

Chapter 1 : Olmstead: Implementing the Integration Mandate | Bazelon Center for Mental Health Law

One of the key provisions, used to help implement the OBRA requirements in daily nursing home practice, was the mandatory use of a standardized, comprehensive system, known as the RAI, to assist in assessment and care planning.

March 10, TO: Final Rule - Implementing part of the paternity establishment provisions contained in section of the Personal Responsibility and Work Opportunity Reconciliation Act Public Law , enacted August 22, States will be required to adopt laws and procedures that are in accordance with the statutory and regulatory provisions. These regulations address these procedures and related provisions. The final rule is effective: Hearing impaired individuals may call the Federal Dual Party Relay Service at between 8: Background Paternity establishment is a necessary first step for obtaining child support in cases where a child is born out-of-wedlock. Paternity establishment could also be the first step in developing a psychological and social bond between the father and child, in giving the child social and psychological advantages and a sense of family heritage, and in providing access to important medical history information. Congress and the Federal government have long recognized the importance of paternity establishment. These IV-D agencies provided child support enforcement services, including paternity establishment services. Partly as a result of these Federal and State statutory provisions and their implementation, the number of paternities established each year by the Title IV-D Child Support Enforcement program has increased substantially from about , in fiscal year FY to over , in FY , an increase of over percent in just six years. Finally, in section of PRWORA, Congress cited a number of social and statistical findings relating to the need for paternity establishment. In , only 54 percent of single-parent families with children had a child support order established and, of that number, only about one-half received the full amount due. Of the cases enforced through the public child support enforcement system, only 18 percent of the caseload has a collection. The number of individuals receiving services under Title IV-A of the Social Security Act more than tripled since , and more than two-thirds of these recipients are children, with eighty-nine percent of children receiving Aid to Families with Dependent Children benefits living in homes in which no father is present. The increase in the number of children receiving public assistance is closely related to the increase in births to unmarried women. Congress further cited that between and , the percentage of live births to unmarried women increased nearly threefold, from The estimated rate of nonmarital teen pregnancy rose 23 percent from 54 pregnancies per 1,000 unmarried teenagers in to We received 31 comments from State and local IV-D agencies, national child support enforcement organizations, advocacy groups representing custodial parents and children, and the general public. A summary of the comments received and our responses follow: Description of Regulatory Provisions--Section Under these procedures, before a mother and putative father can sign a voluntary acknowledgment of paternity, the mother and the putative father must be given notice, orally or through the use of video or audio equipment and in writing, of the alternatives to, the legal consequences of, and the rights including any rights, if a parent is a minor, due to minority status and responsibilities of acknowledging paternity, and ensure that due process safeguards are afforded. Response to Comments on Section One commenter was concerned that the regulation appears to require the State birth record agency to offer voluntary paternity services. The State currently uses a collaborative method in which the IV-D agency, birthing hospitals and birth record agencies work together to secure acknowledgments of paternity. The commenter wondered if the entities have to establish separate programs under these revised regulations? The State must make voluntary paternity establishment services available at birthing hospitals and the State birth record agency. However, these agencies may share staff to provide the services to parents. For example, many States station IV-D staff in hospitals to facilitate the acknowledgment process. One commenter was concerned that the Notice of Proposed Rulemaking published January 5, 63 FR gives no guidance to States on how to carry out the oral presentation on rights and responsibilities and no guidance on what to include on the acknowledgment form about how parents were given oral notice. We encourage States to place the explanation of rights and responsibilities in writing on the acknowledgment form itself. However, consistent with past policy, we are not mandating detailed Federal due process requirements. The explanation of rights

