



# STATE OF CONNECTICUT

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RODERICK L. BREMBY  
Commissioner

## MEMORANDUM

To: Individuals Who Commented on the Proposed Regulation Regarding Arrearage Adjustment in Child Support, DSS Reg. No. 13-05

From: Roderick L. Bremby, Commissioner *RLB*

Date: November 4, 2014

Re: Responses to Public Comment

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The following are the responses by the Department of Social Services ("the Department") to comments received from the Attorney Lucy Potter on behalf of Greater Hartford Legal Aid concerning the above-referenced proposed regulation. The Notice of Intent for the proposed regulation was published on the Secretary of the State's website on September 3, 2014. Enclosed is a copy of the proposed regulation with revisions based on the comments received. The Department anticipates submitting the proposed regulation to the Legislative Regulation Review Committee by February 1, 2015.

### § 17b-179b-1

**COMMENT:** The definition of the term "Arrearage" should be narrowed to make it clear that it is limited to the arrearage owing to the State. Conn. Gen. Stats. 17b-179b.

**RESPONSE:** The definition of "arrearage" is consistent with other statutory and regulatory definitions of arrearage or past-due support. The definition of "Arrearage adjustment" in subdivision (2) clarifies that the adjustment applies only to amounts owed to the State.

**COMMENT:** The arrearage adjustment incentive should be as broad as possible to both encourage maximum payment and to reward responsible obligors. An additional definition is proposed to allow for broader relief in the section that defines the amount of the adjustment. Proposed revision: (6) "Current total support obligation" means the current child support obligation in addition to arrearage payments, health care coverage and child care contribution as ordered by the court.

**RESPONSE:** The adjustment amount was purposely correlated to the current support obligation only, exclusive of arrearage payments, health care coverage and a child care contribution, as reflected in § 17b-179b-1 (6). Historically the Arrearage Adjustment Program has had an extremely low participation rate, due in no small part to the stringent payment requirements in the existing regulation. The Department does not want to perpetuate the historically low

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participation rate by imposing an obligation to comply with various other orders, in addition to current support, as a condition of receiving an arrearage adjustment. Also, including the suggested obligations would impose an unreasonable administrative burden on the agency because most child care contribution orders are not tracked by the child support automated system, but only exist in the records of the custodial party unless they become subject to enforcement. Finally, the health care coverage amounts are typically very small relative to the current support component of the child support order.

**COMMENT:** The definition of “voluntary support agreement” should either list the “current child support obligation” or, preferably, reference to the voluntary support agreement in sections 17b-179b-3a(b)(2)(A) and 17b-179b-3a(b)(2)(B)(i) should be deleted.

**RESPONSE:** The proposed regulation defines the term “Voluntary Agreement” (see §17b-179b-1 (15)) and the Department has expanded subsection (d) to reference the “amount of the current child support obligation, if applicable”. In addition, the phrase “current support obligation” has been changed to “current child support obligation” throughout the regulation to more accurately reflect the defined term.

#### **§ 17b-179b-3a (a)(4)**

**COMMENT:** Domestic violence should be relevant to eligibility for the arrearage adjustment program only as it impacts on the appropriateness, as a public policy matter, of rewarding the parenthood program participant. Domestic violence (now more commonly referred to as family violence in the statutes) against the other parent of the child or the child is obviously inconsistent with the program principles, but prior findings against other people may not be.

**RESPONSE:** While the term “family violence” may be the trend in some statutes, at least two statutes affecting DSS most directly (CGS 17b-112a and 17b-112b) still use the term “domestic violence”. Therefore, the term has been retained in the proposed regulation. The Department agrees that prior findings of domestic violence against people other than those involved in the subject case may not be inconsistent with the program principles, and has revised the proposed regulation to limit the exclusion to domestic violence adjudications against the mother or child involved in the case. Adjudications of domestic violence against anyone that are committed by an active program participant will result in termination from the arrearage adjustment program.

**COMMENT:** A lack of prior convictions for domestic violence is the determinant for eligibility. Family violence “convictions” are rare; more typically protective orders issue upon arrests that are resolved through family violence programs or civil restraining orders are issued, following findings at a hearing, when the victim files a motion for a restraining order. An order to stay away from the victim could issue in such a case without a criminal “conviction” of family violence.

