ERICSA POLICY AND LEGISLATION COMMITTEE
SYNOPSIS OF THE NEWLY ENACTED FEDERAL REGULATIONS

RESOLUTION	SUMMARY OF CHANGE
42 CFR 433.152 To 42CFR 433.152(b)1	This policy remedies the current inequity of holding noncustodial parents personally liable for services provided through the Indian Health Programs to IHS-eligible families that qualify for Medicaid, while not holding noncustodial parents personally liable for the same services for IHS-eligible families that does not qualify for.

ERICSA POSITION ON NPRM	P & L RECOMMENDATION
No comment	Support change

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45 CFR 301.1	Changes "in writing" and "written" when used throughout regulations to "record" or "in a record" to remove barriers to electronic communication and document management.

ERICSA POSITION ON NPRM	P & L RECOMMENDATION
No comment	Support change

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45 CFR 302.32	Reemphasizes and clarifies that state collection and disbursement units must collect and disburse non-IV-D collections in accord with federal law if order issued after January 1, 1994.

ERICSA POSITION ON NPRM	P & L RECOMMENDATION
Supported to help confusion regarding collection of support via IWO's . Some felt that it should be handled by OCSE outreach to offending states.	Support change

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45 CFR 302.33	Simplified notification process in foster care cases. Provides for a state option to provide limited paternity establishment services in intrastate

cases. NPRM had included interstate and international cases, but this was removed.

ERICSA COMMENT:	P & L COMMENT:
Generally supported but, questioned the inclusion of interstate and international cases. Also questioned cost in changing computer systems.	OCSE changed NPRM in accord with ERICSA comment (making it a state option in applying to intrastate only)

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45 CFR 302.56

- Changed "shall" to "must" in regard to guidelines and specific requisites in guidelines.
- Original NPRM changed "all" to "actual" income of NCP. Final rule left it at "all".
- Provides for state flexibility in applying a "self - support reserve". State discretion.
- Maintained requirement to address health care needs but struck reference to CFA 303.31 as it applies only to IV-D cases.
- References what must be considered in imputing income - "laundry list".
- Provides that incarceration may not be treated as voluntary unemployment in establishing or modifying orders.
- NPRM had proposed considering parenting time provision in guideline BUT final rule did not include this proposal.

ERICSA COMMENT:	P & L COMMENT:
• ERICSA opposed the change from "all" to "actual". • Recommended that the language "in accordance with § 303.31 of this chapter be stricken since it applies to only IV-D and is "out of step" with the ACA. • Had recommended that the regulation be more expansive in guiding choices as between public and private insurance. • Recommended more flexibility on state option in SSR, particularly when CP is	• Final role conformed to ERICSA comment/request. • Final rule accommodated ERICSA comment/request. • Final rule did not address public vs. private medical insurance choice. • Final rule did provide state flexibility in defining an SSR. The SSR provision is not mandated. • Final rule implements original proposal: "Incarceration is not voluntary unemployment" and various procedures which require suspension of order when individual is incarcerated. • Consideration of parenting time.

	in the low income range as well so as not to shift the complete support burden to CP. • Agree in principle that incarceration should not be deemed "voluntary unemployment", it should remain within discretion of states. (Should be permissive). • Supported parenting time provisions in guidelines and support orders. • Recommend a permissive element for guidelines to address the alignment of the child dependent exemption on federal taxes with health insurance enforcement provisions. • Supports providing states flexibility in naming deviation elements.	Provision (and cost of same) was eliminated in final rule. • Some flexibility in naming "deviation factors" is provided.

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302.70	Changed three year exemption to a five year exemption in 302.70 requirements.	
	ERICSA COMMENT:	**P & L COMMENT:**
	Support the recommendations.	Adopted the proposal in final rule.

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302.76	**Job Services**: The NPRM had included a provision that permitted states the ability to include in a state plan a provision for job services pursuant to § 303.6(c) 5. However, the final rule DID NOT include this provision. OCSE noted that the provision received overwhelming support, however, the use of IV-D funding for job services was slated "for further study and possible implementation in the future".	
	ERICSA COMMENT:	**P & L COMMENT:**
	Had supported the inclusion of IV-D funding for job services for NCP's.	We should consider supporting further "study" and ultimately inclusion of this in a new rule.

