



George E. Pataki
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

Brian J. Wing
Commissioner

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 98 ADM-6

TO: Commissioners of
Social Services

DIVISION: Child Support
Enforcement

DATE: May 5, 1998

SUBJECT: Procedures for Establishing Paternity with Acknowledgments
and Administrative Orders for Genetic and/or DNA Tests

**SUGGESTED
DISTRIBUTION:**

Child Support Enforcement Coordinators
Support Collection Unit Supervisors
Accounting Supervisors
Public Assistance Directors
Medicaid Directors

**CONTACT
PERSON:**

OCSE - County Representative (800) 343-8859
Legal - Eileen Stack (518) 473-1949
Fiscal - Regions I-IV, Roland Levie (800) 343-8859
ext. 4-7549 Region V, Marvin Gold (212) 383-1733
Medicaid - Shari Niedbalic (518) 473-5531
Public Assistance - (800) 343-8859 Region extension

ATTACHMENTS:

Order - Genetic Marker or DNA Tests (Attch. 1)
Affidavit - Certificate Lab Authentication (Attch. 2)
Affidavits- Sworn Statement (Attchs. 3 and 4)
List of laboratories (Attch. 5)
(all not available on line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			SSL 111-k FCA 418 FCA 532 FCA 542 FCA 565 CPLR 4518		

I. PURPOSE

This directive advises social services districts of the procedures and forms for establishing paternity. The directive also provides an affidavit of certification which must be completed by the laboratory submitting test results, and a list of laboratories as of January 1, 1998 which have been approved to conduct such tests by the Commissioner of the New York State Department of Health and by an accrediting body identified by the Secretary of the Department of Health and Human Services for that purpose.

II. BACKGROUND

PRWORA of 1996 provides that states must have procedures to conduct genetic tests administratively to expedite the paternity establishment process. States' experience with providing multiple opportunities for parents to acknowledge paternity including conferencing cases after the administration of genetic tests has proven successful in establishing paternity in a timely manner.

Chapter 398 of the Laws of 1997 amended section 111-k of the Social Services Law (SSL) to provide that when the paternity of a child is contested, a social services official or designee is authorized to order the mother, alleged father, and child to submit to one or more genetic marker or DNA tests to aid in the determination of whether or not the alleged father is the father of the child.

Genetic marker or DNA tests administered in paternity proceedings pursuant to section 111-k of the Social Services Law and sections 418 and 532 of the Family Court Act require that such tests must be of a type generally acknowledged as reliable by an accreditation body and performed by a laboratory approved by such an accreditation body and by the New York State Department of Health.

III. PROGRAM IMPLICATIONS

The authority to administratively issue orders of genetic marker or DNA tests will increase the efficiency of the paternity establishment process by reducing the need to obtain a court order for such testing. The resultant decrease in the amount of time required to obtain an order of support will facilitate payments commencing sooner.

IV. REQUIRED ACTION

A. Applicable Cases.

The authority for social services districts to administratively issue genetic marker or DNA testing orders granted pursuant to revisions to SSL 111-k, is applicable to cases receiving child support enforcement services under the provisions of SSL Title 6-A (i.e., public and non-public assistance cases) in which:

1. the paternity of a child is contested and the paternity of a child has not been established;
2. there has not been a determination of good cause, attestation (reference 18NYCRR 369.2 (b)) or other exception as authorized by applicable regulations by the social services district; and
3. there has not been a written finding by the court that submitting to such tests is not in the best interest of the child on the basis of res judicata, equitable estoppel, or the presumption of legitimacy of a child born to a married woman.

B. Procedures.

In accordance with established procedures for intake and where the location of the alleged father is known and where the child support enforcement unit has made a determination in consideration of A. above to proceed to establish paternity, the child support enforcement unit must take the following actions as appropriate:

1. Contact the mother and alleged father.
 - a. Interview the mother to ascertain if she wishes to sign an acknowledgment of paternity. If she does not wish to sign an acknowledgment of paternity because e.g., she is not certain who the father is or does not believe the alleged father will acknowledge, file a paternity petition with the court and continue action as provided under 4. below to arrange for genetic and or DNA tests. Note: Whenever a paternity petition is filed the district must store a "P200" or "Paternity Petition Filed" on CSMS IVDJSI.
 - b. If the mother does wish to sign an acknowledgment of paternity, have her complete her part of the acknowledgment. Contact the alleged father by telephone or letter requesting him to come in and complete the acknowledgment in accordance with SSL 111-k, section 516-a of the Family Court Act (FCA), and section 4135-b of the Public Health Law. Note: based on local district procedures, the action to obtain an acknowledgment may occur concurrently with the filing of a paternity petition.

