CHAPTER 11-000 COLLECTION AND DISTRIBUTION

This chapter outlines the role and responsibility of Child Support Enforcement in the collection, distribution and disbursement of support payments.

11-001 COLLECTION OF SUPPORT PAYMENTS: Federal and State law require ~~Nebraska~~ the Department to operate a State Disbursement Unit (SDU) for the purpose of receiving, receipting, distributing, and disbursing child support payments. All support orders must direct that all payments be made to the SDU, with the following exceptions:

1. Payments for spousal support, alimony, or maintenance support that does not also provide for child support in the court order;
2. Payments constituting child care or day care expenses; and
3. Payments constituting court costs, attorney fees, and other court-related expenses.

These exceptions will continue to be processed by the clerks of the district courts.

11-002 DISTRIBUTION: Distribution of support payments is governed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Support payments, except for amounts collected through federal income tax refund offset, must be distributed as follows:

1. First, distribute the amount collected to satisfy the current monthly support obligations in the following order: Child support, spousal support, and lastly medical support;
2. Second, toward any arrearages owed, in the following order: Child support arrearage, spousal support arrearage, and lastly medical support payment arrearage; and
3. Third, toward the interest on any payment arrearage, in the same order of priority listed in (2) above.

If an obligor has more than one order, collections must be allocated proportionately across all orders. Collections that will be allocated proportionately include, but are not limited to:

1. Administrative Offset;
2. Direct pay;
3. Income Withholding; or
4. Lottery Offset.

Exceptions to proportionate allocation include, but are not limited to collections received from:

1. Administrative Attachment;
2. Federal and State tax intercept;
3. Passport Revocation Program; or
4. U.S. Attorney enforcement.

11-002.01 Assignment: As a condition of receiving ADC, Medicaid, or foster care, a recipient of services must assign his/her right to any child support, medical support or spousal support payments to the state, to reimburse the state for assistance dollars expended. Application for and acceptance of assistance constitutes an assignment by operation of law.

11-002.01A Assignment as it relates to ADC: In ADC cases, past due support and current support that becomes due while the custodial party is receiving ADC, are assigned. Both the principal amount of unpaid support and any interest that accrues are considered support, and are assigned. The amount of child and/or spousal support that may be retained is limited to the amount of unreimbursed assistance or the collectible state debt, whichever is less, in ADC cases.

11-002.01B Assignment as it relates to Medicaid: In Medicaid cases, the application for, and acceptance of medical assistance constitutes an automatic assignment of the client's rights to third party medical payments.

11-002.01C Assignment as it relates to Foster Care: In foster care cases, the amount that may be retained to reimburse the state is limited to the amount of support due for the months during which foster care assistance payments are made or the unreimbursed assistance, whichever is less.

11-002.01C~~(1)~~ Excess Collections of Current Support in Foster Care Cases: If the amount of support collected on current support in any one month is more than the monthly amount of the foster care maintenance payment, the excess is paid to the state agency responsible for supervising the child's placement and care to serve the best interests of the child, including, but not limited to:

1. Setting aside amounts for the child's future needs; or
2. Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

These excess collections are maintained in the HHS State Ward Account.

11-002.01C~~(2)~~ Excess Collection of Arrears in Foster Care Cases: If the amount of support collected in any one month is more than the amount of support due for the months during which foster care assistance payments are made, this excess amount is paid to the state agency responsible for supervising the child's placement and care to serve the child's best interest. These excess collections are maintained in the HHS State Ward Account.

11-002.02 Partial Termination of Assignment: A case is said to have a partial termination of assignment when the following conditions are met, and a debt to the state still exists:

1. All children listed in the court order are no longer receiving public assistance, including foster care;
2. The public assistance case has been suspended or closed; or
3. The assistance grant has been zeroed.

11-002.03 Final Termination of Assignment: A case is said to have a final termination of assignment when a public assistance case is closed and there is no outstanding state debt. Current support collections and arrearage collections must be distributed to the court-ordered payee from that point forward.

11-002.04 Federal Income Tax Offset Distribution: Any amounts collected through the federal income tax offset represent an arrears collection, and must be applied to state debt first. Any amount above the state debt owed must be distributed to the court-ordered payee for arrearages owed. Collections in excess of arrearages owed must be returned to the obligor whose federal income tax refund was offset. See 466 NAC 9-014.

11-002.05 Undisbursed Support Payments and Abandoned Property: Support payments received prior to December 23, 2001, are subject to the Uniform Disposition of Unclaimed Property Act. Payments received on or after December 23, 2001, are exempt from the Uniform Disposition of Unclaimed Property Act. Support payments received on or after December 23, 2001, that are found to be undistributable will be considered abandoned property.

This abandoned property will be used by the State for child support enforcement as provided below.

11-002.05A Abandoned Property and Program Income: Both IV-D and Non-IV-D funds collected through the State Disbursement Unit but not disbursed or refunded after 3 years after the funds are received, will be considered abandoned property and classified as program income.

11-002.05A~~(1)~~ Classification of Funds: Funds collected through the State Disbursement Unit that are classified as IV-D funds will be considered program income and subject to use by the State and Federal CSE Program. Those funds collected but classified as Non-IV-D funds will be considered program income and subject to use by only the State portion of the CSE Program.

