CHAPTER 6-000 PATERNITY ESTABLISHMENT

This chapter outlines the requirements and the processes for establishing paternity or documenting previously established paternity for children born out of wedlock in IV-D cases.

6-001 ESTABLISHMENT OF PATERNITY: For all IV-D cases in which paternity has not been established, the Department or County/Authorized Attorney must, as appropriate:

1. Provide an alleged father the opportunity to voluntarily acknowledge paternity; and
2. Attempt to establish paternity by legal processes established under Nebraska Law.

6-002 EXCEPTIONS TO ESTABLISHING PATERNITY: The Department or County/Authorized Attorney does not need to attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if the Department or County/Authorized Attorney has made a determination that it would not be in the best interest of the child(ren) to establish paternity.

6-003 STATUTE OF LIMITATIONS: The Department or County/Authorized Attorney may institute a paternity action, when appropriate, for any child until the child's 18th birthday. A paternity action may also be initiated for any child for whom a paternity action was previously dismissed without prejudice, provided such child has not yet turned eighteen.

6-004 ALLEGED FATHER LOCATED IN ANOTHER STATE: When the alleged father is located in another state and the use of long-arm jurisdiction under Nebraska law to establish paternity is not appropriate, the Department or County/Authorized Attorney must send an ~~interstate~~ intergovernmental action transmittal to the central registry of the state where the alleged father resides. Such action must be initiated within 20 calendar days of determining the alleged father's location and, if appropriate, the receipt of any necessary information needed to process the case.

6-005 MORE THAN ONE ALLEGED FATHER: In cases where an alleged father is excluded, but more than one alleged father is identified, the process will be followed for each alleged father until one is determined as the father, or there is no one left to pursue.

6-006 UNKNOWN FATHER (PUBLIC ASSISTANCE CASES): When it is determined that an alleged father is unknown, the Department's, Child Support Enforcement automated system will access all available interfaces in an attempt to determine the alleged father's identification. If the identity of the alleged father remains unknown and cannot be identified after diligent efforts, including at least one interview by the Department or County/Authorized Attorney with the recipient of services, the case may be closed.

6-007 CONTESTED PATERNITY: A contested paternity case is any legal action in which the issue of paternity may be raised under Nebraska law and one party denies paternity. In such cases, the Department or County/Authorized Attorney must take steps to initiate genetic testing unless a determination has been made not to pursue paternity in accordance with the provisions of this chapter.

6-008 GENETIC TESTING: Upon the request of any party in a contested paternity case, the Department or County/Authorized Attorney must compel by administrative subpoena or petition the court to require all parties to submit to genetic testing unless:

1. There has been a determination of good cause; and/or
2. It has been determined that it would not be in the best interest of the child(ren) to establish paternity in accordance with the provisions of this chapter.

6-008.01 Laboratories: The Department or County/Authorized Attorney must:

1. Identify and use laboratories which perform, at reasonable costs, legally and medically accepted genetic tests which identify the father or exclude the alleged father; and
2. Make a list of such laboratories available to appropriate courts, law enforcement officials, and to the public upon request.

6-008.02 Administrative Subpoena Process: In any case where paternity is an issue, the Department or County/Authorized Attorney may issue an administrative subpoena to compel the child(ren), and the mother and alleged father of such child(ren) to submit to genetic testing for establishing paternity.

6-008.03 Genetic Test Results: The results of a genetic test may be used in establishing paternity in the following manner:

1. Admissible as evidence and, except as provided below, weighed along with other evidence of paternity;
2. To create a rebuttable presumption of paternity when the results of the test show a probability of paternity of 99% or more; and
3. Introduced as evidence by a verified written report without the need for supporting testimony, other proof of authenticity or accuracy, unless there is a written request for personal testimony of an expert at least 30 days prior to trial.

6-008.04 Payment: The State must pay for testing performed for all parties to the paternity action when performed by any blood testing lab under contract with the Department, or a lab used in an ~~interstate~~ intergovernmental action in which Nebraska is the initiating state. If the result of genetic testing is disputed, additional testing may be done at the expense of the party requesting additional testing.

6-008.05 Reimbursement Of State Costs: A reasonable fee for genetic tests may be charged to any individual who is not a recipient of public assistance. When paternity is established and court-ordered genetic tests are performed, the Department or County/Authorized Attorney may attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity. However, if all parties voluntarily submit to genetic testing, the Department or County/Authorized Attorney may waive the recovery of such costs.

6-009 VOLUNTARY PATERNITY ACKNOWLEDGEMENT PROGRAM: Federal regulation requires states to have laws and implement procedures for a simple civil process for voluntarily acknowledging paternity. Such laws and procedures must include a hospital-based program in every public and private birthing hospital as well as a process for voluntary acknowledgement of paternity outside of hospitals.

6-009.01 Hospital-Based Program: During the period immediately before or after an out of wedlock birth of a child(ren), the Hospital-Based program must at a minimum provide to both the mother and alleged father, if he is present:

1. Written materials about paternity establishment;
2. The forms necessary to voluntarily acknowledge paternity;
3. A written and oral or through the use of video or audio equipment description of the alternatives to, the legal consequences of, and the rights (including, if the parent is a minor, any rights due to minority status) and responsibilities of acknowledging paternity;
4. The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;
5. Due process safeguards; and
6. The opportunity to voluntarily acknowledge paternity on site.

6-009.02 Programs Outside the Hospital: The voluntary paternity acknowledgement program will be available at the State birth record agency, every local birth record agency within the State, and at all other entities participating in the State's voluntary paternity acknowledgement program. Voluntary paternity acknowledgement programs under this section must meet the requirements in 466 NAC 6-009.01.

6-009.03 Signed Notarized Acknowledgement Of Paternity: When the form necessary to voluntarily acknowledge paternity is signed by both the mother and the alleged father of the child and notarized, it creates a rebuttable presumption of paternity. The signed notarized acknowledgement is subject to the right of any signatory to rescind the acknowledgement within the earlier of:

1. 60 days; or
2. The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

After the rescission period, the signed notarized acknowledgement is considered a legal finding which may be challenged in court only on the basis of fraud, duress, or material mistake of fact with the burden of proof upon the challenger.

The signed notarized acknowledgement will be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

6-009.04 Filing Of Acknowledgements and Adjudication: Voluntary acknowledgements and adjudications of paternity by judicial or administrative processes must be filed with the state birth registry.

6-010 TIMEFRAMES: Federal performance standards require that paternity establishment services be completed within the time frames below. Each time frame encompasses the period between the date of service of process and the date on which paternity and a child support order are established, or the court action is dismissed.

1. 75% within 6 months; and
2. 90% within 12 months.

Actions to either establish a support order or to exclude the alleged father as a result of genetic tests and/or legal process must be completed within the above timeframes.

6-010.01 Long Arm Jurisdiction: When long arm jurisdiction is used and the disposition of paternity occurs within 12 months of service of process, the case may be counted as meeting the 6 month tier of the time frame, regardless of when disposition occurs within the 12 month period following service of process.

6-011 DEFAULT ORDER: The Department or County/Authorized Attorney must seek entry of a default order by the court or administrative authority in a paternity case by showing in accordance with Nebraska law that:

1. Process was served on the alleged father ;
2. The alleged father failed to respond to service; and
3. Any other legal requirement(s) were met.