paternity is established by an acknowledgment of paternity or by an order of filiation. This would include interstate actions where New York is using long arm or is the initiating state and the two state method must be used. The district should include a request for reimbursement in the support petition and, if ordered by the court, a 22BD ledger established on the account on CSMS for reimbursement.
2. If either party contests the results of a genetic marker or DNA test, an additional test may be ordered upon written request of either party to the social services district and advance payment by the requesting party.
3. The cost of any genetic marker or DNA tests should be reported as Object of Expense Code 18.2 - Laboratory Paternity Determination Costs on Schedule DSS-923A. These costs will carry through to the Schedule D-8, "Allocation For Claiming Title IV-D Child Support Activities and Support Collection Unit Expenditures" (DSS-2547) and are reimbursed at the rate of 90% Federal, 5% State, and 5% local shares. Any fees collected as repayment for genetic testing expenditures must be netted against any amounts claimed for reimbursement on the DSS 923A Schedule.

E. Records of the SCU.

Each SCU must keep a record through CSMS of activities taken with respect to the administrative ordering of genetic tests and of paternity establishments by acknowledgment of paternity or by court order.

V. SYSTEMS IMPLICATIONS

Modifications are being made to CSMS to add the forms to the CSMS Document Generation Module. Districts will be advised when they are available under separate letter.

VI. EFFECTIVE DATE

This ADM is effective May 15, 1998.

Robert Doar
Director
Office of Child Support Enforcement