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State Use of Genetic Testing

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E X E C U T I V E S U M M A R Y

PURPOSE

This inspection describes State policies and practices regarding the use of genetic testing to establish paternity and highlights innovative strategies for overcoming barriers to testing.

BACKGROUND

Widespread use of genetic testing has contributed to increases in the number of paternities established in recent years. However, barriers may exist that inhibit the effective use of testing. Federal legislation requires States to empower their child support agencies with authority to order parties to submit to genetic testing. States agencies must make genetic testing available upon request of any party in a paternity case, pay for testing in some cases, and affirm that test results create a presumption of paternity. The Federal government matches State funds to cover testing expenses, and States may recoup these costs from the father once paternity is established. To obtain information on how States use genetic testing, barriers to its use, and strategies to surmount barriers, we surveyed child support agency directors in all States. Additionally, in six focus States, we surveyed local child support office managers and interviewed local managers and staff during site visits to twenty-four offices.

FINDINGS

States Use Genetic Testing in a Large Number of Paternity Cases.

State child support agencies widely agree that genetic testing should be used when *any* uncertainty about paternity exists, and report using genetic testing in a significant number of paternity cases. All but one State typically tests all three parties - child, mother and putative father - maximizing the precision of test results. Forty-three State child support agencies have the authority to administratively order parties to submit to genetic testing, while eight State agencies have no such authority, or must gain approval from the courts before requiring parties to test. Testing is occasionally used in cases in which paternity has already been established through voluntary acknowledgment or by default.

Many Mothers and Putative Fathers Have Incentives Not to Test and Other Barriers, Such as Inconvenient Testing Locations, May Inhibit the Use of Genetic Testing.

The greatest barrier to the effective use of genetic testing is a desire on the part of mothers and putative fathers *not* to establish paternity. Putative fathers may simply wish to avoid paying child support, and mothers may prefer informal support. Other barriers that inhibit use of testing include: client fear of needles, lack of transportation, inconvenient testing locations, fees charged for testing, difficulty scheduling appointments for submission of DNA samples, and intentional delays by parties attempting to prolong or avoid paternity establishment.

Some Promising Strategies to Surmount Barriers Are Used Only In Limited Areas.

Some child support staff immediately collect DNA samples from parties at their local office, thereby avoiding future delays and transportation problems. Many areas use buccal swab (cheek cells) sampling, instead of drawing blood, alleviating client fear of needles as a barrier to testing. To eliminate expense as a concern for putative fathers' use of genetic testing, some States do not seek to recoup testing costs, or allow local staff discretion to waive recoupment. However, few areas in the country appear to use all of these strategies.

RECOMMENDATIONS

Encourage All States to Give Agencies Administrative Authority to Order Genetic Testing.

Child support agencies in eight States do not have the full authority to administratively order genetic testing as required by welfare reform. Having authority to order testing is a necessary first step for child support workers to administratively establish paternity.

Encourage States to Use Innovative Strategies, Such as Buccal Swab Sampling at Local Child Support Offices.

Sample collection at local child support offices and use of buccal swab sampling help child support workers surmount barriers to the use of genetic testing. Staff report that collecting genetic samples from parties at the child support office helps avoid delays and transportation problems. Buccal swab sampling appears to be safer, easier and faster than drawing blood, and often meets less resistance from parties who may be afraid of needles.

Encourage States to Exercise Care in Allowing Genetic Testing in Cases in Which Paternity Has Already Been Established.

Routine use of genetic testing in cases in which paternity has already been legally established through voluntary acknowledgment or by default may have serious long-term consequences. Such practice could weaken the legal standing of acknowledged or defaulted paternities. State child support agencies should be encouraged to work with their legislatures, vital records agencies and court systems to develop consistent procedures regarding use of genetic testing when paternity has already been established.

AGENCY COMMENTS

The Administration for Children and Families (ACF) agreed with our recommendations that all States should grant their child support agency authority to order genetic testing, and should be encouraged to use innovative testing strategies. Regarding our recommendation that they encourage States to exercise care in genetic testing when paternity has already been established, ACF prefers to leave this to State discretion but agreed to advise States that our findings suggest the need to review their own policies and practices. We have withdrawn a recommendation that OCSE encourage States to review their recoupment policies.

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I N T R O D U C T I O N

PURPOSE

This inspection describes State policies and practices regarding the use of genetic testing to establish paternity, and highlights innovative strategies for overcoming barriers to testing.

BACKGROUND

Congress and States have taken advantage of modern scientific advances by encouraging the use of genetic testing in paternity establishment efforts. The Family Support Act of 1988 mandated that States require all parties in paternity cases to submit to genetic testing upon request of any party. The Act also set the Federal matching rate for genetic testing at 90 percent.[1] Subsequent legislation required that genetic testing create a presumption of paternity, when test results meet thresholds established by the States. The Personal Responsibility and Work Opportunity Act of 1996 required that States adopt expedited procedures that give child support enforcement agencies authority to order genetic testing "... without the necessity of obtaining an order from any other judicial or administrative tribunal..."[2] Federal law also gives State agencies permission to recoup the cost of testing "... from the alleged father if paternity is established..."[3]

Legislation designed to encourage genetic testing has had a profound effect on the paternity establishment process across the nation. Child support staff now have a highly reliable method of determining whether a man is the father of a child. While genetic testing cannot prove paternity, it can exclude with certainty a man wrongly named as the father. Further, test results can demonstrate the probability that a child is the offspring of a man with the exact genetic characteristics of the man tested, up to a probability of 99.9 percent. As a result of these advances, every State will now legally establish paternity when a man is not excluded by testing.