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303.3

Location of NCP's in IV-D cases: NPRM added correctional institutions to the list of appropriate location services. The final rule made several changes; substituted (SNAP) for "food stamps", substituted electronic communications and internet security providers/utility companies "for the local telephone company", and added correctional institutions as proposed.

ERICSA COMMENT:

Supported the addition of "correctional institution".

P & L COMMENT:

Need clarification as the cost of "jailing parents" is a specifically excluded FFP cost.

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303.6

Enforcement of Support Obligations: The NPRM had proposed significant change to Civil Contempt processes including adding significant emphasis on examing actual earnings and actual means to pay. Also proposed significant reliance on job training and job services for NCP's (including transportation tools, etc.). The final rule scaled back the onerous civil contempt requirements but maintained basic *Turner v. Rogers* requirements including emphasis on NCP's ability to pay.

ERICSA COMMENT:

- Subsistence needs of NCP should not be addressed in enforcement areas – goes beyond *Turner vs. Rogers* requirements. Rule as proposed would greatly slow down the enforcement process.
- Rule encroaches on rights and independence of the judiciary.
- Well- developed body of case law controls.
- Support addition of job and training programs for NCP's to state plan including subsidized employment.

P & L COMMENT:

- Onerous civil contempt and general enforcement requirements reliant on NCP's "inability to pay" have been "scaled back"
- Disappointed that job training and services have been eliminated.
- Consider supporting future consideration of job services and training.

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302.65 303.7 304.25
302.85 304.10
303.5 304.12

All provisions involved technical changes and clarifications which were supported by ERICSA and made into the final rule.

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303.8

Final Rule: State may elect in its state plan to initiate, without request, a review and adjustment of the child support order if the NCP is ordered to still be incarcerated for more than 180 days (NPRM had proposed 90 days) after the IV-D agency receives notice of the incarceration. If the state does NOT elect to adjust automatically based on NCP's 180+ days of incarceration, the IV-D agency must provide notice to parents of the right to review and adjustment with fifteen days of receiving notice of the incarceration with instructions. Section removed the prohibition of Medicaid being used to meet the child's medical support needs.

ERICSA COMMENT:

- Supported concept to permit states to elect to initiate R & A based on NCP's incarceration, but suggested that states be permitted to choose the triggering number of incarceration days.
- Requested OCSE further define "incarceration" in terms of county vs. state time and pre-judgement vs. post-judgement sentence.
- Opposed mandatory requirement for R & A based on incarceration of NCP as not all states consider this to be a change in circumstances.
- Supported the Medicaid provision.

P & L COMMENT:

- Would prefer less "mandatory" language regarding treatment of incarcerated NCP's.
- This ties into a requirement that states pass legislation that incarceration is a change of circumstances that would allow a modification to an order of child support – hence the requirement that the IV-D agency must either initiate a R & A on its own for 180+ days or notify the parents of their right to request it. Deadline for legislation effectiveness: 1 year after completion of the first quadrennial review of the state's guidelines that commences more than one year after 12/20/16.

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303.11 (a) & (b)

Case Closure Criteria: Changed some case closure criteria to simplify and streamline closure requirements. Closure is now permitted in any case where there is not current support obligation and all arrears are assigned to the state. Closure is also permitted for low-income noncustodial parents who are in long-term care arrangements. The previous case closure provisions for a parent whose location is unknown have been shortened from three years and one year to two years and six months, respectively depending on whether the parent's social security number is known or unknown. Also, provision to permit closure when a social security number cannot be verified. Also permits closure when NCP's sole income is from SSI and SSD.

ERICSA COMMENT:

- Had requested clarification on how the cost of a care facility was to be determined and factored into the determination of "subsistence" level.
- Had requested clarification as to whether "subsistence levels" include SSA income.
- Requested clarification on how combined (SSI/VA benefits) should be treated.
- Incarceration and incapacitation should be treated separately with states given ability to determine.
- The ability to collect support from SS retirement and disability should remain even if considered with other types of income and should not be a basis for closure.
- Supports expanded methods of communication with CP regarding closure and the "two attempts" criteria. But would like permission to close if only one means of communicating with CP is available.

