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|---|----------------|--------------|
| 1 | 9/2/2020 | Rhode Island |

2 10/5/2020 American Public Health
Association Caucus On Men's
Health

3 10/1/2020 Office of Chief Legal Counsel
Department of Revenue
Child Support Enforcement

Comment

Good afternoon- The Uniform Parentage Act has been enacted in four states: Washington, Vermont, California, and Rhode Island. It will become effective in RI in January of 2021 after three years of introduction and testimony. The UPA is pending in six states: Colorado, Pennsylvania, Kentucky, Connecticut, Maine, Massachusetts. Further it is my understanding that two states: Nevada and Massachusetts have enacted gender neutral VAP laws. Child support and Vita Records staff are trying to assist same gender parents to acknowledge paternity within archaic laws, regulations and procedures. This issue no longer is focused on who the biological father is. The issue is now about who wish to be responsible and accountable for the child a path or legal mechanism to do so. The Voluntary Paternity Acknowledgment proposed requirements recently published by OCSE for comment does not support the current family dynamic and excludes a large population who simply wish to be legally declared intended parents and accountable for their children. I would suggest removing the terms "mother and father" throughout the acknowledgment form and substitute for the term "parent". I would suggest changing the form to Voluntary Acknowledgment of "Parentage" I would suggest removing the term "husband" and substituting "spouse". Child support rules and regulations should be inclusive of all parents, fairly and equally applied, regardless of gender or the manner in which they became parents. Thank you for considering my comments.

I am writing in my capacity as Chair-Emeritus of the American Public Health Association Caucus On Men's Health and as a health professional who has interacted with many men who are impacted by this policy. It is my experience and my observation in talking with men who deal with paternity matters that Fathers are all too often appear to be considered incidental to the whole process of child support. It is distressing to learn that the current rules and system of child support enforcement treats the rights of the true and proper father with laxity rather than with the seriousness that it involves. Everyone should agree that a diligent and rigorous process to establish true paternity is of paramount importance. Children have an innate need to connect to their true father whenever possible. The reasons for this are many including important sociologic factors such as the father's ability to provide emotional support, physical care, and other siblings and other relatives. In addition knowing the identity of the true father is an important link to family medical history including genetic conditions, and numerous other important needs of the child which extend through their life. The bottom line is that it is important to "establish paternity," it is of utmost importance to establish paternity accurately. Everyone engaged in child support enforcement knows that false paternity establishments are wide-spread and most often are targeted against low-income men who lack the resources to fight the injustice. There is a great deal of evidence that all too often paternity is incorrectly attributed due to poor processes, ignorance of situations or procedures or other non-intentional reasons. It is also a most unfortunate reality that a but astonishingly notable, percentage of instances it is intentionally established falsely. The causes of false paternity are multiple and most agree that the current data elements required are far not adequate to deter false paternity establishments and thus lead to outcomes of incorrect paternity establishment. I urge you to engage in a redesign of the data elements in a way that reflects the various scenarios of how men know they have just fathered a child and how social services, health care and governmental agencies in the community can help a new father or identify the new father to establish legal paternity. One particularly poor practice is hospital staff pressuring a non-father male friend who is present at birth to sign for paternity at the time of delivery. Unfortunately many well-meaning men sign in a compassionate act to help the new mother and the hospital staff to "do the right thing to get the paperwork filed on time" really it is the wrong thing for all concerned. Five areas for reform that you may wish to consider are:

1. The person identified as the proposed father must be informed outside of the presence of the mother that only DNA can establish paternity with accuracy. Further that mother must be informed that DNA testing is immediately available at no cost or minimal cost and that a DNA test is strongly recommended before signing an affidavit of acknowledgement of paternity.
2. The proposed father must be informed of the laws of the state governing the effects of signing an acknowledgement of paternity and be informed that it may become impossible to rescind this once it is signed and filed.
3. The proposed father must not be presented with an affidavit of acknowledgement prior to receiving counseling about the accuracy of DNA testing and the legal implications of signing, the need for DNA testing to assure accuracy, and the risks of making an emotional decision without the benefit of DNA confirmation.
4. Hospital staff must be properly trained in the implications of attestations of paternity and its implications and hospitals and birthing facilities should incorporate the above into their standard policies and procedures.
5. Hospital and other birthing facility staff must be required to certify on the official medical record that elements 1-3 above were followed and that the hospital actively encouraged the proposed father to obtain DNA test results and that all hospital staff members having contact with the proposed father have been trained to vigorously work to prevent false paternity establishments.

