



Office of Temporary and Disability Assistance

ANDREW M. CUOMO
Governor

SAMUEL D. ROBERTS
Commissioner

MICHAEL PERRIN
Executive Deputy Commissioner

Administrative Directive

Section 1

Transmittal:	10-ADM-05-P
To:	Local District Commissioners
Issuing Division/Office:	Division of Child Support Enforcement Center for Child Well-Being
Date:	May 16, 2016
Subject:	Purchase of Service Agreements/Memorandum of Understanding for the Child Support Program
Suggested Distribution:	Child Support Enforcement Unit Coordinators Support Collection Unit Supervisors IV-D Attorneys Accounting Supervisors
Contact Person(s):	Division of Child Support Enforcement at 1-800-343-8859 Office of Legal Affairs at 1-518-474-9502
Attachments:	Attachment 1: Draft Agreement Attachment 2: OTDA-3243, Acknowledgment of Confidentiality of Child Support Information, Including Internal Revenue Service Information Attachment 3: Safeguarding Contract Language Exhibit 7 Publication 1075
Attachments Available Online:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
85-ADM-32	10-ADM-05	346.4; 346.5; 347.4	110-a;352;352-a 45 CFR 303.107 45 CFR 302.34 45 CFR 304.21 45 CFR 304.22		10-ADM-08

Section 2

I. Summary

The local district may enter into purchase of service agreements (POS) with nonprofit organizations, private entities, local officials, departments and agencies which do not have judicial or law enforcement authority, to assist in the administration of the child support enforcement program at the local district level. These include, but are not limited to, laboratories licensed and approved by the New York State (NYS) Department of Health for paternity testing in paternity establishment cases and process servers. When services are being purchased from another governmental agency, with the exceptions noted above (courts and law enforcement), a Memorandum of Understanding (MOU) is used. For the purposes of this ADM, government agencies and private entities that could otherwise be referred to as agency/contractor/vendor will be referred to as "Service Provider." Also, legal services may be provided by a POS with a private attorney or non-profit legal services attorney or a Memorandum of Agreement with the County Attorney's office (refer to 10-ADM-02 for information about contracting legal services).

Important note: Regardless of whether a POS or MOU is used, State and federal law and regulations require the inclusion of certain terms and provisions in order to be eligible for federal financial participation and all POS/MOUs must be provided to the Division of Child Support Enforcement (DCSE) for approval *prior* to execution of the document.

II. Purpose

This Administrative Directive sets forth provisions that must be contained in a POS or MOU. It also provides direction for obtaining prior approval of the POS/MOU from DCSE.

III. Background

Local districts enter into POS/MOUs to obtain the assistance of Service Providers in carrying out their functions under the child support enforcement program as specified under Parts 346 (excluding support collection unit services) and 347 of Title 18 of New York Codes Rules and Regulations (NYCRR). These POS/MOUs must be in written form and must contain certain terms and conditions in order to be eligible for federal financial participation (refer to Title 45 Code of Federal Regulations §§ 302.34, 303.107, 304.2 and 304.22 and 18 NYCRR §§ 346.4 and 347.4).

IV. Program Implications

Local districts must review current procedures for services obtained through a POS/MOU to ensure compliance with relevant statutes, regulations and these instructions.

