

RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

DATE: APRIL 30, 2009

NOTICE OF

PROPOSED ADOPTION OF RULES, REGULATIONS,
POLICIES, PROCEDURES, AND OTHER MATERIALS
RELATING TO THE ADMINISTRATION OF THE FOLLOWING PROGRAM(S):

In accordance with Title 42, Chapter 35, of the General Laws of the State of Rhode Island, notice is hereby given that the Department of Human Services (DHS) proposes to adopt rules, regulations, policies, procedures, and other materials relating to the following programs(s):

FAMILY INDEPENDENCE PROGRAM (FIP) REPEAL

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

For all assistance units that were receiving cash assistance on October 1, 2008, without any break in eligibility through June 30, 2009, the RI Works time limits will take effect on July 1, 2009.

A Fiscal Note is available upon request. In the development of the rules and regulations, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information. (Complies with 42-35-3(3).) The health, safety, and welfare of the public preclude any economic impact that may be incurred as a result of these regulations.

Interested persons may inspect said proposed rules, regulations, policies, procedures, summary of policies, and other related materials on the R.I. Secretary of State's website at www.sec.state.ri.us/ProposedRules/ or on the Department of Human Services website at www.dhs.ri.gov, or in the Office of Policy Development, Department of Human Services, Louis Pasteur Building, Bldg. 57, Howard Avenue, Cranston, Rhode Island 02920, between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday.

Interested persons may submit data, views, or written arguments to the Office of Legal Counsel, Department of Human Services, Louis Pasteur Building, Bldg. 57, 600 New London Avenue, Cranston, Rhode Island 02920, within thirty (30) days of the date of this notice.

In accordance with the Rhode Island General Laws 42-35-3, an oral hearing will be granted on these rules if requested by twenty-five (25) persons, or an agency, or by an

association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

SCOPE OF CHANGE

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

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SUMMARY OF CHANGE

The Family Independence Act (RIGL 40-5.1) was repealed effective July 1, 2008, and was replaced by The Rhode Island Works (RIW) Program (RIGL 40-5.2). Effective July 1, 2009, The Family Independence Program policies in Section 0800, et al, are repealed and replaced by the Rhode Island Works Program policies in Sections 1400, et al.

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~~0808~~ ~~COOPERATION REQUIREMENTS~~

~~0808.05~~ ~~ASSIGNMENT OF SUPPORT RIGHTS~~

~~REV:05/1997~~

~~An applicant for or recipient of cash assistance for and on behalf of herself or himself and for and on behalf of a child(ren) or children, shall be deemed, without the necessity of signing any document other than the DHS-2 Statement of Need, to have made an assignment to the Department of Human Services pursuant to Rhode Island General Laws, Section 40-6-9 against any parent failing to or obligated to provide for the support and maintenance of any minor child(ren) for the period of time that assistance is being paid by the Department.~~

~~Additionally, the Department of Administration, Division of Taxation—Child Support Enforcement is authorized to perform the act of instituting suit to establish paternity and/or to collect support for said child(ren) who receives or received assistance from DHS.~~

~~— Cooperation in Obtaining Support~~

~~An explanation must be given by the agency representative that a parent or caretaker relative must assist DHS and the Department of Administration, Division of Taxation—Child Support Enforcement by~~

~~providing all relevant information in seeking support from a person who has a legal duty to support the child(ren) and/or in establishing paternity and seeking support from the putative father unless good cause for refusing to do so is determined to exist. An AP-35, Notice Concerning Good Cause for Refusal to Cooperate, a copy of which is included in the intake package, is reviewed with the applicant who is requested to sign a copy for the case record. See Section 0808.05.10 for further discussion of cooperation.~~

~~0808.05.05 — Referral to Child Support Enforcement~~

~~REV:01/2002~~

~~The DHS agency representative refers the applicant's case to the Department of Administration, Division of Taxation — Child Support Enforcement after approval of eligibility via completion of an Absent Parent (ABSP) panel for each absent parent. If a good cause for refusal has been determined in accordance with the requirements outlined in Sections 0808.05.15-0808.05.15.25, the DHS agency representative codes the appropriate fields in the ABSP panel.~~