- c. Review the case for contact from the alleged father. If the alleged father fails to respond or responds by denying paternity, file a paternity petition with the court and continue action as provided under 4. below.
 2. Complete an acknowledgment of paternity.
 - a. If the alleged father indicates he wishes to acknowledge paternity, complete the father's part of the acknowledgment and file the acknowledgment with the birth registrar for the district in which the birth occurred and in which the birth certificate has been filed. Any time an acknowledgment of paternity is obtained by a local district the child record on CSMS IVDJCH or IVDCAB must be updated with the letter "A". This will result in the entry of a "P901 05" or "Pat Est. By Acknowledgment" on IVDJSI.
 3. File a support petition.

If an acknowledgment of paternity is obtained, proceed to obtain an order of support by attempting to secure a support agreement in accordance with SSL 111-k and FCA 425, or by filing a support petition with the family court in the event a support agreement cannot be reached or it is determined impractical and/or inefficient to do so.

4. Arrange for genetic or DNA tests.
 - a. If an acknowledgment of paternity is not obtained, arrange for genetic or DNA tests by obtaining a sworn statement using Attachment 3 or Attachment 4 as appropriate:

Attachment 3 "Affidavit Alleging Paternity" alleges paternity and sets forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

Attachment 4 "Affidavit Denying Paternity" denies paternity and sets forth facts establishing a reasonable possibility that the party is not the father.

- b. In assisting the mother in preparing the sworn statement alleging paternity, care must be exercised to not disclose the mother's address where domestic violence or good cause has been determined but the child support enforcement unit has still been authorized to proceed to establish paternity.

- c. Schedule the date and time of the genetic and or DNA tests with the paternity testing laboratory and with the mother and putative father for the parties and child. Note: when scheduling the tests with the parties ensure that it is appropriate for the parties to appear at the same time or make arrangements for different times.
 - d. Ensure that the laboratory has been provided with a copy of Attachment 2, "Affidavit Certification Pursuant to CPLR 4518 (c) and (d)" which the laboratory should complete and forward with any records or reports of genetic marker or DNA test results which are forwarded to the SCU or to the court. This certification will ensure the admissibility of such reports into evidence in court if necessary.
5. Complete Attachment 1 "Order For Genetic or DNA Tests.
- Complete the order and serve the order and sworn statement on the parties by certified mail. Whenever an order for genetic or DNA tests is served store a "P2001 06" "Admin Order For Genetic Testing on IVDJSI. Once the the order is available on CSMS Document Generation Module a "P201 06" status will be stored automatically on IVDJSI whenever the document is generated.
6. Review the case for the return of the test results.
- a. If the putative father fails to appear for the paternity tests and, as a result, the tests are not completed proceed to file a paternity petition as set forth in B.2. above. Also include in the petition a request for an order of temporary support based on the alleged father's failure to comply with the "Order - Genetic marker or DNA Tests" pursuant to section 542 of the Family Court Act.
 - b. If the test results have been received provide a copy of the test results to each party.
 - c. If the test results indicate paternity, again attempt to obtain an acknowledgment of paternity (Note: test results indicating at least a 95% probability of paternity create a rebuttable presumption of paternity) by conferencing the case with the parties or each of them separately as is appropriate.
 - d. If the parties agree, complete an acknowledgment of paternity. If an acknowledgment of paternity is obtained, proceed to obtain an order of support as set forth in B.3. above.

- e. If an acknowledgment of paternity is not obtained, complete and file a paternity petition with the Family Court (if one has not already been filed) and attach to the petition: the original of the record or report of test results, the genetic test order, and the sworn statement affidavit.
 - f. If the test results indicate exclusion of paternity, child support enforcement unit staff should store a "P801 05 "Paternity Excluded" for that child on IVDJSI. The child support enforcement unit staff must re-interview the mother and take such other steps as necessary to identify and locate an alleged father.
7. Cooperation with child support.
- In public assistance cases and medicaid cases (except for pregnant women), applicant/recipients are required to cooperate with child support in establishing paternity and securing support absent good cause, attestation or other exception. As such, applicant/recipients must cooperate except as noted with all procedures provided in this ADM. Notification of cooperation or noncooperation must be promptly made to the income maintenance or medical assistance unit.
8. Challenges to administrative order.
- a. If the "Order - Genetic Marker or DNA Tests" is challenged by the party on a motion to the court pursuant to section 565 of the Family Court Act, the child support enforcement unit must appear in court with respect to such motion. Since the case will now be before the court, the child support enforcement unit should file a petition to establish paternity as noted in B.1. above if a paternity petition has not already been filed.
 - b. The child support enforcement unit staff should appear in court to testify with regard to any CSMS records.
9. Other actions.
- The child support enforcement unit should promptly take action to modify CSMS record or take other such action as necessary as a result of any court order.

