

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Human Resources  
(DLS Control No. 16-103)**

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## **Overview and Legal and Fiscal Impact**

The regulation reduces, from \$25 to \$15, certain fees charged by the Child Support Enforcement Administration for child support enforcement services.

The regulation presents a potential legal issue of concern.

Special fund revenues decrease by \$599,070 annually, which reflects lowering the child support application and collection fees paid by child support obligees from \$25 to \$15. However, because the federal government shares in fee revenues associated with child support collections, the regulation also results in expenditures for the purpose of reimbursing the federal government for its share of those fees, as explained in more detail below. Accordingly, special fund expenditures (from another available source) of \$167,582 and federal matching fund expenditures of \$325,307 are annually redirected from general operations to ensure the federal government is fully reimbursed.

## **Regulation of COMAR Affected**

### **Department of Human Resources:**

Child Support Enforcement Administration: General Information: COMAR 07.07.02.02

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## **Legal Analysis**

### **Background**

On September 15, 2015, Governor Larry Hogan announced a plan to reduce or eliminate a number of fees across State government. Governor Hogan announced a second round of fee reductions or eliminations on May 12, 2016. This regulation is part of the second round of reductions or eliminations. Additional information regarding Governor Hogan's fee reduction initiative may be found [here](#).

Section 10-110(a) of the Family Law Article authorizes the Child Support Enforcement Administration to (1) charge an initial application fee of not more than \$25 for support services; and (2) deduct from child support payments an annual collection fee of \$25 for cases in which the family never received temporary cash assistance and has received at least \$3,500 in child support payments during the federal fiscal year.

Federal law (42 U.S.C. § 654(6)(B)) requires states, as a condition of receiving federal funding for their child support enforcement programs, to impose (1) an application fee not exceeding \$25 for furnishing child support enforcement services and (2) an annual fee of \$25 for furnishing services to an individual who has never received assistance under a state program funded under the federal Temporary Assistance (*i.e.*, temporary cash assistance in Maryland) to Needy Families Program and for whom the state has collected at least \$500 of support. The fees must be paid by the individual applying for the services, recovered from the absent parent, or paid by the state out of its own funds. The payment of the fees from state funds may not be considered as an administrative cost for the operation of the state child support enforcement plan and shall be considered income to the program.

## **Summary of Regulation**

The regulation reduces, from \$25 to \$15, the following fees charged by the Child Support Enforcement Administration for child support enforcement services: (1) the application fee; and (2) the annual collection fee deducted from child support payments in a case in which the family never received temporary cash assistance and has received at least \$3,500 in child support payments during the federal fiscal year.

## **Legal Issues**

The regulation presents a potential legal issue of concern. As noted above, § 10-110(a)(4) of the Family Law Article authorizes the Child Support Enforcement Administration to “deduct from child support payments an annual collection fee of \$25 for cases in which the family never received temporary cash assistance and has received at least \$3,500 in child support payments during the federal fiscal year.” This provision could be interpreted as strictly authorizing the administration to deducting an annual collection fee of \$25 or not to collect the annual fee at all, rather than authorizing the administration to deduct an annual collection fee not to exceed \$25 under the specified circumstances. The administration may wish to pursue legislation to clarify this provision.

## **Statutory Authority and Legislative Intent**

The department cites §§ 10-106 through 10-116, 10-118, 10-119, 10-119.3 through 10-144, and 10-303 through 10-359 of the Family Law Article as authority for the regulation. More specifically, as noted above, § 10-110 provides statutory authority for the fees. The remaining cited authority is not relevant to these regulations

The relevant cited authority is correct and complete. To the extent that the regulation may result in a loss of revenue to the State, the regulation may not reflect legislative intent.

## **Fiscal Analysis**

Special fund revenues decrease by \$599,070 annually, which reflects lowering the child support application and collection fees paid by child support obligees from \$25 to \$15. However,

because the federal government shares in fee revenues associated with child support collections, the regulation also results in expenditures for the purpose of reimbursing the federal government for its share of those fees, as explained in more detail below. Accordingly, special fund expenditures (from another available source) of \$167,582 and federal matching fund expenditures of \$325,307 are annually *redirected* from general operations to ensure the federal government is fully reimbursed.

### **Agency Estimate of Projected Fiscal Impact**

The department now advises that the regulation decreases special fund revenues by \$599,070 annually, which is based on fiscal 2015 revenues from application and collection fees. The Department of Legislative Services concurs and notes that this only represents the amount that child support *obligees* will *save* under the regulation. It does not reflect the reality that fees associated with child support collections and applications have not been available for the department's use for a number of years due to legislative action in 2008. Both fees are shared with the federal government, with 66% passing through to the federal government as its share and the remaining 34% considered the State share.

