

## Chapter DWD 41

### ESTABLISHMENT OF THE PATERNITY OF A NONMARITAL CHILD

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**Note:** Chapter HSS 81 was renumbered chapter DWD 41 by emergency rule effective October 1, 1998.

**Note:** Chapter HSS 81 as it existed on July 31, 1999 was renumbered chapter DWD 41, Register, July, 1999 No. 523, eff. 8-1-99.

**DWD 41.01 Introduction.** (1) **AUTHORITY AND PURPOSE.** This chapter is promulgated under authority set out in s. 767.45 (6m), Stats., for the purpose of establishing the paternity of non-marital children for purposes of child support enforcement.

(2) **APPLICABILITY.** This chapter applies to all cases in which a birth certificate filed under s. 69.07, Stats., on or after September 1, 1988, does not contain the name of a father. Procedures under this chapter shall be followed by county officials charged with duties under ss. 59.07 (97) and 767.45 (6m), Stats. This chapter does not apply to cases in which an assignment of rights to support has been made to the state under s. 49.19 (4) (h) 1. or 49.45 (19), Stats., nor to cases in which the mother applies for paternity establishment services under s. 49.22, Stats.

**History:** Cr. Register, August, 1989, No. 404, eff. 9-1-89; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523.

**DWD 41.02 Definitions.** In this chapter:

(1) "Attorney" means the district attorney or corporation counsel designated under s. 767.45 (6) (a), Stats.

(2) "Best interests of the child" means whatever protects a child from harm and promotes the child's well-being.

(3) "Birth certificate" means the record made under s. 69.14, Stats.

(4) "County child support agency" means the office, officer, board, department or agency designated by a county board under s. 59.07 (97), Stats.

(5) "Caretaker relative" means the blood relative or blood relative's spouse with whom the child resides at the time the attorney takes action to establish paternity.

(6) "Department" means the Wisconsin department of health and social services.

(7) "Establish paternity" means to file a statement acknowledging paternity pursuant to s. 69.15 (3) (b) 1. or 3., Stats., provided that s. 891.41, Stats., does not apply to any other person, or to obtain a judgment of paternity.

(8) "Nonmarital child" means a child for whom no father is named on the child's birth certificate.

**History:** Cr. Register, August, 1989, No. 404, eff. 9-1-89.

**DWD 41.03 Timely action.** When the attorney receives from the department under s. 69.03 (15), Stats., the name of a non-marital child who is a resident of the county and the nonmarital mother's address, the attorney shall:

(1) Send a written communication to the mother at the mother's last known address, describing the legal implications of paternity establishment, the paternity establishment process, applicable fees, how to apply for the services offered by the child support agency, including services to establish paternity, the circum-

stances when the attorney will not take action to establish paternity under s. DWD 41.04, and the rights of the mother and other caretaker relatives under s. DWD 41.05.

(2) Make a reasonable effort to obtain the mother's cooperation in establishing paternity;

(3) Make a reasonable effort to locate the father within 90 days after the date on the written communication required under sub. (1); and

(4) With the cooperation of the mother, if obtained, and upon location of the probable father or a possible father, commence an action to establish paternity, except as provided under s. DWD 41.04.

**History:** Cr. Register, August, 1989, No. 404, eff. 9-1-89.

**DWD 41.04 Excluded cases.** The attorney may not take any action to establish paternity if:

(1) The child was conceived by artificial insemination and information about the father has been omitted from the birth certificate in accordance with s. 69.14 (1) (g), Stats.;

(2) The child was born to a surrogate mother and information about the father has been omitted from the birth certificate in accordance with s. 69.14 (1) (h), Stats.;

(3) The child was conceived as a result of sexual assault as defined in s. 940.225 (1) (a), Stats.;

(4) The child was conceived by incest;

(5) Adoption proceedings for the child are pending as evidenced by a petition for adoption filed with the court;

(6) The mother or the caretaker relative opposes the establishment of paternity and the attorney determines that the establishment of paternity would be reasonably anticipated to result in physical or emotional harm to the child, the mother or the caretaker relative; or

(7) A guardian ad litem appointed under s. DWD 41.05 (2), or appointed under any other provision, determines that it would not be in the best interests of the child to establish paternity.

**History:** Cr. Register, August, 1989, No. 404, eff. 9-1-89.

**DWD 41.05 Disputed cases.** (1) The attorney shall commence a court action to establish paternity for all cases except those meeting the criteria for exclusion in s. DWD 41.04, unless:

(a) The mother opposes the establishment of paternity because of the risk of physical or emotional harm to the child or herself; or

(b) The caretaker relative opposes the establishment of paternity because of the risk of physical or emotional harm to the child or the caretaker relative.

(2) If there is a dispute between the attorney and the mother about commencing a paternity action or the seriousness of the risk of physical or emotional harm, the attorney shall petition the court for appointment of a guardian ad litem to determine whether it would be in the best interests of the child to determine paternity.

**History:** Cr. Register, August, 1989, No. 404, eff. 9-1-89.