~~0808.05.10 — Cooperation in Obtaining Support~~

~~REV:06/1999~~

~~An applicant or recipient must cooperate with the agency for each child for whom assistance is applied or received (unless good cause for refusing to do so has been determined to exist) in:~~

~~Identifying and locating the parent of a child for whom assistance is claimed;~~

~~Establishing the paternity of a child born out of wedlock for whom assistance is claimed;~~

~~Obtaining support payments for the applicant or recipient and for a child for whom assistance is claimed; and~~

~~Obtaining any other payments or property due the applicant or recipient or the child from an absent parent.~~

~~To cooperate in achieving the above objectives is defined as, that at the request of DHS or the Department of Administration, Division of Taxation — Child Support Enforcement, the applicant or recipient must:~~

~~Appear, as necessary, to provide verbal or written information or documentary evidence, known to, possessed by, or reasonably obtainable by her/him.~~

~~Appear as a witness at court or other hearings or proceedings, as necessary.~~

~~Provide information, or attest to the lack of information, under penalty of perjury.~~

~~Forward to the agency any support payments received from the absent parent which are covered by the assignment.~~

~~The consequences of failure to cooperate with DHS or the Department of Administration, Division of Taxation Child Support Enforcement are delineated in Section 0808.05.17.~~

~~0808.05.15 — Good Cause for Refusing to Cooperate~~

~~REV:05/1997~~

~~Every applicant or recipient is given an opportunity to claim good cause for refusing to cooperate. An AP-35 is read by the applicant/recipient, explained by the DHS agency representative and signed and dated, in duplicate, by each. The applicant/recipient retains a copy. The second copy is filed in the case record.~~

~~Good cause applies only to cooperation. The eligibility requirement regarding assignment is not affected by a good cause determination. If good cause is claimed, the applicant/recipient is advised that s/he must state the basis of the claim and present corroborative evidence within twenty (20) days of the claim; or, s/he must provide sufficient information to enable the investigation of the existence of the circumstance; or, provide sworn statements from individuals to support the claim as specified on the AP-35.~~

~~A determination of good cause is based on the evidence supplied which establishes the claim; or, an investigation by the agency of the circumstance which confirms the claim; or, a combination of evidence and investigation; or, when the claim is one of anticipated physical harm without evidence, the investigation supports the credibility of the claimant. The determination as to whether good cause does or does not exist should be made within thirty (30) days of the good cause claim unless the record documents that the agency needs additional time because the information required to verify the claim cannot be obtained within the time standard.~~

~~If the reason that the information is not available is that the client did not present the corroborative evidence within twenty (20) days of the claim, the record must document that the agency determined that the applicant/recipient required additional time to obtain the evidence, the amount of additional time allowed, and that this decision had supervisory approval. The final determination that good cause does or does not exist, including the findings and basis for the decision, must be included in the CLOC.~~

~~The DHS representative will obtain verification and/or conduct an investigation in order to make the determination. If sufficient information to conduct an investigation is provided, an otherwise eligible individual is provided assistance (or assistance is continued) pending the final determination on the good cause claim.~~

~~0808.05.15.05 — When Cooperation Not in Best Interest~~

~~REV:05/1997~~

~~Cooperation is determined to be against the best interest of the child, if:~~

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~~The individual's cooperation is reasonably anticipated to result in physical or emotional harm to the child, mother, or other relative with whom the child is living. (Physical or emotional harm must be determined to be of a genuine and serious nature. The mere belief that cooperation would result in harm is not sufficient basis for a finding of good cause. The emotional harm to the mother must be of such a serious nature that the capacity to care for the child adequately would be reduced.); or~~

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~~It would be harmful to the child for whom support would be sought because the child was conceived as a result of incest or forcible rape; or~~

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~~Legal proceedings for adoption of the child are pending before a court of competent jurisdiction; or~~