Chapter 162 of 2008 altered Maryland's collection of the annual collection fee by authorizing the department to deduct a \$25 collection fee only after \$3,500 has been collected on behalf of the obligee. Nevertheless, criteria established by the federal government requires a \$25 fee to be paid after \$500 has been collected, although the federal government allows the State to make up any difference. Because Maryland now has a higher threshold before it collects the fee from an obligee, the State has had to reimburse the federal government a greater amount than is actually collected. Thus, the State forgoes its share of the collection fee and uses other monies available to the department, including the State's share of the application fee, other special funds, and federal matching funds, to make the federal government whole.

Accordingly, the regulation directly impacts special fund revenues (which pass through to the federal government) due to the \$10 reduction in the amount of both fees with \$599,070 less collected on an annual basis. As discussed below, this will necessitate that \$492,889 annually be redirected from expenditures for child support enforcement operations and instead be used to reimburse the federal government for its assumed share of the collection fee. Although reducing the application fee also reduces, by \$106,181, the federal share of application fee revenues, the State does not have to cover any difference as the federal government simply requires that it be reimbursed for 66% of whatever amount is collected.

### **Shortfall in Amount of Collection Fee Owed to Federal Government Grows**

In fiscal 2015, the federal government assumed Maryland would collect \$2,023,600 in collection fee revenues (based on 80,944 cases), of which the federal share was \$1,335,576. However, the State only actually collected \$1,095,475 from this fee (based on 43,819 cases that met the \$3,500 threshold), which resulted in a shortfall of \$240,401 owed to the federal government. Assuming that the number of cases for which the collection fee is assessed remains constant, the total amount of collection fee revenues collected by the department under the regulation equals \$657,285 annually. This represents \$438,190 less than the amount currently

collected and, thus, necessitates redirecting available funding to meet the greater shortfall in the amount owed to the federal government as its share.

### **Application Fee Revenues and Other Funding Have Been Used to Meet the Shortfall**

In fiscal 2015, the State also collected \$402,200 in application fee revenues (based on 16,088 cases), of which the federal share was \$265,452 and \$136,748 was available for the State's use. Under the regulation, the State will collect a total of \$241,320 annually in application fee revenues, of which \$159,271 will pass directly through to the federal government (as its 66% share of this fee – \$106,181 less than the current federal share). The remaining funds available for State use (\$82,049) represent a \$54,699 decrease from fiscal 2015 levels. Accordingly, once the reduced fees of \$15 take effect, State funding from *both* application and collection fees that is available to reimburse the federal government for its share in the collection revenues decrease by \$492,889 annually.

The department further advises that, in fiscal 2015, it applied the entire \$136,748 State share of the application fee revenues to the shortfall owed to the federal government for its share of the collection fee revenues (\$240,401), which left a residual amount due of \$103,353. By using another source of funding available to the department (child support offset funds) to cover this remainder, the department was able to use federal funds of \$68,213 to match \$35,140 in special fund expenditures.

The department advises that, under this regulation, it will continue to rely on other special funds, specifically child support offset funds, and federal matching funds to cover the difference between the revenue collections assumed by the federal government and actual collections. Thus, to cover the portion of the revenue loss needed to reimburse the federal government (\$492,889), special fund expenditures of \$167,582 and federal matching funds of \$325,307 are annually redirected from child support enforcement operations and instead used to pay the remainder due. Assuming that the regulation takes effect by the end of August, the impact in the first year is slightly less.

### **Impact on Budget**

The regulation has no material impact on the State operating or capital budget as the amount of total expenditures anticipated does not change under the regulation. The fiscal 2017 operating budget includes \$9.6 million in child support offset funding, \$167,582 of which will be redirected to reimburse the federal government for its share of the forgone fee revenues (rather than be used for other child support enforcement operations). That funding source also allows the department to use existing federal matching funds for the balance of the required reimbursement. The department advises that redirecting these monies to this purpose will not materially impact the operations of the child support enforcement program.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Additional Comments**

The department advises that the \$970,320 annual revenue loss, as *originally* submitted within the regulation, was calculated using the *total* number of cases for which the federal government assumes fee collections (16,088 application fee cases and 80,944 collection fee cases). Because Chapter 162 of 2008 restricted the ability of the department to assess fees for all of these cases (as discussed above), the department concurs that the difference in fees that child support obligees must pay based exclusively on the \$10 fee reduction under the regulation is \$599,070 annually (16,088 application fee cases and 43,819 collection fee cases meeting the \$3,500 threshold).

### **Contact Information**

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