**RESPONSE:** The Department revised § 17b-179b-3a (a)(4) adopting the suggested terminology, referring to “adjudications of domestic violence,” and including protective and civil restraining orders as a type of such adjudication.

**COMMENT:** The proposed language limits the disqualification for historical family violence to incidents with the parties to the support action. For family violence that occurs in the course of program participation, the obligor should be disqualified whether or not the violence is targeted against parties to the support action.

**RESPONSE:** The Department agrees and has revised the proposed language as suggested.

**COMMENT:** The provision affording a desk review when there is only an allegation of domestic violence seems internally inconsistent with the regulation as drafted, because a conviction (not an allegation) is necessary to trigger the disqualification. We suggest that there be a general opportunity for desk review. A desk review may be needed where family violence is in issue, because issuance of protective and restraining orders is somewhat confusing, and there should be opportunity to clearly present whatever findings there might be. Moreover, in other situations, a desk review could allow the principles in the statute to govern in cases, e.g. where a person had an unavoidable setback that kept him or her from fulfilling the agreement, but remediation was readily foreseeable, or other situations that are harder to contemplate. For this reason, we propose deleting the desk review from this subsection and adding a section for general desk review at the end of the regulations.

**RESPONSE:** The Department agrees with the comment and has revised the proposed regulation to provide for a general opportunity for a desk review.

**§ 17b-179b-3a (b)(2)(A)**

**COMMENT:** This subsection specifies the amount of adjustment to be 50% of the “dollar amount paid on such current support obligations.” We recommend that the amount be keyed to payment of the total obligation to provide further incentive for payment consistent with the overall intent of the proposed regulation. Also, this subsection refers to the current support obligation identified in the agreement. The definition of “voluntary agreement” lists the agreement contents and does not specify that the current support obligation is identified in the voluntary agreement. The amount is readily identifiable, so does not need to be specified in the agreement, but if that is the intent, the definition of “voluntary agreement” should be changed to include the current support obligation.

**RESPONSE:** These points are addressed in the responses to comments concerning § 17b-179b-1.

**§ 17b-179b-3a (b)(2)(B)(i)**

**COMMENT:** The term “arrearage adjustments . . . shall continue until the next review” is a little ambiguous, perhaps because the word “continue” in court means postpone. The language should be more direct. Tracking eligibility for the adjustment to payment of 50% of the current support obligation is fair. As suggested above, the obligor should be allowed an adjustment up to 50% of the current total support obligation, i.e. being credited for a portion of the total obligation paid beyond the current cash support.

The reference to the voluntary agreement is deleted, for the same reasons discussed in the preceding comment. If the reference is kept, the voluntary agreement definition should be expanded.

Proposed revision: (i) If the eligible obligor has paid fifty percent or more of the current support obligation identified in the voluntary agreement, the arrearage shall be adjusted ~~—adjustments in accordance with subparagraph (A) . The voluntary agreement shall continue until the next review.~~

**RESPONSE:** No change was made to the proposed amendments in response to this comment. The Department believes the plain language meaning of the word “continue” in the context of the proposed regulation will be understandable to the general public, regardless of the specialized meaning it may have in the context of a court hearing. The agency also agrees that the 50% adjustment is a fair amount and provides sufficient incentive for obligors to pay their current support. The adjustment is not being extended to payment orders beyond the current support obligation for the reasons stated in the responses concerning 17b-179b-1. The definition of voluntary agreement was expanded as suggested and explained in the responses concerning 17b-179b-1.

**§ 17b-179b-3a (b)(3)(A)**

**COMMENT:** The following language is proposed to make it clear (assuming this was intended) that a support calculation will be done contemporaneously with the eligibility determination (rather than relying on an existing order from a previous time.) We also propose that the amount include any HUSKY cash contribution the obligor would otherwise be subject to were he not residing with the child. The reason for the latter is to parallel the proposed expansion of the adjustment amount (see discussion above) and to maximize the reward for responsible behavior.

