CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES
P.O. Box 419064, Rancho Cordova, CA 95741-9064

Reason for this Transmittal

[ ] State Law or Regulation Change
[ ] Federal Law or Regulation Change
[ ] Court Order or Settlement Change
[ ] Clarification requested by One or More Counties
[X] Initiated by DCSS

November 17, 2004

CSSIN LETTER: 04-26

ALL IV-D DIRECTORS
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL BOARDS OF SUPERVISORS

SUBJECT: NEW YORK STATE LETTER ON COST RECOVERY FOR LEGAL SERVICES ON INTERSTATE CHILD SUPPORT CASES

The purpose of this letter is to inform you that the state of New York recently released a policy letter regarding legal services and cost recovery on interstate cases. Although New York has issued guidance on this subject in the past, there has been some confusion expressed by certain states. Please see the attached letter, dated August 5, 2004, from Mr. Robert Velcoff, Chief of the New York State Interstate Central Registry, Division of Child Support Enforcement.

If you have any questions on this issue, please contact Mr. Velcoff at the telephone number or email address shown on the attached letter.

Sincerely,

/os/

SANDRA O. POOLE
Deputy Director
Child Support Services Division

Attachment

New York State
Office of Temporary and Disability Assistance
40 North Pearl Street - Albany, NY 12243-0001

George E. Pataki
Governor

Robert Doar
Commissioner

August 5, 2004

Dear Colleague:

I am writing to clarify New York State's policy regarding legal services and cost recovery on interstate cases. Federal regulations require that we advise each state's IV-D agency of our policy regarding the recovery of costs for legal services so initiating states can advise applicants for services, as per 45 CFR 302.33(d)(5),(6). Although we have done this twice in the past, some recent confusion by certain states regarding this policy has led to the need for this letter.

In New York legal services may be provided for the purpose of establishing paternity or obtaining child support. Obtaining support includes establishing, modifying, or enforcing a support obligation. A person applying for services in an interstate proceeding must indicate if they are also requesting legal services. They would do so by signing a "Right to Recovery" agreement (attached) indicating their understanding of the obligation to repay the actual cost of these services.

While the New York State Division of Child Support Enforcement does not require a separate application for services, the "Right to Recovery" agreement must be signed before an attorney will appear on behalf of the applicant. To avoid delay or prejudice to your applicants, please forward a signed agreement with every request for legal services. If the agreement is not received, the local district will promptly mail an agreement for signature, assuming there has been some indication on the Child Support Enforcement Transmittal #1 (or other appropriate document) that legal services are being requested. The New York IV-D agency attorney cannot appear or ask for an adjournment until this is received, and the court proceeding may go forward without counsel's presence. Please emphasize this point to your local offices.

A "Right to Recovery" agreement is not required in cases where the out-of-state IV-D agency is the petitioner (i.e., TANF, MA-only, or Title IV-E foster care cases), as required by federal law, no costs may be recovered.

New York State has always charged its own child support applicants for legal services, and, as such, must charge out-of-state non-TANF petitioners. We are not charging your applicants anything more than what our own applicants are paying for.

Please note that legal services are never mandatory in New York. If your applicants do not wish to avail themselves of legal services, the case will still proceed into court. Once there, either telephonic (or other electronic) testimony will be used, or else the pleadings will be used as evidentiary material. Either way, legal services for your applicants is strictly optional.

Some states have expressed concern over the cost for legal services. There is no set fee, as costs vary from county to county, and may even vary within counties depending upon what services are rendered. Either way, there is no up front cost to your applicants. Any costs incurred will only be deducted from child support actually paid at the rate of 25% of monies collected, until all costs are recouped.

Please disseminate this information to your Interstate Central Registry, as well as to all appropriate state and local offices. I hope this information clarifies the confusion regarding this issue. If you have any questions in regard to this policy, please feel free to contact me at (518) 474-1801, or at rob.velcoff@dfa.state.ny.us.

Sincerely,

Rob Velcoff

Robert Velcoff, Chief
NYS Interstate Central Registry
Division of Child Support Enforcement

attachment

NEW YORK STATE CHILD SUPPORT ENFORCEMENT DIRECTORY
NYS Request for Legal Representation and Right to Recovery Agreement

REQUEST FOR LEGAL REPRESENTATION
AND
RIGHT TO RECOVERY AGREEMENT

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE NUMBER: DAYS: _____ EVENINGS: _____

NAME OF OBLIGOR: _____

SOCIAL SECURITY NUMBER: _____

NAME OF CHILD/CHILDREN: _____

_____

I request legal representation pursuant to 18 NYCRR 347.17 in establishing paternity and/or establishing, increasing or enforcing a support obligation against the above named obligor.

I agree to pay to the New York State Office of Temporary and Disability Assistance (OTDA) or the local district department of social services of the county where any proceeding is brought (LDDSS) the actual cost incurred in providing the services I request.

I hereby assign to OTDA and/or LDDSS the title to and right to receive up to 25% of each child support payment to be received by me on behalf of the children of the obligor until such time that OTDA and/or LDDSS are reimbursed for these costs. If child support payments are made payable through the Support Collection Unit (SCU), I authorize the SCU to pay OTDA and/or LDDSS the amounts assigned above.

I understand that if I do not reimburse OTDA and/or LDDSS for these costs, they may initiate a civil proceeding to recoup the costs which I will be responsible to pay.

_____ _____
OBLIGEE SIGNATURE DATE

State of):
ss
County of):

On the _____ day of _____ , ____ , , to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she/he executed the same.

_____
Notary Public

REQUEST FOR LEGAL REPRESENTATION
AND
RIGHT TO RECOVERY AGREEMENT

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE NUMBER: DAYS: _____ EVENINGS: _____

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