C. Tests and Laboratory.

1. Genetic marker or DNA tests which are administratively or judicially ordered must be of a type generally acknowledged as reliable by an accreditation body designated by the Secretary of the U.S. Department of Health & Human Services, and must be performed by a laboratory approved by such accreditation body and by the Commissioner of the Department of Health. A list of laboratories approved for paternity testing is included as Attachment 5.
2. CPLR 4518 (d) and (e) provide that such test records and reports are admissible provided that they bear certification or authentication by the laboratory which conducted the tests. A copy of an affidavit of certification is provided as Attachment 2. Laboratories have been provided this form to use under separate cover.

D. Cost of Tests.

1. The cost of any test ordered pursuant to this directive shall be paid by the social services district, provided however, that the alleged father shall reimburse the district for the cost of such test at such time as his paternity is established by an acknowledgment of paternity or by an order of filiation. This would include interstate actions where New York is using long arm or is the initiating state and the two state method must be used. The district should include a request for reimbursement in the support petition and, if ordered by the court, a 22BD ledger established on the account on CSMS for reimbursement.
2. If either party contests the results of a genetic marker or DNA test, an additional test may be ordered upon written request of either party to the social services district and advance payment by the requesting party.
3. The cost of any genetic marker or DNA tests should be reported as Object of Expense Code 18.2 - Laboratory Paternity Determination Costs on Schedule DSS-923A. These costs will carry through to the Schedule D-8, "Allocation For Claiming Title IV-D Child Support Activities and Support Collection Unit Expenditures" (DSS-2547) and are reimbursed at the rate of 90% Federal, 5% State, and 5% local shares. Any fees collected as repayment for genetic testing expenditures must be netted against any amounts claimed for reimbursement on the DSS 923A Schedule.

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E. Records of the SCU.

Each SCU must keep a record through CSMS of activities taken with respect to the administrative ordering of genetic tests and of paternity establishments by acknowledgment of paternity or by court order.

V. SYSTEMS IMPLICATIONS

Modifications are being made to CSMS to add the forms to the CSMS Document Generation Module. Districts will be advised when they are available under separate letter.

VI. EFFECTIVE DATE

This ADM is effective May 15, 1998.



Robert Doar, Director
New York State Office of
Child Support Enforcement

_____ County Child Support Enforcement Unit

In the matter of a Paternity Proceeding

(Commissioner of Social Services,
Assignee)

**Order - Genetic Marker
or DNA Tests**

Petitioner

-against-

[SSL 111-k]

Respondent

CSMS Case Number: _____

Child's Name: _____

The Social Services official or designee, having received the attached sworn statement (alleging) (denying) paternity, issues this administrative order requiring the mother, the child and the alleged father to submit to one or more (genetic marker) (DNA) tests performed by an approved laboratory pursuant to section 111-k of the Social Services Law, to determine whether the alleged father can be identified or excluded as being the father of the child; therefore, it is hereby

ORDERED that the mother, child and alleged father appear at the draw/testing site which is located at _____, Mother and child to appear on _____, _____, at _____ (A.M.)(P.M.) for the purpose of submitting to such test(s); and

Father to appear on _____, _____, at _____ (A.M.)(P.M.) for the purpose of submitting to such test(s); and it is further

ORDERED that the mother is directed to bring the child's birth certificate, her driver's license and/or picture identification, and her Social Security Number to the draw/testing site; and it is further

ORDERED that the alleged father is directed to bring his driver's license and/or picture identification, and his Social Security Number to the draw/testing site; provided, however, that

The parties shall not be required to submit to the administration and analysis of such tests if they sign an acknowledgment of paternity, or if there has been a written finding by the Family Court that it is not in the best interest of the child, as provided by section 111-k of the Social Services Law. NOTE: Any challenge to this order must be submitted in writing to the Family Court, and a copy of the challenge shall be provided to the _____ Child Support Enforcement Unit.