Proposed revision:

(A) General Rule

An eligible obligor who resides with the child and is employed a minimum of one hundred twenty hours per month shall receive arrearage adjustments at the end of each calendar quarter

subject to subparagraphs (B) and (C) of this subdivision. The amount of such adjustment shall be fifty percent of the ~~an imputed presumptive~~ current support amount calculated under the child support and arrearage guidelines adopted pursuant to section 46b-215c of the Connecticut General Statutes, based solely on the eligible obligor's net income at the time he is found eligible for the adjustment. Such adjustment may be received during participation in the Parenthood Program and after successful completion of such program.

**RESPONSE:** In response to this comment, the Department revised the proposed regulation as follows:

“(A) General rule

An eligible obligor who resides with the child and is employed a minimum of one hundred twenty hours per month shall receive arrearage adjustments at the end of each calendar quarter subject to subparagraphs (B) and (C) of this subdivision. The amount of such adjustment shall be fifty percent of the presumptive current support amount calculated under the child support and arrearage guidelines adopted pursuant to section 46b-215c of the Connecticut General Statutes, based solely on the eligible obligor's net income at the time such obligor is found eligible for such adjustment. Such adjustment may be received during participation in the Parenthood Program and after successful completion of such program.”

The revision clarifies that the presumptive current support calculation is done when the obligor is found eligible for the adjustment, as recommended by the commenter. The word “presumptive” is retained in favor of “imputed”, however, to be consistent with the terminology used in the guidelines worksheet. Any HUSKY cash contribution is not included in the amount for the reasons stated in the responses concerning 17b-179b-1.

**§ 17b-179b-3a (b)(3)(B)(ii)**

**COMMENT:** The 120 hours should be the average over the three month period, to give the obligor the benefit if hours fall short one month but are compensated in the others.

**RESPONSE:** The Department agrees with the comment and revised paragraphs (B)(i) and (B)(ii) for the reason stated in the comment.

**COMMENT:** An additional subsection should be added to the proposed regulation as follows: “An obligor who fails to satisfy a voluntary agreement and is terminated from the program may re-apply after six months. If all other eligibility requirements are met the obligor can again qualify to enter into a voluntary arrearage adjustment agreement.”

**RESPONSE:** The Department has added subsection (c) to permit obligors who are terminated from the arrearage adjustment program to re-apply and enter into a new voluntary agreement no earlier than six months following their date of termination. Obligor must again satisfy all

eligibility requirements to qualify for arrearage adjustments. The language of this additional subsection is as follows:

**COMMENT:** Affording a desk review when people are denied arrearage adjustments would allow for a fair review of factually complex scenarios, such as family violence, and also allow for reversals where equitable factors, as delineated in the enabling statute, come into play. It could also be useful to be sure that child support is fully credited, e.g. documented in kind payments and child care costs that are not tracked in the SES system until an action is brought for non-payment.

**RESPONSE:** The Department has added a new subsection (d) to section 17b-179b-3a to provide a desk review to obligors who are denied eligibility, not reinstated, suspended or terminated from the program, or who received an alleged incorrect adjustment. The desk review will be provided within sixty days of a request received within thirty days of notice of the agency's action. However, a review of an alleged incorrect adjustment will only be provided annually if requested. The desk review, as included in the proposed regulation, will be based on the factors specifically described in the proposed regulation, rather than those listed in § 17b-179b of the Connecticut General Statutes. The statutory factors are helpful guideposts in designing an appropriate regulatory structure, but would be administratively impractical and potentially arbitrary to apply in individual cases.

*Section 1. Section 17b-179b-1 of the Regulations of the State of Connecticut is amended to read as follows:*

**Section 17b-179b-1. Definitions**

As used in sections 17b-179b-1 through 17b-179b-4, inclusive, of the Regulations of Connecticut State Agencies:

(1) “Arrearage” means either one or a combination of (A) court ordered current support payments which have become due and payable and remain unpaid; and (B) support due for past periods that has been found owing by a court of competent jurisdiction, whether or not presently payable;

