

CHILD SUPPORT AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Nathan C. Tanner

AN ACT RELATING TO HUMAN SERVICES; CLARIFYING THE DUTY OF A HOSPITAL IN ESTABLISHING THE PATERNITY OF A CHILD; CLARIFYING THE STATE'S RIGHT TO THE ASSIGNMENT OF A SUPPORT OBLIGATION WHEN PUBLIC ASSISTANCE IS PROVIDED; PERMITTING A DECLARATION OF PATERNITY TO BE WITNESSED INSTEAD OF NOTARIZED; AND MAKING TECHNICAL AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

26-2-5, as last amended by Chapter 232, Laws of Utah 1997

35A-3-108, as renumbered and amended by Chapters 174 and 232, Laws of Utah 1997

62A-11-504, as repealed and reenacted by Chapter 232, Laws of Utah 1997

78-45-7.1, as last amended by Chapter 118, Laws of Utah 1994

78-45e-3, as last amended by Chapter 232, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-2-5** is amended to read:

26-2-5. Birth certificates -- Execution and registration requirements.

(1) As used in this section, "birthing facility" means a general acute hospital or birthing center as defined in Section 26-21-2.

(2) For each live birth occurring in the state, a certificate shall be filed with the local registrar for the district in which the birth occurred within ten days following the birth. The certificate shall be registered if it is completed and filed in accordance with this chapter.

(3) (a) For each live birth that occurs in a birthing facility, the administrator of the birthing facility, or his designee, shall obtain and enter the information required under this chapter on the certificate, securing the required signatures, and filing the certificate.

(b) (i) The date, time, place of birth, and required medical information shall be certified by the birthing facility administrator or his designee.

(ii) The attending physician or nurse midwife may sign the certificate, but if the attending physician or nurse midwife has not signed the certificate within seven days of the date of birth, the birthing facility administrator or his designee shall enter the attending physician's or nurse midwife's name and transmit the certificate to the local registrar.

(iii) The information on the certificate about the parents shall be provided and certified by the mother or father or, in their incapacity or absence, by a person with knowledge of the facts.

(4) (a) For each live birth to an unmarried mother that occurs in a birthing facility, the administrator or director of that facility, or his designee, shall:

(i) provide the birth mother and biological father, if present, with:

(A) a voluntary declaration of paternity form published by the state registrar;

~~[(ii) provide]~~ (B) oral and written notice to the birth mother and biological father of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration; and

(C) the opportunity to sign the declaration;

~~[(iii) (i) [provide notarization of] witness the [signatures required on the form] signature of a birth mother or biological father in accordance with Section 78-45e-3 if the signature occurs at the hospital;~~

~~[(iv)] (iii)~~ enter the biological father's information on the original birth certificate, but only if the mother and biological father have signed a voluntary declaration of paternity or a court or administrative agency has issued an adjudication of paternity; and

~~[(v)] (iv)~~ file the completed declaration with the original birth certificate.

(b) The state registrar shall file the information provided on the voluntary declaration of paternity form with the original birth certificate and may provide certified copies of the declaration of paternity as otherwise provided under Title 78, Chapter 45e, Voluntary Declaration of Paternity Act.

(5) (a) For live births that occur outside a birthing facility, the certificate shall be completed and filed by the physician, nurse, midwife, or other person primarily responsible for providing assistance to the mother at the birth. If there is no such person, the father shall complete and file the

certificate. In his absence, the mother shall complete and file the certificate, and in the event of her death or disability, the owner or operator of the premises where the birth occurred shall do so.

(b) The certificate shall be completed as fully as possible and shall include the date, time, and place of birth, the mother's name, and the signature of the person completing the certificate.

(6) (a) The state registrar shall publish a form for the voluntary declaration of paternity, a description of the process for filing a voluntary declaration of paternity, and of the rights and responsibilities established or effected by that filing, in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act.

(b) Information regarding the form and services related to voluntary paternity establishment shall be made available to birthing facilities and to any other entity or individual upon request.

(7) The name of a father may only be included on the birth certificate of a child of unmarried parents if:

- (a) the mother and father have signed a voluntary declaration of paternity; or
- (b) a court or administrative agency has issued an adjudication of paternity.

(8) Voluntary declarations of paternity and adjudications of paternity by judicial or administrative agencies shall be filed with and maintained by the state registry for the purpose of comparing information with the state case registry maintained by the Office of Recovery Services pursuant to Section 62A-11-104.

Section 2. Section **35A-3-108** is amended to read:

35A-3-108. Assignment of support.

(1) (a) The division shall obtain an assignment of support from each applicant or client regardless of whether the payment is court ordered.