11-002.05B Availability of Funds: The support payments will continue to be available to the payee or other designated recipient. Once the Department is contacted, the legitimacy of the claim will be determined including verification of identity of the payee or other designated recipient. After a legitimate claim is established such funds will be properly disbursed.

When a legitimate claim is honored against the funds previously considered abandoned, the funds reported as program income will then be adjusted to reflect the same on the state payment records. All state and federal reports will be adjusted to reflect that change.

11-003 INTERSTATE CASES: Interstate cases must follow the same distribution format as in-state cases. The responding state is responsible for collecting and monitoring support payments and forwarding payments to the initiating state. The initiating state is responsible for distributing support payments within two business days, using the distribution formula specified by federal and state law. If a responding state deducts any fees from a payment before forwarding the payment to the initiating state, the initiating state must give the non-custodial party credit for the full payment amount, and any unreimbursed assistance will be reduced by the full amount.

11-004 STATE DISBURSEMENT UNIT (SDU): PRWORA requires states to centralize collection and disbursement of support payments through a State Disbursement Unit (SDU). The Nebraska Legislature has enacted legislation to provide for the establishment of an SDU. A public or private entity or state officer, as designated by the Title IV-D Agency, will directly administer and operate the SDU. The designated entity or officer must be directly responsible to the Title IV-D Agency.

11-004.01 Electronic Payment Delivery (or electronic disbursement): Payments disbursed through the SDU will be done by electronic means.

11-004.02 Exceptions to Electronic Disbursement: An individual may qualify for an exception if:

1. An individual has a physical or mental disability;
2. An individual has a court appointed guardian or conservator;
3. An individual lives and/or works more than 5 miles from an automated teller or financial institution where funds may be accessed; or
4. In circumstances not noted above, Child Support Enforcement may consider an exception on an individual basis.

An individual must file a claim with Child Support Enforcement. An exception granted under any of the above conditions may be subject to a periodic review.

11-005 SDU SCOPE OF SERVICES

11-005.01 Customer Billing: The SDU must provide all court ordered obligors monthly billing statements. The billing statements must contain demographic, case, and financial information for obligors to fulfill their financial obligation and for the SDU to process obligor payments. The historical records of all billing information must remain in archive within the statewide child support automated data processing and information system for seven years.

11-005.02 Payment Receipting: The SDU must receipt support payments. A support payment may include child support, medical support and spousal support if it is for the support of a spouse who is living with the child(ren) for whom the obligor also owes support. Any non-monetary transactions will be the responsibility of the ~~IV-D Agency~~ Child Support Enforcement Central Office. The SDU must be responsible for processing targeted payments.

11-005.03 Obligee Account Activity Summary: The obligee must receive a quarterly account activity summary statement from ~~IV-D Agency~~ Child Support Enforcement Central Office. The statement must contain specific demographic, case, and payment information.

11-005.04 Disbursement: Support order payments must be disbursed to an obligee(s) within two business days after receipt of the support payment at the SDU. Disbursements may be delayed for the following reasons which include, but are not limited to:

1. A payment does not include accurate identification information;
2. An obligee's whereabouts are unknown;
3. An appeal regarding arrearages has not be resolved;
4. A payment exception applies;
5. Insufficient funds check;
6. Rejected receipts;
7. Items damaged by the post office;
8. Foreign currency collection;
9. Court ordered payments for the release or avoidance of incarceration;
10. Collections received as a result of federal income tax refund offsets based upon joint tax returns; or
11. Collections received as a result of state income tax refund offsets.

The historical records of all disbursement information must remain in archive within the statewide child support automated data processing and information system for seven years.

11-005.05 Payment Records: The Department's Title IV-D Agency must maintain records of payments for all cases in which the SDU receipts and disburses support order payments. A copy of such a support payment record will be a true copy of the record when certified by a person designated by the Department's Title IV-D Agency. The Clerks of the District Court must maintain records of payments and disbursement they made prior to the SDU implementation date. The court must continue to maintain control over court records.

11-005.06 Customer Service: The SDU must provide customer service to employers, custodial and non-custodial parties, Clerks of the District Court, and other stakeholders regarding receipt and disbursement of support payments. The personal assistance line must receive calls Monday through Friday, from 7:00 a.m. until 6:00 p.m. Central Standard Time. The automated component of the system, Voice Response Unit (VRU), must be available at least 23 hours a day, seven days a week.

11-005.07 Insufficient Funds Checks: The SDU must be responsible for insufficient funds checks received or electronic payments not accepted. The SDU must mail notices to obligors, or other payors, who submit insufficient funds checks or electronic payments that are not accepted. The SDU may collect a fee equal to the actual cost of processing an insufficient funds check or an electronic payment not accepted. After a payor has originated two insufficient funds checks or electronic payments not accepted within a period of two years, the SDU may notify the payor that, for the following year, all payments are required to be made by money order, cashier's checks, or certified check. After a payor has originated three insufficient funds, checks or electronic payments not accepted, the SDU may notify the payor that all future payments are required to be made by money order, cashier's check, or certified check.