V. **Required Action**

- A. All POS/MOUs must:
1. Provide for adequate supervision and monitoring by State and local officials.
 2. Include a clear description of the specific duties, functions and responsibilities of each party. This means that the POS/MOU must state clearly what will be done and who will do it. It is the responsibility of the local district Child Support Enforcement Unit (CSEU) to monitor the POS/MOU to ensure effective implementation of its terms and to identify any problems that may affect the delivery of services.
 3. Any POS/MOUs must:
 - a. specify clear and precise performance standards by which the terms of the arrangement and quality of services under the arrangement are measured;
 - b. contain standards of performance that are measurable, consistent with federal and State requirements, and acceptable to each party. These standards must be related specifically to the duties outlined in the POS/MOU; and
 - c. contain both qualitative and quantifiable performance standards. Some examples of qualitative standards are accuracy and thoroughness. Examples of quantifiable standards are: how many specific actions must be taken; what time frame is allowable for the completion of a task, for example, time for service of process.
 4. Specify the financial arrangements including: budget estimates; covered expenditures; methods of determining costs; procedures for billing the CSEU; and any relevant federal and state reimbursement requirements and limitations.
 5. Specify the type of records that must be maintained and the appropriate federal and State reporting and records retention requirements.
 6. Clearly state organizational relationships (e.g., who is accountable to whom, resources used, etc.).
 7. Include a justification that the POS/MOU is the most cost-effective way of providing the service and that the cost is reasonable and necessary to ensure the quality of the services.

8. If applicable, include a justification for the POS/MOU using two or more part-time employees, whose combined time under the arrangement will be greater than one full-time employee equivalent.
 9. Specify the documentation that the POS/MOU must provide to support claims for federal and State reimbursement for services performed under the arrangement.
 10. Specify the dates on which the POS/MOU begins and ends, any conditions for renewal, and the circumstances under which the arrangement may be terminated.
- B. Some required terms and conditions are standard for all POS and MOUs. These terms and conditions are set out in the *Draft Agreement (Attachment 1)*, which must be attached to and incorporated in every POS/MOU. These standard terms and conditions require that the POS/MOU:
1. Specify that the parties will comply with Title IV-D of the Social Security Act, implementing federal and State law and regulations and any other applicable federal and State law and regulations and requirements.
 2. Provide for the proper use and disclosure of confidential child support information and the security and confidentiality of information and data flowing through, accessed, and/or utilized by non-state computerized systems. As used herein, computerized system means any system, network, hardware, software, program, or application which stores, produces, utilizes, manages, processes, accounts for, transmits, or monitors information or data used by the Service Provider in carrying out its duties. Attachment 1 provides language to meet these requirements. However, the language may be modified as appropriate to the circumstances of each Agreement, subject to approval of DCSE.

Child support information and data may include "Federal Information." Federal information includes all information obtained through the Federal Parent Locator System (FPLS), including the National Directory of New Hires (NDNH), and the Federal Case Registry (FCR) unless independently verified by another source. Federal information is subject to additional safeguarding requirements.

Child support information and data may include Federal Tax Information (FTI). FTI is any federal tax return or return information received from the Internal Revenue Service (IRS) or secondary source, such as the Social Security Administration, federal Office of Child Support Enforcement or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information.

Child support information may be used and disclosed only to authorized individuals and only for authorized purposes, (refer to Social Services Law § 111-v and 18 NYCRR § 347.19). The Service Provider must

maintain and use all child support information provided by the local district or otherwise obtained pursuant to the Agreement in a confidential manner designed to protect the privacy rights of the parties and children. The Service Provider shall implement safeguards, including systems safeguards, to ensure that the confidentiality, integrity, accuracy, access, and the use of all confidential information and other data handled or maintained is in accordance with the Office of Temporary and Disability Assistance (OTDA) and local district policy.

The Service Provider's officers, employees, agents, and subcontractors with access to child support information; i.e. those who have direct access to the child support system or paper child support case file records, must sign a non-disclosure agreement using the OTDA-3243, *Acknowledgement of Confidentiality of Child Support Information, Including Internal Revenue Service Information (Attachment 2)*. The officers, employees, agents, and subcontractors of the Service Provider shall be required to receive OTDA-approved training prior to receiving access to such information and annually thereafter. Where required by DCSE, the Service Provider shall conduct background checks before granting access to child support information and data. In addition, the Service Provider shall not utilize any person who has been convicted of any crime of dishonesty to perform a service under a POS/MOU for the child support enforcement program.