and responsibilities should describe the rights and responsibilities, including the duty to support the child financially, that each party will assume as a result of signing the acknowledgment. It should also describe rights that each party may be giving up by signing the acknowledgment e. These rights and responsibilities will vary by State, depending on State law. However, because of the importance of the due process and rights and responsibilities issue, OCSE is committed to providing technical assistance, within its available resources, including sharing sample forms and materials from other jurisdictions, in order to assist States. The oral presentation of rights and responsibilities may be made in several ways: One commenter wanted the regulation to include a date certain by which all States are to implement the oral presentation. The dates vary, depending on the beginning and ending of legislative sessions in each State. Statutory requirements should be in effect in all jurisdictions. One commenter was concerned about the potential burden on States and other entities if they have to provide for the needs of hearing impaired mothers and putative fathers. While we are concerned that parents with special needs are also able to learn of their rights and responsibilities, we do not believe that this regulation should specify how the States operationalize these program requirements when interacting with parents with special needs. We are confident that each State has appropriate procedures for use with all parents and see our role as providing the overall program direction, to be implemented by the States in an appropriate manner for the particular circumstance. The commenter [[Page]] suggested revising this section of the regulations to allow a category of entities which could assist in the establishment process without being subject to the procedures currently governing State hospital-based programs. States may choose to make voluntary paternity establishment services available in as few or as many entities beyond hospitals and birth record agencies as they see fit. If a State would prefer to make information about voluntary paternity services available at many locations but to restrict the number of entities actually providing the service, that would be perfectly within State flexibility. We do not think it is necessary to revise the regulations to grant States this flexibility. However, any entity that is providing voluntary paternity acknowledgment services will be subject to the procedures governing hospitals and birth record agencies. One commenter requested that the regulations make it absolutely clear that State law must provide that, for a paternity acknowledgment to be valid, it must be signed by both parents. The commenter advised moving the language from section The statute requires States to develop procedures under which the name of the father will be included on the record of birth of unmarried parents only if the father and mother have signed a voluntary acknowledgment of paternity or a court or an administrative agency has issued an adjudication of paternity. The State plan requirement at section 20 cross references all of section Therefore, compliance with the paternity establishment requirements of section a 5 and the implementing regulations at 45 CFR We continue to think that is appropriate because, whether or not referenced in the regulations, States must include the mandated data elements developed by the Secretary in their paternity acknowledgment affidavits. One commenter recommended the regulations provide more information on what the consequences of signing the acknowledgment are. Since the specific consequences may vary State-by-State and we are concerned about giving States more flexibility in designing their programs and the materials to be used to explain them, we think it is better to avoid being overly prescriptive and to avoid developing Federal requirements that would unnecessarily disrupt or interfere with the operation of existing, successfully functioning programs. Two commenters objected to expanding the program to other entities including the State and local birth record agencies. At a minimum, this commenter felt States should have flexibility to determine what entities other than birthing hospitals and IV-D agencies should be involved in the program. Section a 5 C iii II of the Act requires the Secretary to prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies and to prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services. Thus, the statute and this regulation give States the flexibility to determine what entities, other than hospitals and birth record agencies, should be involved in the voluntary paternity establishment program. A State may choose to make the program available at one or all of the locations described in section One commenter was concerned that the requirement for oral and written notice would make it problematic to inform parents who are unable to come to an office of their rights and responsibilities. Parents do not need to be present in order to receive an explanation of their rights and responsibilities. Oral