P & L COMMENT:

- Support expanded closure material.
- Note that the OCSE did NOT clarify some ERICSA questions despite requests to do so.
- Most changes were same as proposed in NPRM.

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303.11(b)12 Permits closure when responding agency documents failure by the initiating agency that is essential for the next step. (Clarifies responding agency" role).

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303.11(b)20 A new regulation that permits closure when another assistance program has referred the case to the IV-D agency that is inappropriate to establish, enforce or continue to enforce a child support order and the CP has not

applied for services.

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303.11(b)21

A new regulation permits closure when the IV-D case, including a case with arrears assigned to the State, has been transferred to a Tribal IV-D agency and the State IV-D agency has compiled with the following procedures:

(i) Before transferring the State IV-D case to a Tribal IV-D agency and closing the IV-D case with the State:

(A) The recipient of services requested that State to transfer the case to the Tribal IV-D agency and closed the case with the State; or

(B) The State IV-D agency notified the recipient of services of its intent to transfer the case to the Tribal IV-D agency and close the case with the State and the recipient did not respond to the notice to transfer the case within 60 calendar days from the date notice was provided;

(ii) The State IV-D agency completely and fully transferred and closed the case; and

(iii) The State IV-D agency notified the recipient of services that the case has been transferred to the Tribal IV-D agency and closed.

The Final rule modifies the language from the NPRM to clarify the roles of the IV-D State agency, tribal agency, and to enunciate what notice the recipient of services must receive.

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303.11(c)

Specifically provides for case closure when the child is eligible HIS services and/or the case was only opened for a Medicaid referral. Final rule added to NPRM language: "including the Purchased/Returned Care" program to clarify that it is a reason to close.

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303.11(d)

This section mainly follows the existing 303.11(c) case closure notice requirements. The NPRM requirements about notifying other agencies relating to closure (see NPRM subsections (d)(4) and (d)(5) were eliminated in the final rule in response to comments stating that it was unnecessary and a waste of state resources.

The final rule added the ability to electronically notify the recipient of services of the case closure when the recipient has specifically authorized that form of notification.

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303.11(e)

The IV-D agency must retain all records for cases closed pursuant to this

section for a minimum of three years, in accordance with 45CFR 75.361.

The main change is moving this to subsection "e" and adding the specific section in 45 CFR rather than a general reference to part 92.

ERICSA COMMENT:	P & L COMMENT:
Had generally agreed with all proposed changes to case closure outlined above (we did have comments to other case closure proposals).	The final rule changes and attendant notice requirements will permit IV-D programs to concentrate efforts on collecting support for families in cases when the order is appropriate and collectable.

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303.31

Medical Support: Final rule makes substantial changes to the existing rule and the NPRM. Broadened the definition to include all types of health insurance. Health insurance is changed to "health care coverage". As defined, this is broader than traditional health insurance products. It not only includes traditional health insurance modalities such as fee for service plans, health maintenance organizations and, preferred provider organizations, the rule refers to "other types of private health insurance." The term also includes public health coverage or public health care coverage, meaning we can specifically seek out coverage through Medicare, Medicaid and CHIP. Parents may not be the only source of coverage available to cover the children. Cost of insurance is reasonable if it does not exceed five percent of gross income. The new rule seems to provide for two separate analyses. One when the responsible party already has health insurance for him/herself and one when they do not. Does afford flexibility to states to determine an alternative method. The final Rule also indicates that the cost of insurance is to be allocated among the parties.

ERICSA COMMENT:	P & L COMMENT:
• Supports inclusion of public health insurance to be sufficient. • Pointed out that some elements were in conflict with ACA (ex: 8% is reasonable cost.) • IV-D Agency cannot and should not be in a position to "choose" between available health insurance. Request more specific OCSE guidelines.	• Primarily adopted NPRM. • Support changes but note that there remain many "unclear" items. • More specific guidance by OCSE not provided. • Question role of "cash medical support" now.

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303.72 (d)(1) State referring past due support for tax refund offset, most in interstate situations; notify any other states involved in enforcing order when it receives the offset amount.

ERICSA COMMENT:	P & L COMMENT:
Supported change.	New rule adopts NPRM language.

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303.100 Mandates use of federal forms in wage withholding and mandates use of SDU.