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~~The individual is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or release her or him for adoption and the discussions have not gone on for more than three (3) months; or~~

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~~There is anticipated physical harm to the parent without corroborative evidence.~~

0808.05.15.10 Corroborative Evidence of Good Cause

REV:05/1997

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~~Corroborative evidence upon which a determination of good cause is based without further agency investigation is limited to documents similar to the following which must be presented within twenty (20) days of the claim:~~

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~~Birth certificates, medical, or law enforcement records which indicate that the child was conceived as a result of incest or forcible rape.~~

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~~Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.~~

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~~Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative.~~

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~~Medical records which indicate emotional health history and present emotional health status of the caretaker relative (parent or loco parentis) or the child for whom support is sought or, written statements from a~~

~~_____ mental health professional indicating a diagnosis or
_____ prognosis concerning the emotional health of the
_____ caretaker relative or the child for whom support is
_____ sought.~~

~~_____ A written statement from a public or licensed private
_____ social agency that the individual is being assisted by
_____ the agency to resolve the issue of whether to keep the
_____ child or release him for adoption, and the discussions
_____ have not gone on for more than three (3) months.~~

~~_____ If the evidence is insufficient, the DHS agency representative will
_____ promptly notify the applicant/recipient that additional corroborative
_____ evidence is needed and specify the type of document needed. The DHS
_____ representative will assist in obtaining the needed evidence if
_____ requested to do so by the individual. This assistance might be in the
_____ form of advising the individual how to go about obtaining the
_____ documents, or, if requested, undertaking reasonable efforts to obtain
_____ the evidence, if s/he is not reasonably able to obtain it by him or
_____ herself.~~

~~_____ When sufficient information to permit an investigation is given or when
_____ the claim is one of anticipated physical harm without corroborative
_____ evidence and the DHS representative considers the claim credible and
_____ corroborative evidence is not available, the DHS representative will
_____ conduct an investigation. In conducting the investigation, the DHS
_____ representative will not contact the absent father or putative father
_____ unless such contact is determined to be necessary to establish the
_____ claim. Prior to making any contact, the applicant or recipient will be
_____ notified in order for her to present additional evidence or information
_____ that the contact is unnecessary or she can withdraw the application, or
_____ the good cause claim can be denied.~~

~~_____ On the basis of the evidence or the results of the investigation, the
_____ DHS agency representative makes a decision on the applicant/recipient's
_____ good cause claim as described in 0808.05.15.20.~~

~~**0808.05.15.15 Emotional and Physical Harm Defined**~~

~~REV:05/1997~~

~~_____ Physical harm and emotional harm, as defined, must be of a serious
_____ nature. It must be demonstrated to the DHS agency representative that
_____ there exists an emotional impairment that substantially affects the
_____ individual's functioning for a finding of good cause for emotional harm
_____ to be made.~~

~~_____ If a determination is based in whole or in part upon the anticipation
_____ of emotional harm to the child, parent, or other caretaker relative,
_____ consideration is given to the following:~~

~~_____ the present emotional state of the individual subject
_____ to emotional harm;~~

~~_____ the emotional health history of the individual;~~

~~_____ intensity and probable duration of the emotional upset;~~

~~— degree of cooperation to be required; and the extent of involvement of the child in paternity establishment or support enforcement activity to be undertaken.~~

~~— The DHS agency representative can find good cause on the basis of anticipated physical harm without corroborative evidence if the agency considers the claim credible without corroborative evidence and if such corroborative evidence is not available.~~

~~— For example, battered women are often too afraid or ashamed to tell anyone of the beatings they have received and would therefore be unable to corroborate a valid good cause claim.~~

~~— In this case, the claimant has the burden of establishing her credibility as well as explaining why no evidence is available.~~

~~— The agency is required to investigate this type of claim and while it may not establish the good cause circumstance, it should establish the credibility of the claimant.~~