(b) [~~Any right to support from any other person that has accrued at the time the assignment is executed and that will accrue during receipt of assistance or, if none is executed, at the time of application for assistance, passes to the division upon~~] Upon the receipt of assistance, any right to receive support from another person passes to the state, even if the client has not executed and delivered an assignment to the division as required by Subsection (1)(a).

(c) The right to support described in Subsection (1)(b) includes a right to support in the

applicant's or client's own behalf or in behalf of any family member for whom the applicant or client is applying for or receiving assistance.

(2) An assignment of support or a passing of rights under Subsection (1)(b) includes payments ordered, decreed, or adjudged by any court within this state, any other state, or territory of the United States and is not in lieu of, and shall not supersede or alter, any other court order, decree, or judgment.

(3) When an assignment is executed or the right to support passes to the department under Subsection (1)(b), the applicant or client is eligible to regular monthly assistance and the support paid to the division is a refund.

(4) All sums refunded, except any amount which is required to be credited to the federal government, shall be deposited into the General Fund.

(5) On and after the date a family stops receiving cash assistance, an assignment of support under Subsection (1) shall not apply to any support that accrued before the family received such assistance if the department has not collected the support by[: (a) ~~September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or (b)] the date the family stops receiving cash assistance, if the assignment is executed on or after October 1, [2000] 1998.~~

(6) The department shall distribute arrearages to families in accordance with the Social Security Act, 42 U.S.C. Sec. 657.

(7) The total amount of child support assigned to the department and collected under this section may not exceed the total amount of cash assistance received by the recipient.

Section 3. Section **62A-11-504** is amended to read:

62A-11-504. Procedures for commencing income withholding.

(1) If income withholding has not been commenced in connection with a child support order, an obligee or obligor may commence income withholding by:

- (a) applying for IV-D services from the office; or
- (b) filing an ex parte motion for income withholding with a district court of competent jurisdiction.

(2) The office shall commence income withholding in accordance with Part 4 of this chapter upon receipt of an application for IV-D services under Subsection (1)(a).

(3) A court shall grant an ex parte motion to commence income withholding filed under Subsection (1)(b) regardless of whether the child support order provided for income withholding, if the obligee provides competent evidence showing:

(a) the child support order was issued or modified after January 1, 1994, and the obligee or obligor expresses a desire to commence income withholding;

(b) the child support order was issued or modified after January 1, 1994, and the order contains a good cause exception to income withholding as provided for in Section 62A-11-502, and a delinquency has occurred; or

(c) the child support order was issued or modified before January 1, 1994, and a delinquency has occurred.

(4) If a court grants an ex parte motion under Subsection (3), the court shall order the clerk of the court or the requesting party to:

(a) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506;

(b) mail a copy of the written notice sent to the payor under Subsection (4)(a) to the [new requesting] nonrequesting party's address and a copy of the support order and the notice to the payor to the office; and

(c) if the obligee is the requesting party, send notice to the obligor under Section 62A-11-304.4 that includes:

(i) a copy of the notice sent to the payor; and

(ii) information regarding:

(A) the commencement of income withholding; and

(B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing an objection with the court within 20 days.

(5) A payor who receives written notice under Subsection (4)(a) shall comply with the requirements of Section 62A-11-507.

(6) If an obligor contests withholding, the court shall:

(a) provide an opportunity for the obligor to present evidence supporting his claim of a mistake of fact;

(b) decide whether income withholding should continue;

(c) notify the parties of the decision; and

(d) at the obligor's option, return or credit toward the most current and future support payments of the obligor any amount mistakenly withheld plus interest at the legal rate.

Section 4. Section **78-45-7.1** is amended to read:

78-45-7.1. Medical expenses of dependent children -- Assigning responsibility for payment -- Insurance coverage -- Income withholding.

The court shall include the following in its order:

(1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;

(2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost; and

(3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5[;and].

~~[(4) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional \$7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.]~~

Section 5. Section **78-45e-3** is amended to read:

78-45e-3. Requirements for filing.

A voluntary declaration of paternity may not be filed with the state registrar unless the declaration:

(1) is signed by the birth mother and biological father, and by the legal guardian or a parent

of a biological father who is under 18 years of age[;], in the presence of two witnesses who are not related by blood or marriage; and

~~[(2) includes a jurat, as defined in Section 46-1-2, for the biological mother and father, and an acknowledgment, as defined in Section 46-1-2 for a guardian or parent who may be required to sign the declaration; and]~~

~~[(3)]~~ (2) the mother and alleged father have been given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the declaration.