ERICSA did not comment on this provision

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304.20 **Federal Financial Participation:** FFP was provided for the establishment and enforcement of support obligations including, but not limited to:

(v) Bus fare and other minor transportation expenses to enable custodial or noncustodial parents to participate in child support proceedings and related activities;

(vi) Services to increase *pro se* access to adjudicative and alternative dispute resolution processes in IV-D cases;

(vii) Investigation and prosecution of fraud related to child and spousal support;

(11) Medical support activities as specified; and

(12) Educational and outreach activities intended to inform the public, parents and family members and young people who are not yet parents about the Child Support Enforcement program, responsible parenting and co-parenting, family budgeting and other financial consequences of raising children when the parents are not married to each other.

Included in NPRM but removed from the final rule:

(vii) De minimus costs associated with the inclusion of parenting time provisions entered as part of a child support order and incidental to a child support enforcement proceeding;

(ix) Job service activities pursuant to Sec. 303.6(c) (5).

ERICSA COMMENT:	P & L COMMENT:
• ERICSA supported additional	• Adopted our request for additional

flexibility in expenses eligible for FFP to carry out the state plan.

- ERICSA supported providing FFP for electronic monitoring in lieu of incarceration.
- ERICSA supported the allowance, at the state option, to claim FFP for legal expenses incurred in representing NCPs in IV-D legal process such as guardian ad litem in paternity establishments.
- ERICSA supported parenting time provisions at the state option.
- ERICSA did not support the inclusion of "bus fare or other minor transportation expenses."

flexibility.

- Electronic monitoring removed from final rule.
- No mention of FFP for various costs associated with NCP which was supported by ERICSA.
- No allowance for parenting time FFP.

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304.21

Federal Financial Participation: Final rule makes FFP available for "medical services" and costs of "corrections officials."

ERICSA COMMENT:

Strongly opposed the inclusion of "corrections officials" and questioned what was intended – "cost of incarceration"?

P & L COMMENT:

Final rule adopts "corrections officials" still questions what this means.

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304.23

Expenditures from which FFP is not available: Adopted NPRM regarding clarification that state and county employees are included in cost of education and training related to employment, but not as an education "benefit".

Adopted elimination of medical support activities from that which was precluded for FFP.

Retained the preclusion of FFP for the costs associated with the jailing of parents. (ed. note: this seems inconsistent with the new inclusion of "corrections officials" as an entity with whom cooperative agreements can be entered into.)

ERICSA COMMENT:	P & L COMMENT:
• Supported the technical clarification regarding the limitation of FFP funds for training programs and educational services. • Consistent with prior comments; ERICSA disturbed by eliminating preclusion for FFP for jailing of parents. ERICSA request clarification as to what specifically would be an "allowable" cost associated with incarceration. • ERICSA supported at state option, the cost of counsel for indigent defendants (contrary to NPRM).	The preclusion of FFP for the cost of "jailing" of parents seems inconsistent, (needs clarified) with the inclusion of "corrections officials" to be eligible for FFP.

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305.35 **Reinvestment:** New rule clarifies the reinvestment "penalty" when the base amount of financial support is not met.

ERICSA had no comment on NPRM which was adopted.

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307.11 **Functional Requirements for Computerized Support Enforcement Systems:** Clarified when incorrectly garnished SSI and/or comingled SSI/ SSD or veterans benefits must be returned and time frame changed.

ERICSA COMMENT:	P & L COMMENT:
Supported change	The time frame to return funds in NPRM was two days. Final rule changes to five days.

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301.13 **Approval of State Plants and Amendments:** NPRM made technical changes to the rule which were supported by ERICSA and adopted in the Final Rule.

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301.15 **Grants:** A number of technical changes were proposed in NPRM supported by ERICSA and adopted in the final rule.

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302.14
302.15

Fiscal Policies and Accountability: Final Rule clarifies record requirements.

ERICSA had no comment

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304.26
304.40
305.63
305.66
308.2

A number of technical changes were proposed and finalized in these rules.

ERICSA had supported.

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309 309.130
309.85 309.145
309.115 309.160

Tribal Child Support Program: A number of "technical" changes to the Tribal Child Support Program were proposed and adopted. The technical changes mirror and create "conformity" with the IV-D program.

ERICSA had supported these changes.