The Child Support Enforcement Division of the Massachusetts Department of Revenue (DOR) submits these comments on the information collection activity regarding voluntary acknowledgment of paternity and the required data elements for paternity affidavits, published at 85 Fed. Reg. 47216 on August 4, 2020. In general, we believe the current data elements properly balance providing a well-defined voluntary acknowledgment process to expedite paternity establishment while providing information for the proper performance of the child support agency. We write to suggest that OCSE consider amending the current data requirements to use gender neutral terminology to help ensure that all families have equal access to establish legal parentage.

Diverse families represent an increasing segment of the child support agency's caseload across the country. The Supreme Judicial Court decision in *Goodridge v. DPH*, 440 Mass. 309 (2003), brought Massachusetts to the forefront as one of the first states to recognize a constitutional right to same-sex marriage. The Supreme Court in *Obergefell v. Hodges*, 135 U.S. 2584 (2015) also recognized the right to same-sex marriage under the United States Constitution. Through legislation or judicial action many states have expanded legal parentage to individuals in familial configurations not originally contemplated when OCSE promulgated the required data elements back in 2003. For example, four states have enacted versions of the most recent Uniform Parentage Act and another seven states have similar legislation, including Massachusetts.

While the courts provided couples with a means to define a legal relationship between each other, scientific advances in artificial reproductive technology also provided individuals with the means to become a parent in a multitude of ways. The biological parent may serve as a donor of genetic material or act as a surrogate mother, with no intention of becoming a legal parent. Conversely, legal parentage can be established for individuals absent any biological or genetic connection to the child.

Some states and the Uniform Parentage Act recognize that more than two parents can be named legal parents. These social advances force states to examine the underlying processes conferring legal parental status as current practices may not adequately address the needs of children brought into a diverse family structure.

In *Partanen v. Gallagher*, 475 Mass. 632 (2016), the Massachusetts Supreme Judicial Court was asked to determine if a woman in a non-marital relationship with no biological connection to two children could establish legal parentage under the non-marital children statute, Massachusetts General Laws Chapter 209C. They raised the children together for years but never formalized legal parentage through adoption, or court action. The court held that she could bring the legal action as the phrase "adjudication of paternity" was gender neutral and the statute provides a "means for establishing parentage regardless of the parent's gender". The court suggested that a voluntary

Section 466(a)(5)(C) of the Social Security Act (42 USC §666(a)(5)(C)) requires a State have a procedure for voluntary Acknowledgment of paternity, permitting a mother and a putative father to voluntarily establish the paternity of a child born out of wedlock. Section 652(a)(7) of the Act (42 U.S.C. §652(a)(7)) requires the Secretary of Health and Human Services to "specify the minimum requirements of the form to be used for the voluntary acknowledgment of paternity which shall include the social security number of each parent." These provisions were adopted in order to create a non-judicial way to use biological ties to recognize the legal father of a child, who is then vested with the legal rights, and obligations attached to that relationship. Given the varying familial structures that have been recognized in the modern family law, the focus on biological ties reflected in the existing Acknowledgment regime may be a hinderance to the program and the responsibilities of the agencies.

1. Is the proposed collection of information necessary for the proper performance of the functions of the (IV-D) agency? The continued collection of the data set forth in Table 1 is necessary for the proper performance of the functions of the IV-D agency. The form provides the agency with the information necessary to fulfill its responsibility in establishing orders of support by identifying the individuals who are responsible for the support of the child, and information to assist in locating those individuals.

2. Is the estimate of the burden of the proposed collection of information accurate? ERICSA takes no position on the time estimate as we do not know how the estimate was determined.

3. The quality, utility, and clarity of the information to be collected as it stands, the data is clear for those states that provide for Acknowledgment of paternity executed between the biological mother and the biological father.

4. Are there ways to minimize the burden of collection of information on respondents? The collection of data is more burdensome in states where an Acknowledgment of parentage is used as opposed to an acknowledgment of paternity. For parentage acknowledgment, the data does not translate, as one party may be designated as mother/biological mother, the other may only be designated by "putative" elements should be amended as explained below to minimize the burden of collection of information on child support programs. For parentage acknowledgment, in terms of requiring those programs to have to keep additional information from the form or instead, the data to re-categorize it to fit the reporting requirements.