(2) “Arrearage adjustment” means a reduction, by the Department of Social Services [or any bureau, division, or agency of the department, or agency under cooperative or purchase of service agreement therewith,] of the total arrearage owed [as of the first day of the qualifying year] as a result of the signing of a voluntary agreement by a noncustodial parent to the State in a child support case in accordance with sections 17b-179b-1 to 17b-179b-4, inclusive, of the Regulations of Connecticut State Agencies, and includes an equivalent reduction of the amount of unreimbursed assistance;

(3) “Arrearage adjustment program” means the system of scheduled arrearage adjustments prescribed by sections 17b-179b-1 to 17b-179b-4, inclusive, of the Regulations of Connecticut State Agencies for the purpose of encouraging the positive involvement of noncustodial parents in the lives of their children and encouraging noncustodial parents to make regular support payments;

(4) “Child support case” means one in which the Department of Social Services or any bureau, division, or agency of the department, or agency under cooperative or purchase of service agreement therewith, is providing child support enforcement services under Title IV-D of the federal Social Security Act;

(5) “Commissioner” means the commissioner of the Department of Social Services or such commissioner’s designee;

[(5)] (6) “Current child support obligation” means a court ordered amount for the ongoing support of a child, [and does not include payments on an] exclusive of arrearage [;] payments, health care coverage and a child care contribution;

[(6)] (7) “Custodial party” means the individual who has primary physical custody of a child.[, or, in foster care cases, the commissioner of the Department of Children and Families];

(8) “Desk review” means an informal investigation of the automated and paper records of the Department of Social Services pertaining to a noncustodial parent or obligor participating in the arrearage adjustment program;

[(7)] (9) “Domestic violence” means (A) physical acts that result in or are threatened to result in physical or bodily injury; (B) sexual abuse; (C) sexual activity involving a child in the home; (D) forced participation in nonconsensual sexual acts or activities; (E) threats of or attempts at physical or sexual abuse; (F) mental abuse; or (G) neglect or deprivation of medical care;

[(9)] “Parenthood Program” means any project, site or program that meets the requirements of section 17b-179b-2 of the Regulations of Connecticut State Agencies[, and shall include the research and demonstration projects established under subsection (d) of section 1 of Public Act 99-193;]

[(8)] (10) “Noncustodial parent” means the parent who does not have primary physical custody of a child;

[(9)] (11) "Obligor" means the individual required to make payments under a current child support or arrearage obligation;

[(10)] "Qualifying year" means the twelve-month period beginning with the date a noncustodial parent enters into a voluntary agreement to participate in the arrearage adjustment program;]

[(12)] "Parenthood Program" means any project, site or program that meets the requirements of section 17b-179b-2 of the Regulations of Connecticut State Agencies;

[(12)] (13) "Starting arrearage" means the total arrearage owed[,as of the first day of the qualifying year, to the State of Connecticut] by a noncustodial parent or obligor to the State of Connecticut in a child support case on the date a voluntary agreement is executed; [and]

[(13)] (14) "Unreimbursed assistance" means the portion that has not been repaid to the State of Connecticut of the total assistance provided under the aid to families with dependent children, state-administered general assistance or temporary family assistance programs to or [in] on behalf of either parent, such parent's spouse, or such parent's child; such portion being the subject of the State's claim under section 17b-93 of the Connecticut General Statutes;[.] and

(15) "Voluntary Agreement" means a document signed by the noncustodial parent or obligor and the commissioner, which:

(a) states the rights and responsibilities of the noncustodial parent or obligor under the arrearage adjustment program,

(b) defines the activities required for participation in the arrearage adjustment program,

(c) specifies the outcomes expected from successful participation in the arrearage adjustment program, and

(d) states the total arrearage amount that may be subject to adjustment and the amount of the current child support obligation, if applicable.

*Sec. 2. Section 17b-179-2 of the Regulations of the State of Connecticut is amended to read as follows:*

#### **Section 17b-179b-2. Parenthood Program requirements**

##### **[(a) In general]**

##### **[(1)] (a) Certification**

Participants in a Parenthood Program shall be eligible for an arrearage adjustment under section [17b-179b-3] 17b-179b-3a of the Regulations of Connecticut State Agencies only if such program is [designated initially and] certified [annually] by the [Commissioner of Social Services] commissioner as a participating program [that] which provides services that promote the positive involvement and interaction of noncustodial parents with their children.