11-005.08 Business Practices and Standards: The SDU must adhere to applicable State Plan, Nebraska Administrative Code, and Code of Federal Regulation requirements. Acceptable business practices for the SDU must involve adhering to General Accepted Accounting Principles (GAAP). A Certified Public Accounting firm must perform an annual audit of the SDU financial statements and records. The audit must be based on Generally Accepted Auditing Standards (GAAS).

11-005.09 The State Disbursement Advisory Commission: The Executive Board of the Legislative Council will appoint the members of the State Advisory Commission. The Commission may recommend to the Department's Title IV-D Agency ways to enhance effectiveness of the SDU. Recommendations for improvement may also include recommending legislation to clarify and improve state law related to the SDU.

11-006 RECOVERY OF DIRECT PAYMENTS: DHHS IV-D staff or designated IV-D contract staff must take action to recover direct support payments made by a non-custodial party that are received by an overpaid party.

11-006.01 Identify Recovery of Direct Payment: DHHS IV-D staff or designated IV-D contract staff must do the following prior to establishing a repayment agreement with an overpaid party:

1. Document that the overpaid party has, in fact, received and retained direct support payments, and the amounts;
2. Provide written notice of intent to recover the payments to the overpaid party that includes the following:
   a. An explanation of the overpaid party's responsibility to cooperate by turning over direct payments as a condition of eligibility for ADC, and the sanction for failure to cooperate;
   b. A detailed list of the direct payments which have been retained by the overpaid party, as documented by ~~Child Support Enforcement,~~ DHHS IV-D Staff including the dates and amounts of these payments as well as a description of any documentary evidence (such as photocopies of the checks) which DHHS IV-D staff or designated IV-D contract staff possesses;
   c. A proposal for a repayment plan between the recipient and the Department; and
   d. An explanation that repaying retained direct payments to the Department according to a signed repayment plan meets the condition of cooperation~~.~~; and
3. Provide the overpaid party with an opportunity for an informal meeting to clarify the overpaid party's responsibilities and to resolve any difference regarding repayment of the directly received support by the overpaid party.

11-006.02 Requirement of the Repayment Agreement: The repayment agreement between the Department and the overpaid party who has received and retained direct support payments must be reasonably related to:

1. The overpaid party's income and resources including the ADC grant; and
2. The total amount of retained support.

11-006.03 Referral to the IV-A Agency for Non-cooperation: DHHS IV-D staff or designated IV-D contract staff must refer a case to the IV-A agency with evidence of failure to cooperate if:

1. The overpaid party refuses to sign a repayment agreement; or
2. The overpaid party enters into a repayment agreement but subsequently fails to make a payment under the terms of the agreement.

11-006.04 Subsequent Notification to the IV-A Agency: If DHHS IV-D staff or designated IV-D contract staff have referred a case to the IV-A agency with evidence of failure to cooperate, the DHHS IV-D staff or designated IV-D contract staff must notify the IV-A agency when either of the following changes in circumstances occurs:

1. The overpaid party who refused to enter into a repayment agreement consents to do so and signs the agreement; or
2. The overpaid party who defaulted on an agreement begins making regularly scheduled payments according to the agreement: Under this paragraph, a regularly scheduled payment is a payment made in the current month for the amount specified in the initial repayment agreement between the Department and the overpaid party. The resumption of regularly scheduled payments cannot be interpreted to mean payment of amounts which were not paid during the period of default, nor amounts which could be categorized as balloon payments or which would be due as a result of an acceleration clause. To recover amounts due from any period of default, the Department must extend the duration of the repayment agreement.

11-006.05 Enforcement Actions: The Department will consider other enforcement actions if the overpaid party refuses or fails to repay any assigned support. These actions include but are not limited to:

1. Contact with the county/authorized attorney to request a ~~judgement~~ judgment against the overpaid party; or
2. Contact with a private attorney or collection agency to assist with the collection of the assigned support.

11-006.06 Request for Administrative Review: The overpaid party may request an administrative hearing to appeal any enforcement action taken to recover support overpayments. In order to suspend collection efforts, the overpaid party must send a written request for an administrative hearing to the Department within 10 calendar days of the date of notification of the overpayment. The overpaid party may request a hearing within 90 calendar days of the notification of overpayment, but collection efforts will continue. If the written request is not postmarked within 90 calendar days of the date of the administrative review finding, the Department is required to deny the administrative hearing request.

11-006.06A Administrative Hearing: Any administrative hearing must be conducted in accordance with 465 NAC 6-000 ff, and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901, et seq.

11-006.06A(1) Hearing Date: The Department is required to provide an opportunity for a hearing within 30 days after receipt of a proper written request.

11-006.06A(2) Hearing Results: The Department is required to notify any person receiving an administrative hearing and the Director or his or her designee Child Support Enforcement Central Office of the hearing results within 15 calendar days of the hearing.

11-006.06B Judicial Review: Any person aggrieved by a determination of the Department, upon exhaustion of all administrative remedies, may seek judicial review of a hearing finding in the court in which the support order was issued or registered.