Upon completion of the test(s), the testing laboratory shall provide the original of the record or report of the results of such test(s) to the _____ County Child Support Enforcement Unit, which shall mail a copy to the Petitioner and Respondent, respectively. It is further

ORDERED that the mother and alleged father shall appear at any conference scheduled by the _____ County Child Support Enforcement Unit, to discuss the allegation of paternity or the results of the tests, the date and time of which shall be provided by such unit; and it is further

ORDERED that the costs of the test(s) shall be paid by the _____ County Department of Social Services; PROVIDED HOWEVER, that the alleged father shall reimburse such Department for the cost of such test(s) at such time as the alleged father's paternity of the child is established by a voluntary acknowledgment of paternity or an order of filiation. If either party contests the results of the test(s), an additional test may be ordered upon written request to the social services district and advance payment by the requesting party.

The record or report of the test(s), if certified in accordance with section 4518(d) and [e] of the Civil Practice Law and Rules, is admissible in evidence in support of a petition to establish paternity unless objections to the record or report are made in writing to the Clerk of the _____ County Family Court no later than twenty days before the hearing or thirty days after receipt of the record or report of the test

results, whichever is earlier; and if no such timely objections are made, they are deemed waived.

FAILURE TO APPEAR AND SUBMIT to the (genetic marker) (DNA) tests or FAILURE TO APPEAR at a conference scheduled by the Child Support Enforcement Unit, as ordered herein, shall result in the filing of a petition with the Family Court to establish paternity. The court will be provided with a copy of the record or report of test results, if any, and will be requested to issue an Order for Temporary Support pursuant to section five hundred forty-two of the Family Court Act.

Ordered by

(Commissioner) (CSEU Coordinator)

or Designee _____

_____ County DSS

_____ (address)

_____ (address)

Dated: _____, _____

attachment: Sworn statement (alleging)(denying) paternity.

AFFIDAVIT

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF _____

In the matter of a Paternity Proceeding
(Commissioner of Social Services, Assignee)

CERTIFICATION PURSUANT TO
CPLR 4518 (d) and (e)

Petitioner
against

Respondent

STATE OF _____
COUNTY OF _____

I, _____, the head of the laboratory named below, or an employee designated to certify and authenticate records and reports of said laboratory, CERTIFY AND AUTHENTICATE the annexed records and reports relating to the administration and analysis of genetic marker and/or DNA tests administered under court order pursuant to Section 418 and 532 of the Family Court Act or an administrative order pursuant to Section 111-k of Social Services Law, relating to:

(MOTHER)

(CHILD)

(ALLEGED FATHER)

I further certify that the _____ is a laboratory duly approved to perform genetic marker and/or DNA tests by the New York State Commissioner of Health (Clinical Laboratory Number _____, Patient Service Center Permit Number _____) and has been accredited by the American Association of Blood Banks and/or the American Society of Histocompatibility and Immunogenetics.

I further certify that the annexed report was made in the regular course of business of this laboratory, and that it was in the regular course of business for this laboratory to make such report and that such report was made at or about the time of the administration and analysis of the genetic marker and/or DNA tests relating to said mother, child, and alleged father.

All said Certificates of Qualification and Permits are in full force and effect on the date this affidavit was executed.

Sworn to and Subscribed before me this
____ day of _____, _____ at

Notary Public or Commissioner of Deeds
My commission expires _____

AFFIDAVIT ALLEGING PATERNITY

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF _____

In the matter of a Paternity Proceeding
(Commissioner of Social Services, Assignee)

Petitioner
against

Respondent

STATE OF _____
COUNTY OF _____

I, the undersigned _____,
whose social security number is _____, whose residential address is
_____, whose mailing address, if different is
_____, being duly sworn, depose and say:

1. I am the mother of a child _____ born to me out-
of-wedlock on _____, at _____
located at _____.
The pregnancy (was) (was not) full term.

2. I believe the natural father of the child is _____,
whose social security number is _____, whose residential address is
_____, whose mailing address, if different is
_____.

3. From the point of sixty (60) days before I became pregnant the alleged father and I did engage in
sexual intercourse on the following dates and times at the following locations:

4. In support of my allegation of paternity for said child, I set forth the following additional facts:

Sworn to and Subscribed before me this
____ day of _____, _____ at
_____.

Notary Public or Commissioner of Deeds
My commission expires _____

AFFIDAVIT DENYING PATERNITY

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF _____

In the matter of a Paternity Proceeding
(Commissioner of Social Services, Assignee)

Petitioner
against

Respondent

STATE OF _____
COUNTY OF _____

I, the undersigned _____,
whose social security number is _____, whose residential address is
_____, whose mailing address, if different is
_____, being duly sworn, depose and say:

1. I deny the paternity of the child whose name is _____
born out-of-wedlock to _____ at
on _____

2. In support of my denial of paternity for said child, I set forth the following facts which I believe establish
that I am not the father of said child.