##### **[(2) Exception**

Notwithstanding subdivision (1) of this subsection, the research and demonstration projects established under subsection (d) of section 1 of Public Act 99-193 shall not require certification to participate in the arrearage adjustment program.]

**(b) Program components**

A Parenthood Program seeking [designation or] certification as a participating program under subsection (a) of this section shall demonstrate to the satisfaction of the [Commissioner of Social Services] commissioner that such program provides a minimum curriculum of at least twenty-four hours of programming over [an eight] a twelve week period, and a plan of service to assist male or female noncustodial parents to [identify and resolve problems,] build healthy relationships with their children[,] and establish or strengthen collaborative co-parenting alliances with the custodial party. To meet these requirements, a participating program shall provide services directly and by referral in at least the following areas:

- (1) education, training and employment [placement] readiness;
- (2) parenting education and services to strengthen the parent-child relationship;
- (3) counseling, support and self-help;
- (4) legal assistance and court advocacy;
- (5) mental health and substance abuse services;
- (6) housing;
- (7) transportation;
- (8) domestic violence services;
- (9) conflict resolution and anger management;
- (10) mentoring;
- (11) relationship and co-parenting mediation; and
- (12) pregnancy prevention.

**(c) Administrative requirements**

A Parenthood Program seeking [designation or] certification as a participating program under subsection (a) of this section shall demonstrate to the satisfaction of the [Commissioner of Social Services] commissioner that such program has and will use the forms and procedures prescribed by such commissioner to administer the provisions of sections 17b-179b-1 to [17b-179b-4] 17b-179b-3a, inclusive, of the Regulations of Connecticut State Agencies.

*Sec. 3. The Regulations of the Connecticut State Agencies are amended by adding section 17b-179b-3a as follows:*

**(NEW) Section 17b-179b-3a. Arrearage adjustment program for Parenthood Program participants**

**(a) Eligibility for program**

A noncustodial parent or obligor shall be eligible for the arrearage adjustment program for Parenthood Program participants if the Department of Social Services determines, based on information provided by a participating program or otherwise available to the department, that the requirements of this subsection are met.

(1) The noncustodial parent or obligor is participating and making satisfactory progress in a Parenthood Program, as demonstrated by quantifiable achievements that facilitate positive involvement with the child or the participant's ability to provide support, such as (A) signing a paternity acknowledgment, (B) signing a voluntary support agreement, (C) signing a co-parenting or mediation agreement, (D) attending one or more child development classes or (E) registering with the Department of Labor for skills training;

(2) The noncustodial parent meets program goals for appropriate involvement and interaction with the child or children and (A) has an active child support case where an arrearage is owed to the State of Connecticut and there is a current payment due to the custodial party or (B) is an obligor who now resides with the child or children to whom support is owed;

(3) The noncustodial parent or obligor applies for an arrearage adjustment and enters into a voluntary agreement as defined in subdivision (15) of section 17b-179b-1 of the Regulations of Connecticut State Agencies; and

(4) The noncustodial parent or obligor has no judicial adjudications of domestic violence against the mother of the child or the child involved in the child support case, including protective or civil restraining orders, as known or reported to the Department of Social Services or attested by such parent or obligor. Any judicial adjudication of domestic violence committed by a participant of the program will result in such participant's immediate termination from the arrearage adjustment program.

**(b) Adjustment amounts**

**(1) Completes Parenthood Program**

An eligible noncustodial parent or obligor who successfully completes a parenthood program shall receive a one-time arrearage adjustment of ten percent of the starting arrearage.

**(2) Pays current child support obligation**

**(A) General rule**

An eligible noncustodial parent or obligor who makes payments on the current child support obligation identified in the voluntary agreement shall receive arrearage adjustments in the amount of fifty percent of the dollar amount paid on such current child support obligation, subject to subparagraph (B) of this subsection. Such adjustments may be received during participation in the Parenthood Program and after successful completion of such program.

**(B) Annual review of payment record**

At the end of each year of eligibility the commissioner shall review the eligible obligor's payment record. Based on such review the commissioner shall take action in accordance with clauses (i) and (ii) of this subparagraph.