0808.05.15.20 — Good Cause Decision

REV:01/2002

~~— After the DHS representative has made a determination that good cause exists, and the case has been referred to the Department of Administration, Division of Taxation — Child Support Enforcement, the CSE representative evaluates the evidence and information in the ABSP panel(s). The CSE representative makes a determination whether support enforcement activity can be conducted without risk of harm to the child or caretaker relative if taken without the caretaker's cooperation.~~

0808.05.15.25 — Review of Good Cause Finding

REV:06/1999

~~— A review of the good cause decision must be made at each redetermination by the DHS agency representative. If it is determined that circumstances have changed such that good cause no longer exists, there must be enforcement of the cooperation requirements.~~

~~— The failure of a parent or caretaker relative to comply with child support enforcement cooperation requirements without good cause results in the imposition of a sanction as outlined in Section 0808.05.17. The Department of Administration, Division of Taxation — Child Support Enforcement notifies the DHS representative of any failure to cooperate with that agency and the DHS representative must take the necessary action on the case.~~

0808.05.17 — Consequences of Noncooperation with CSE

REV:06/1999

~~— The failure of a parent or caretaker relative 1) to cooperate with the Department of Administration, Division of Taxation — Child Support Enforcement in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child and 2) the individual~~

~~does not qualify for good cause results in the imposition of a financial sanction.~~

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~~The financial sanction is equal to a twenty five percent (25%) reduction of the entire assistance plan's standard of assistance before the application of any income. The sanction renders the noncompliant parent or caretaker relative ineligible for cash and medical assistance.~~

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~~The Department of Administration, Division of Taxation—Child Support Enforcement notifies the DHS representative of failure to cooperate with that agency and the DHS representative must take the necessary action on the case.~~

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~~The reduction in assistance and ineligibility of the sanctioned individual shall continue until the parent/caretaker relative who refused to comply with child support cooperation requirements consents to and cooperates with the agency in satisfying those requirements. The Department of Administration, Division of Taxation—Child Support Enforcement notifies DHS of such compliance for appropriate follow up by the DHS representative.~~

~~0808.05.20~~——~~Notifying IV-D of Additional Information~~

~~REV:05/1997~~

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~~The DHS representative utilizes E-Mail in INRHODES to notify the Department of Administration, Division of Taxation—Child Support Enforcement to any new information about the absent parent, particularly as regards her/his residence or place of employment.~~

~~0808.10~~——~~THIRD PARTY LIABILITY~~

~~REV:05/1997~~

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~~A third party is a collateral source which may be liable for an accident, injury, or illness of applicants/recipients. When an applicant needs and accepts a cash payment during the period in which a claim for payment from a collateral source is pending, the applicant is advised that repayment for funds financed by the state to the applicant is required by Chapter 40-6-9 of the General Laws of Rhode Island, as amended, if the applicant is subsequently found eligible for monies from the collateral source.~~

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~~When the applicant signs the DHS-2 Statement of Need, s/he assigns all rights to the Department of Human Services (DHS) for and on behalf of her or himself and any person for whom the individual may legally act for amounts recoverable from a third party equal to the amount of financial assistance and medical assistance provided as a result of the accident, illness, or injury.~~

~~0808.10.05~~——~~Third Party Payments~~

~~REV:05/1997~~

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~~Potentially liable third parties include but are not limited to insurance companies liable for Worker's Compensation and/or other types of insurance. RSDI benefits are not subject to reimbursement.~~

~~Generally, these payments are retroactive payments and cover a period of time cash assistance had to be paid because the income from the collateral source was not available.~~

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~~Funds subject to such assignment are all cash assistance payments provided to such applicant and any family members included in the applicant's cash assistance payment and all Title XIX payments which are related to the accident, injury, or illness for which the third party may be liable.~~

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~~All pertinent information concerning a potential third party resource is contained in Question 21 of the DHS-2. This data is entered into a STAT/Sett (Settlement) panel; this information is automatically referred to the TPL Unit.~~