notice may be provided to parents via a phone line with recorded information, if the parents are given the number to call. The designation of the particular entities that may offer voluntary paternity establishment services is the responsibility of the State. These entities to be identified by the State could include the following and similar entities: This is consistent with the statutory requirement that the Secretary prescribe regulations governing the provision of services by the other entities. We believe this consistency will greatly facilitate the establishment of paternities by entities other than hospitals and birth record agencies. The information about consequences may also be provided through the use of video or audio equipment. The NPRM proposed to replace the reference to the requirement in section 5 D ii of the Act with the following: "If States opt to file the signed original voluntary acknowledgment or an adjudication of paternity with an entity other than the State registry of birth records, a copy must be filed with the State birth record registry, in accordance with section 5 C iii II aa." One commenter expressed fear that the wholesale involvement of other agencies in acknowledging paternity may not provide the kind of support that parents need to make an informed choice about completing a voluntary paternity acknowledgment. We are confident that States will not expand the program too quickly. We also feel that the protections built into section 5 C iii II aa States may choose to add to the list at section 5 C iii II aa. However, correctional officers are law enforcement or penal officers and do not qualify as health, welfare or social service organizations. Due to the nature of the relationship between such officers and their charges and the authority or power of such officers over their charges, there would be significant risk for coercion. We do not believe they would be an appropriate category to be added for participation in the voluntary paternity establishment program. One commenter wanted to know if a State would be in compliance if it only choose to identify one entity in addition to hospitals and birth record agencies to provide voluntary paternity services. The regulations require voluntary paternity establishment services to be available at hospitals and at State birth record agencies. States may choose to also make the services available at one or more of the other entities listed in the regulations at section 5 C iii II aa. Several commenters were concerned that birth record agencies as the term is used in section 5 C iii II aa should be interpreted to mean only State level birth record agencies and not to refer to local-level birth record agencies. We agree and have made several slight changes to emphasize that fact in the final regulations. Local birth record agencies i. One commenter recommended the preamble address the issue of the right to rescind a voluntary paternity acknowledgment and provide guidance on appropriate procedures for States. Section 5 D ii of the Act requires the States to enact laws and develop procedures under which an individual who has signed a voluntary acknowledgment has the right to rescind that acknowledgment within the earlier of 60 days or the date of an administrative or judicial proceeding relating to the child. We think this is an area where further regulation is not needed at this time. We are prepared to work with States to help them address any specific problems they face in implementing the minimum data requirements of the paternity affidavit which include a reference to the day recession requirement. In addition, OCSE regional staff will be compiling information on State paternity programs including how States manage the 60 day rescission. One commenter proposed that States establish voluntary paternity establishment services in cooperation with all birthing hospitals but not in cooperation with every hospital in the State. The hospital-based program requirement is limited to hospitals that either have an obstetric care unit or that provide obstetric services, consistent with previously issued regulations. One commenter proposed revising this section to clarify that the staff of a paternity establishment services provider may be based out of any agency or contractor designated by the State, and need not be available outside of normal business hours. States are free to make voluntary paternity acknowledgment services available in as many locations and at any times they choose, so long as the services are available at hospitals and at State birth record agencies. We want to encourage States to make paternity acknowledgment services available to as many parents as possible after a thorough explanation of the rights and responsibilities of doing so. In fact, States have been successful making staff available outside of normal business hours, to recognize after-working-hour visits to the hospital. One commenter recommended OCSE assist States in implementing in-hospital paternity acknowledgment before expanding paternity establishment services to other entities. In the past, we have conducted meetings with our Regional Offices to bring together hospital personnel, IV-D staff and birth registry personnel to air issues and concerns about in-hospital paternity establishment and more

recently we are moving to develop a national video on paternity establishment for unmarried parents regarding the benefits, rights, and legal consequences of signing a voluntary acknowledgment of paternity. We agree and are deleting the phrase in the two places in section

Chapter 2 : Implementing OBRA: LTC providers fear poor reimbursement.

Under OBRA, Long Term Care Ombudsman Programs have defined roles to fulfill and tools to use in the annual inspection process to nurture the conversations between residents/families and inspectors and life in the nursing home.

It was signed by President Ronald Reagan, and it was the first major revision to the federal standards for nursing home care since the creation of both Medicare and Medicaid in 1965. This legislation changed the legal expectations of nursing homes and their care. By the OBRA regulations nursing homes are not allowed to have working nurse aides for more than four months unless they are certified. In order to keep working longer than that aides need to go through a training and competency program. The nursing home will be responsible to verify that the aide is registered in their state. Under OBRA a nurse aide registry must consist of aides who have completed a nurse aide training and have successfully passed the competency evaluation program. OBRA requires that all nursing facilities keep all employees up to date in their trainings. Annual education requires a minimum of 12 hours of training that specially address any weaknesses or areas of concerns that the group may be having. If the facility holds mentally ill patients the aid needs to be able to show that they have the proper skills to handle situations involving those mentally ill patients. The states can have their own training and competency program, for a program to be approved it must meet OBRA regulations. Such training must have a minimum of 75 hours of training of which 16 need to be supervise practical training hours. There are specific requirements under OBRA for a training curriculum. Students need to learn proper communication skills and interpersonal skills, they need to learn how to control infections, the appropriate emergency procedures, appropriate safety procedures. Students need to learn the needed nursing skills, such as how to correctly take vital signs and how to identify abnormal changes in a patient. They need to be able to know the needs needed when working with patients with mental health problems, and how to give care to patients for cognitively impaired patients. Some requirements under OBRA are: OBRA changed the care and lives of nursing home residents all across America. Many improvements have improved the care planning of the residents in the nursing home system. Retrieved July 1, 2011, from Appendix PP: The OBRA nursing home regulations and implementation. It was created to be a part of California Budget Pages: Poor money management of the State of California has caused people to suffer. The purpose of my speech is to educate the audience about prevention, treatment and how to know whether a person is suffering from the flu rather than a comparison of Federal and Puerto Rican Employment Protections Pages:

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federal implementation of obra nursing home reform provisions thursday, may 18, u.s. senate, special committee on aging, washington, dc.