(i) If the eligible obligor has paid fifty percent or more of the current child support obligation identified in the voluntary agreement, arrearage adjustments in accordance with subparagraph (A) shall continue until the next review.

(ii) If the eligible obligor has paid less than fifty percent of the current child support obligation identified in the voluntary agreement the commissioner shall suspend arrearage adjustments for a period of six months after which the commissioner shall conduct a compliance review of the obligor's payment record in accordance with subparagraph (C) of this subsection.

(C) Compliance review

At the end of the six month suspension required under clause (ii) of subparagraph (B) of this subdivision the commissioner shall again review the obligor's payment record, and:

(i) During the suspension period, if the obligor has paid fifty percent or more of the current child support obligation identified in the voluntary agreement the commissioner shall reinstate arrearage adjustments for a six month period after which the commissioner shall conduct the regularly scheduled annual review of the obligor's payment record for compliance.

(ii) During the suspension period, if the obligor has paid less than fifty percent of the current child support obligation identified in the voluntary agreement the commissioner shall terminate arrearage adjustments in the child support case identified in the voluntary agreement.

(3) Resides with the child

(A) General rule

An eligible obligor who resides with the child and is employed a minimum of one hundred twenty hours per month shall receive arrearage adjustments at the end of each calendar quarter subject to subparagraphs (B) and (C) of this subdivision. The amount of such adjustment shall be fifty percent of the presumptive current support amount calculated under the child support and arrearage guidelines adopted pursuant to section 46b-215c of the Connecticut General Statutes, based solely on the eligible obligor's net income at the time such obligor is found eligible for such adjustment. Such adjustment may be received during participation in the Parenthood Program and after successful completion of such program.

(B) Quarterly compliance review

The eligible obligor who resides with the child shall provide the commissioner quarterly documentation of employment and income required under subparagraph (A) of this subdivision.

(i) If the eligible obligor who resides with the child has maintained a minimum average of one hundred twenty hours employment per month during the three month quarterly review period, arrearage adjustments in accordance with subparagraph (A) of this subdivision shall be made for the completed quarter.

(ii) If the eligible obligor who resides with the child has not maintained a minimum average of one hundred and twenty hours employment or fails to provide the commissioner documentation as required under subparagraph (A) of this subdivision, arrearage adjustments for the eligible obligor shall be suspended for the completed quarter but such obligor shall be eligible for an arrearage adjustment for the following quarter subject to subparagraph (C) of this subdivision.

(C) Reinstatement and termination from the program

(i) If the eligible obligor who resides with the child becomes employed and provides the commissioner documentation in accordance with subparagraph (B) of this subdivision during the quarter following the suspension period, the eligible obligor shall receive an arrearage adjustment in accordance with subparagraph (A) of this subdivision for the completed quarter.

(ii) If the eligible obligor who resides with the child fails to meet the requirements of subparagraphs (A) and (B) of this subdivision for two consecutive quarterly review periods, the commissioner shall terminate the eligible obligor from the arrearage adjustment program.

**(c) Eligibility following termination from program**

An obligor who is terminated from the arrearage adjustment program for Parenthood Program participants pursuant to clause (2)(C)(ii) or clause (3)(C)(ii) of this subsection may re-apply for such program no earlier than six months following the date of termination. If all other eligibility requirements are met the obligor can again enter into a voluntary agreement and receive adjustments under subsection (b) of this section.

**(d) Desk review**

**(1) Right to review**

The commissioner shall provide a desk review to any noncustodial parent or obligor who is denied eligibility for or reinstatement in the arrearage adjustment program for Parenthood Program participants, suspended or terminated from such program, or who allegedly received an incorrect adjustment amount.

**(2) When held**

A desk review under this subsection shall be provided upon written request of the noncustodial parent or obligor received within thirty calendar days of notice of denial of eligibility, failure to reinstate, suspension or termination. A desk review based on an alleged incorrect adjustment amount shall be provided no more than once each calendar year.

**(3) Notice of results**

Notice of the results of a desk review shall be issued to the noncustodial parent or obligor by the commissioner within sixty days of receipt of a timely written request for such review.

*Sec. 4. Section 17-179b-3 of the Regulations of Connecticut State Agencies is repealed.*