Sworn to and Subscribed before me this
____ day of _____, _____ at
_____.

Notary Public or Commissioner of Deeds
My commission expires _____

Laboratory Permit Report

Labs Approved by the NYSDOH as of 1/98

Attachment 5

<p>Laboratory: CBR Laboratories Inc. * 800 Huntington Avenue Boston, Mass. 02115</p> <p>Telephone: (617) 731-6470</p> <p>Contact: David H. Bing, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing Blood Genetic Marker Testing Paternity/Identity DNA Testing</p>	<p>Laboratory: Fairfax Identity Laboratories Genetics & IVF Institute * 3025 Hamaker Ct. Suite 203 Fairfax, VA 22031</p> <p>Telephone: (703) 698-3919</p> <p>Contact: Daniel B. Demers, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing DNA Testing</p>
<p>Laboratory: Cellmark Diagnostics Inc. * 20271 Goldenrod Lane Suite 120 Germantown, MD 20876-4064</p> <p>Telephone: (301) 428-4980</p> <p>Contact: Robin W. Cotton, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing DNA Testing (RFLP & STR analysis)</p>	<p>Laboratory: GeneScreen * # 5698 Springboro Pike Dayton, OH 45449</p> <p>Telephone: (800) 443-2383</p> <p>Contact: Cheryl L. Conley, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing Blood Genetic Marker Testing Paternity/Identity Testing DNA Testing (RFLP and STR analysis) Paternity/Identity Testing HLA Testing</p>
<p>Laboratory: Clinical Testing & Research Inc.* 20 Wilsey Square Ridgewood, NJ 07450</p> <p>Telephone: (201) 652-2088</p> <p>Contact: Leslie D. Johnson, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing Blood Genetic Marker Testing Paternity/Identity DNA Testing (limited to PCR Dot-Blot & STR analysis) Paternity/Identity HLA Testing</p>	<p>Laboratory: Identigene Inc. * 7400 Fannin Ste 1222 Houston, TX 77054</p> <p>Telephone: (713) 798-9510</p> <p>Contact: Rick W. Staub, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing DNA Testing (limited to DNA polymorphism analysis by STR analysis)</p>

* = Approved by the American Association of Blood Banks (AABB)

= Approved by the American Society for Histocompatibility and Immunogenetics (ASHI)

Note: The licensure of laboratories is date-specific and the NYSDOH should be contacted regarding any specific lab that you are interested in. Please contact Betty Kusel at (518)474-7885. AABB may be reached at (301)907-6895. ASHI may be reached at (913)541-0009.

Laboratory Permit Report

Labs Approved by the NYSDOH as of 1/98

Attachment 5

<p>Laboratory: Laboratory Corporation of America Holdings* # 1447 York Court Burlington, NC 27215</p> <p>Telephone: (800) 334-5161 Contact: William F. Hancock, M.D.</p> <p>Type of Testing: Paternity/Identity Testing Blood Genetic Marker Testing Paternity/Identity Testing DNA Testing Paternity/Identity Testing HLA Testing</p>	<p>Laboratory: SUNY Health Science Ctr. At Syracuse Clinical Pathology Laboratory * # 750 East Adams Street Syracuse, NY 13210</p> <p>Telephone: (315) 464-4460 Contact: Frederick R. Davey, M.D.</p> <p>Type of Testing: Paternity/Identity Testing Blood Genetic Marker Testing Paternity/Identity Testing HLA Testing</p>
<p>Laboratory: Lifecodes Corporation * 550 West Avenue Stamford, CT 06902</p> <p>Telephone: (203) 328-9500 Contact: Michael L. Baird, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing DNA Testing Paternity/Identity Testing HLA Testing</p>	<p>Laboratory: The Blood Center of Southeastern Wisconsin Inc. * 638 N. 18th Street Milwaukee, WI 53233</p> <p>Telephone: (414) 937-6250 Contact: Jerome L. Gottschall, M.D.</p> <p>Type of Testing: Paternity/Identity Testing DNA Testing (limited to RFLP)</p>
<p>Laboratory: Micro Diagnostics Inc.* # 1400 Donelson Pike Ste A-15 Nashville, TN 37217</p> <p>Telephone: (615) 360-5000 Contact: Robert S. Foster, Ph.D.</p> <p>Type of Testing: Paternity/Identity Testing DNA Testing Paternity/Identity Testing HLA Testing</p>	

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