

The Tennessee Department of Human Services
Child Support Services Division

Statement of Necessity Requiring Emergency Rules

The Tennessee Department of Human Services implemented new Income Shares Child Support Guidelines on January 18, 2005 in Chapter 1240-2-4 of the Department's rules which considers the income of both parents. These Guidelines replaced Child Support Guidelines that were based on a Flat Percentage model which considered only the income of the obligor parent.

Prior to filing a final version of the new Child Support Guidelines, the Department engaged in extensive meetings and discussions with various stakeholders in the child support community. During these discussions, a concern was repeatedly expressed that, upon implementation of the new Guidelines methodology, if nothing was done to manage the manner in which existing child support orders could be modified, the change, in and of itself, might result in relatively significant increases or decreases in existing orders due solely to a change in the formula under the new methodology for calculating child support. Additionally, Tennessee courts would be subjected to an unusually high volume of requests for modification by parents seeking to improve their respective financial positions by modifying the amount of their existing child support order using the new Guidelines methodology.

In order to alleviate this concern, the Department agreed to limit, until January 1, 2006, the ability to modify existing child support orders by adding additional requirements to the previous criteria for a "significant variance" that is required to permit modification of an existing child support order. The previous criteria for modification of an existing order required only a fifteen percent (15%) difference between the existing order and the proposed new order, based on increases or decreases in the obligor's income. The additional criteria under the new Income Shares Guidelines include:

1. At least a fifteen percent (15%) change in the gross income of the ARP [Alternate Residential Parent, a/k/a obligor]; and/or
2. A change in the number of children for whom the ARP is legally responsible and actually supporting; and/or
3. A child supported by this order becoming disabled; and/or
4. The parties voluntarily entering into an agreed order to modify support in compliance with these Rules, and submitting completed worksheets with the agreed order;

These additional requirements will automatically expire on December 31, 2005, by operation of Rule 1240-2-4-.05(7), and the criteria for a significant variance will revert to only the fifteen percent (15%) difference between the existing and proposed orders.

In April 2005, after implementation of the new Guidelines, the Department created an Income Shares Advisory Committee to address any questions and concerns that may have arisen following application of the new rules to specific child support cases that had been litigated since the rules were implemented, and to make recommendations for possible improvements based on those experiences. Additionally, by operation of Senate Bill 707/House Bill 122 (2005), the Advisory Committee is required to report its findings and recommendations to the Senate Judiciary Committee and the House Children and Family Affairs Committee by no later than February 15, 2006.

In considering the basis for modification of child support orders, the Advisory Committee recommended that the current additional requirements noted above for establishing a significant variance be added permanently to the definition. Members of the Committee have expressed concern about the impact of a modification in individual child support cases, based solely on the difference between the methodology of the former Flat Percentage of Income guidelines and the methodology of the current Income Shares guidelines. Members have found that application of the new Income Shares Guidelines methodology to orders established under the previous guideline model may result in a significant change in the amount of the child support obligation due only to the change in methodologies, with the potential of imposing great hardship on the obligee (a/k/a Primary Residential Parent or PRP) whose child support has been greatly

decreased or on the obligor (ARP) whose obligation has been greatly increased. In the opinion of the Committee, the potential impact of this hardship will be greatly diminished by limiting the availability of modifications by continuation of the existing criteria.

In addition, in the estimation of the Committee, this change is necessary to, again, limit an expected high volume of petitions seeking modification of child support orders that has been anticipated throughout this year, after the additional criteria expire on December 31, 2005.

In order to meaningfully implement this recommendation, and thereby greatly limit the hardship imposed on children, parents, and the Tennessee court system, a change to the existing Guidelines must be made prior to January 1, 2006, the date when the additional significant variance criteria will cease to apply. From the date the Committee made the recommendation, September 15, 2005, the Department had one hundred seven (107) days to complete a rule change. The rulemaking hearing process would require a minimum of one hundred twenty (120) days to promulgate a permanent rule, thus, the criteria limiting the ability to modify child support orders would expire before the change to the rule to make permanent the existing limitations would become effective.

Additionally, if this recommended and important change to the rule is done through the rulemaking hearing process, significant confusion to litigants, the bar, and the courts will be created by allowing the expiration of the existing limits on the ability to modify child support orders only to later modify the rules to re-establish the limiting criteria as recommended by the Committee. This result, necessitated by the rulemaking hearing process, would create a period of short duration in which orders may be modified with less proof, followed very shortly by a permanent rule which re-establishes the more stringent previously existing criteria. In addition to confusion, the intervening period would create the significant likelihood of delays in the consideration of petitions for modification as parties seek real or perceived advantages from delay. Conversely, the intervening period may create a rush to the courthouse to file petitions for modification to take advantage of the absence of the limiting criteria. Either circumstance further presents the serious potential of increased litigation regarding when and whether petitions for modification of child support orders could be considered under the less restricted criteria during the intervening period. These delays and the additional and unnecessary litigation will serve to disrupt the orderly operation of the child support system on which thousands of children depend, will result in unnecessary increased volume for courts and unnecessary added litigation expenses to the parties.

Accordingly, under the Administrative Procedures Act, emergency rules are the only viable mechanism available for making this important change to the Child Support Guidelines and for preventing potential serious confusion and unnecessary litigation.

The Department, therefore, finds that an immediate danger to the public welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by Tennessee Code Annotated, Section 4-5-201 et seq., would not adequately protect the public.

For a copy of this emergency rule, contact: Conswella R. Wilkes, Legal Assistant, Citizens Plaza Building, 15th Floor, 400 Deaderick Street, Nashville, Tennessee 37248-0006 (615) 313-6673.

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

Emergency Rules of
The Tennessee Department of Human Services
Child Support Services Division

1240-2-4
Child Support Guidelines

Amendments

Rule 1240-2-4-.05, Modification of Child Support Orders, is amended by deleting paragraph (7) in its entirety.

Authority: T.C.A. §§ 4-5-202; 36-5-101(a)(1) and (e); 36-5-103(f); 71-1-105(12), (16); 71-1-132; 42 U.S.C. § 667, 45 C.F.R. §§ 302.56, 303.8.

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules.

Mike Adams, Assistant Commissioner
Child Support Division
Tennessee Department of Human Services

Virginia T. Lodge
Commissioner
Tennessee Department of Human Services

I certify that this is an accurate and complete copy of emergency rules lawfully promulgated by the Department of Human Services on the ____ day of _____, 2005.

Kim Beals, Assistant General Counsel
Tennessee Department of Human Services

Sworn to and subscribed before me this the ____ day of _____, 2005.

Notary Public

My Commission Expires on the ____ day of _____, 200__.

All emergency rules provided for herein have been examined by the Attorney General and Reporter for the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Attorney General and Reporter

The emergency rules set out herein were properly filed in the Department of State on the ____ day of _____, 2005, and will be effective from the date of filing for a period of ____ days. These emergency rules will remain in effect through the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____