~~0808.10.10~~ — ~~Responsibility of Third Party Liability Unit~~

~~REV:05/1997~~

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~~Upon receipt of the electronic referral, the Third Party Liability Unit reviews it for completeness and sets up a case file. Verification of such claims is accomplished by contacting attorneys, insurance companies, or other applicable third parties identified by the client via a notice of assignment sent by certified mail, return receipt. This acts as the State's legal instrument in ensuring third party reimbursements (liens) through settlement proceeds.~~

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~~Copies of verified medical documentation, payments, recipient data, and third party information are contained in the case record maintained by the TPL Unit. Appropriate information is forwarded to the attorney and/or insurance company that is settling the liability claim. Those providing the settlement check are advised to make the check payable to the Department of Human Services.~~

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~~Settled Cases~~

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~~Upon receipt of the lien payment, the TPL agency representative initiates closing action on the paid claim and sends a discharge/release of lien to the appropriate party(ies). The check is deposited and settlement information is entered into the SETT screen in the case. A memorandum is forwarded to appropriate agency representatives to review the case(s) for continuing eligibility.~~

~~0808.15~~ — ~~FAMILY INDEPENDENCE WORK REQUIREMENTS~~

~~REV:05/1998~~

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~~A nonexempt Family Independence Program participant who fails without good cause to participate in an assigned work activity component or otherwise refuses without good cause to comply with her/his employment plan or with any other work requirement is subject to sanction as described in Section 0812.35.~~

~~0808.20~~ — ~~SAVE REQUIREMENTS~~

~~REV:05/1997~~

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~~The Systematic Alien Verification for Entitlements (SAVE) Program is the Immigration and Naturalization Service operated system for the verification of immigration status of aliens applying for benefits from certain federally funded entitlement programs.~~

~~Beginning December 1, 1988, applicants for most major assistance programs must declare in writing that they are U.S. citizens or nationals or that they have "satisfactory immigration status".~~

~~See Section 0104 for further information details on SAVE requirements.~~

0808.25 ——— PURSUIT OF POTENTIAL RESOURCES

REV:05/1997

~~Eligibility is denied or terminated if the value of available non-exempt resources exceeds the \$1,000 limit. Resources are considered available both when actually available and when the applicant/recipient has a legal interest in a liquidated sum and has the ability to make such sum available for support and maintenance. However, in the event of joint ownership of bank accounts, there is an opportunity to rebut the presumption of ownership of the joint bank account. See Section 0822.15 for further discussion of cooperation with regard to pursuit of resources.~~

0808.30 ——— CHANGE REPORTING REQUIREMENTS

REV:12/2004

~~All adult family members are responsible for reporting any changes in income, resources, family composition, or other factors which can affect the family's eligibility or payment level within ten (10) days of the change in circumstances with the following exception:~~

~~Whenever an adult family member(s) becomes aware that a minor child in his or her household has been or will be temporarily absent from the home, the adult family member(s) is responsible to report such absence of a minor child from the home by the end of the five (5) day period that begins with the date that the adult family member(s) becomes aware that the minor child has been or will be absent from the home for a period of thirty (30) or more consecutive days.~~

~~The changes with a ten (10) day reporting requirement include:~~

~~* Changes in sources of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;~~

~~* Changes in the amount of gross monthly earned income of more than one hundred dollars (\$100) from the amount last used to calculate the household's allotment;~~

~~* Changes in the amount of unearned income of more than fifty dollars (\$50), except for a change in FIP or CPA cash assistance;~~

~~* All changes in household composition, such as the addition
or loss of a household member;~~

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~~* Changes in residence;~~

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~~* Acquisition of a licensed vehicle not excluded under Section
0822.10.20; and~~

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~~* When cash on hand, stocks, bonds, and money in a bank
account or savings institution reach or exceed a total of
ONE thousand dollars (\$1,000).~~

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~~Furthermore, families receiving cash assistance as a supplement to
earned income must report such earned income in the sixth month of each
certification period. Such cases are identified by INRHODES as having
job income (JINC panel(s)) or self-employment income (BUSI, DCIN, RINC,
and/or RBIN panel(s)). Earnings reporting requirements and procedures
are outlined in Section 0828.15.~~