Any FTI (e.g., tax refund offset amounts, payment sources) obtained from the IRS is subject to specific IRS safeguards. Any POS/MOU that would grant access to or provide FTI must include verbatim the language required by IRS *Publication 1075* which is specified in *Safeguarding Contract Language Exhibit 7 Publication 1075 (Attachment 3)*. The information that may be disclosed for this purpose to an agent or a contractor is limited to the amount of the tax refund offset (see IRS *Publication 1075*, Section 5.5, *Child Support Agencies—IRC 6103(l)(6), (l)(8), and (l)(10)*). In addition, the local district must notify the IRS Office of Safeguards and obtain approval prior to executing an agreement that includes redisclosing FTI to contractors (see IRS *Publication 1075* Section 7.0, *Reporting Requirements—6103(p)(4)(E)*, and Section 7.4, *45-Day Notification Reporting Requirements*, for additional information). The agency entering the contract must have reasonable assurance that all security standards (physical and computer) have been addressed, through an on-site visitation or a certifying report. If the Service Provider has access to FTI, OTDA-approved training and background checks are mandatory.

3. Include a provision that the POS/MOU may be terminated by the local district Department of Social Services or CSEU upon thirty (30) days written notice to the other party without cause and immediately for cause or if federal or State reimbursement is terminated or not allowed.

4. The POS/MOU must have a provision for bonding of any POS/MOU employees who will have access to or control over child support collections as required by 18 NYCRR § 346.5. Any collections received by the local district or a service provider must be immediately remitted to the NYS Child Support Payment Processing Center.
- C. POS/MOUs for legal services should follow the format of Attachment 1, “*Cooperative Agreement/Purchase of Services Agreement*,” provided in 10-ADM-02. The sample POS/MOU includes all the required terms and conditions specific to legal services. Attachment 1 to this Administrative Directive should not be attached to POS/MOUs for legal services.
- D. All POS/MOUs must be submitted to DCSE for review and approval prior to execution of the document. DCSE will review such agreements within forty-five (45) days of receipt and notify the district if the agreement is approved or return the agreement with comment. Such POS/MOUs must be

mailed to:

Bureau of Program Operations
NYS OTDA
Center for Child Well-Being
Division of Child Support Enforcement
40 North Pearl St., 13th Floor, Albany, NY 12243-0001

OR

emailed to:

otda.sm.dcse.bpo@otda.state.ny.us

VI. Systems Implications

None.

VII. Additional Information

Fiscal Claiming

Costs incurred by other local agencies through Cooperative Agreements and POS are to be supported by the LDSS-2674 *Cost Allocation Summary, Title IV-D Program*. Instructions for the preparation of this form appear in *Fiscal Reference Manual (FRM)*, Volume 3, Chapter 15. For services negotiated on a per case basis, the LDSS-2674 form does not have to be prepared. Payments to another local governmental unit for services provided under a Cooperative Agreement or an interagency contract are made from the Social Services Administration appropriation expense account, A6010.

Expenditures for Cooperative Agreements and POS for child support and collection activities are reported on the LDSS-923A *Cost Allocation, Schedule of Payments, Administrative Expenses other than Salaries* and LDSS-923 *Cost*

Allocation, Schedule of Payments, Administrative Expenses Other than Salaries, Title IV-D, Child Support Activities and Collection Unit Costs. They should be coded to a range of object of expense codes (i.e., 31.1, 31.2, 31.3 for Cooperative Agreements and 32.1, 32.2, 32.3 33.1, 33.2, 33.3 for purchase of services). Each agreement and accompanying expenditure should be identified to the F8 function.

Please refer to FRM Volume 3, Chapter 5 and Chapter 15 for further instructions: http://otda.state.ny.net/bfdm/finance/FRM_Vol3_Manual.asp.

VIII. Effective Date

This Administrative Directive is effective immediately.

Issued By:

Name: Eileen M. Stack
Title: Deputy Commissioner and Director
Division/Office: Center for Child Well-Being
Division of Child Support Enforcement