5. Other concerns There is a need to modernize the "Complete List of Required and Optional DATA elements to reflect newly created parent-child relationships." The requirement that the States adopt a simple, non-judicial process which would allow a biological mother of a child and that child's putative biological father to voluntarily establish the paternity of a child born out of wedlock has been a requirement of the IV-D program since 1996. The Acknowledgment process is supposed to recognize the biological and legal ties between the parents and the child, but increasingly, parent-child relationships are being formed in ways that do not rely on such biological ties.

The Acknowledgment process currently permits biological parents to establish legal ties to a child born out of wedlock to protect the interests of the parents and the child. Except in a handful of states, the non judicial acknowledgment process focuses on biological ties to the child to prevent non judicial "adoptions" of children born out of wedlock by requiring both parents be "biological" parents of the child. However, this has not always been the case; there are anecdotal reports that the "father" who signs the Acknowledgment is often not the biological father.

Response

Thank you for your comments which we will consider in our future work. Title IV-D of the Social Security Act and related federal minimum paternity establishment requirements for state child support laws and programs. Section 466(a)(5)(C)(i) of the Social Security Act requires a state to have procedures for a "simple civil process for voluntarily acknowledging paternity under which the State must provide the putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally, or by audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, minority status) and responsibilities that arise from, signing the acknowledgment." Section 466(a)(5)(C)(iv) of the Act requires an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by section 452(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in accordance with its procedures."

Section 452(a)(7) of the Act requires the Secretary of Health and Human Services to "specify the minimum requirements of a voluntary acknowledgment of paternity which shall include the social security number of each parent and, after consultation with the Secretary, elements as determined by such designee." OCSE recognizes that there are various family structures and that the statutory requirements for Acknowledgement of Paternity do not serve all families. OCSE does not prohibit states from including additional elements on the voluntary acknowledgment affidavit. As long as a state is able to meet the requirements of section 466(a)(5)(C) of the Act and establish paternity cases, a state may adopt a gender neutral acknowledgment law and procedure that allows for the establishment of parentage.

Thank you for your comments which we will consider in our future work. OCSE agrees fully with the commenter that paternity should always be undertaken in an appropriate manner to ensure that paternity is established accurately. We thank the commenter for the reform areas for the field to consider. Most of these reform suggestions are not currently required by federal law or regulation. Testing at no cost before signing any affidavit, so such reforms would require legislative or regulatory action to implement federal reform area #4, that hospital staff must be appropriately trained, is addressed in the regulation under 45 CFR 303.5(g)(6). For 45 CFR 303.5(g) that requires states to operate voluntary establishment programs as follows:

(g) Voluntary paternity establishment programs. (1) The State must establish, in cooperation with hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, a program for voluntary paternity establishment services.

(i) The hospital-based portion of the voluntary paternity establishment services program must be operational in all private and public hospitals statewide and must provide voluntary paternity establishment services focusing on the period immediately before and after the birth of the child.

(ii) The voluntary paternity establishment services program must also be available at the State birth record agencies, and at other entities designated by the State and participating in the State's voluntary paternity establishment program. These entities may include the following types of entities:

(A) Public health clinics (including Supplementary Feeding Program for Women, Infants, and Children (WIC) and Maternal and Child Health (MCH) centers);

(B) Agencies providing assistance or services under Title IV-A of the Act, agencies providing food stamp eligibility service, and child support enforcement (IV-D) services;

(C) Head Start and child care agencies (including child care information and referral providers), and individual child care providers;

(D) Community Action Agencies and Community Action Programs;

(E) Secondary education schools (particularly those that have parenthood education curricula);

(F) Legal Aid agencies, and private attorneys; and

(G) Any similar public or private health, welfare or social services organization.

(2) The hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program must, at a minimum:

(i) Provide to both the mother and alleged father:

(A) Written materials about paternity establishment,

(B) The forms necessary to voluntarily acknowledge paternity,

(C) Notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the responsibilities of, paternity establishment (if a parent is a minor, due to minority status) and responsibilities or acknowledging paternity, and

(D) The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father the opportunity to voluntarily acknowledge paternity;

(iii) Afford due process safeguards; and

(iv) File signed original of voluntary acknowledgments or adjudications of paternity with the State registry of birth records (or with another designated entity) for comparison with information in the State case registry.

(3) The hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a

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