When a child is born to an unmarried woman, paternity may be established through various methods. Many unmarried parents sign voluntary acknowledgments of paternity immediately following birth in hospitals, or sometime subsequent to the child's eighteenth birthday. Genetic testing is typically not required in conjunction with voluntary acknowledgments. A second method of establishing paternity involves the parties voluntarily consenting to genetic testing and agreeing to abide by the results. These are common in administrative paternity establishments. A third method involves contested cases in which the parties are either administratively or judicially ordered to submit to genetic testing.

Several topics regarding the use of genetic testing in paternity establishment warrant consideration, including the legal authority to order genetic testing, the mechanics of testing, and its effect on children, mothers, putative fathers and child support staff. Barriers may exist that make testing more difficult for parties, which is important, considering the possible consequences of failure to test when ordered. Potential barriers may include inaccessibility of test sites, fear of needles and drawing blood, the cost of testing, and any incentives the parties might have to avoid testing or delay paternity establishment.

SCOPE AND METHODOLOGY

To examine the role of genetic testing in the paternity establishment process, we gathered information from three groups of child support specialists: State child support agency directors, local office managers, and local office front-line staff. We reviewed the laws and regulations governing the use of genetic testing. We also analyzed the processes, forms and documentation employed by State and local child support enforcement offices regarding genetic testing.

Administrators from every State and the District of Columbia child support agency completed a written survey on paternity establishment methods and policies. Ninety-nine local office managers in six focus States - California, Georgia, Illinois, New Jersey, Texas and Virginia - completed a survey about their office's paternity establishment policies and practices. Finally, we made site visits to four local offices in each of the six focus States. During these visits, we conducted 47 interviews which included over 99 local office child support staff who work directly with clients.

We purposively selected the six focus States to include a variety of implementation strategies and experiences regarding paternity establishment. To achieve this variety, we considered many criteria including, non-marital birth rates by State and locality, State Paternity Establishment Percentages (PEP), performance of voluntary acknowledgment programs, outstanding program characteristics (innovation, privatization, etc.), status as State-administered or county-administered, and geographic region. We also purposively selected local child support offices within these States to provide a mix of urban, suburban, mid-size and rural locations.[4] Since the number of local offices varies significantly by State, we surveyed all local offices in some States and a portion in others.[5] For on-site interviews, we visited offices in one or two cities and their surrounding areas in each focus State. The selection of focus States does not purport to be representative of the nation, nor do local offices represent all offices within individual focus States. The selections do, however, allow for examination of paternity establishment processes under conditions found throughout the country.

The pretested survey instruments and interview protocols included sections specifically about policies and office procedures related to genetic testing as well as barriers to the use of testing. Additionally, we gathered supplementary documentation including copies of State paternity policy manuals, staff training materials on paternity practices, public outreach materials related to paternity establishment, and samples of documents and correspondence regarding paternity establishment.

This study of the use of genetic testing was conducted as part of a larger project on State paternity establishment methods. Companion reports discuss State use of voluntary paternity acknowledgments, the role of vital records agencies in paternity establishment efforts, and an overall description of State paternity establishment methods.

This study was conducted in accordance with the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

F I N D I N G S

STATE USE OF GENETIC TESTING

Almost All States Use Genetic Testing in a Large Number of Paternity Cases and Typically Test the Mother, As Well as the Child and Putative Father.

State and local child support agencies rely heavily on genetic testing to determine paternity. Thirty-one States report using testing in "about half" or "some" paternity cases, with another 16 States reporting usage in more than half of all paternity cases. Two States claim to use genetic testing in only few cases. Local child support offices in focus States report similar usage patterns, with 81 percent using genetic testing in "about half" or "some" paternity cases, and another 17 percent using it in more than half of all paternity cases. Only one out of 96 local managers reported testing in just a few cases.

Policy in all but one State is to test all three parties in a paternity case: child, mother and putative father. While paternity may be established without testing the mother, States choose to test her for two reasons. First, genetic test results using all three parties provide a higher probability of paternity than motherless tests.[6] Additionally, testing the mother eliminates a potential welfare fraud scheme. Local staff report that women occasionally apply for public assistance, fraudulently claiming a child is hers in order to increase her level of benefits. In this case, genetic testing would exclude her as the mother. However, States may be forced to test without the mother if she cannot be located, or is incarcerated or deceased.

Child Support Staff Encourage Genetic Testing in Cases in Which Uncertainty Exists.

Forty State child support agencies believe genetic testing should be used when *any* uncertainty about paternity exists on the part of any of the parties, and another six go further to say it should be used in *all* cases. Only four State officials suggest that *substantial* uncertainty should exist before genetic testing is provided. A local child support worker explains that, in practice, workers encourage genetic testing whenever doubt exists:

> *"If there is any doubt, I encourage them to do a blood test. Some guys are embarrassed to ask for the test, but I tell them to go ahead unless they are sure. Genetic testing does not add much paperwork or staff time to the process. So it is better to do it up front."*

Most, But Not All, State Child Support Agencies Have Administrative Authority To Order Genetic Testing, Thereby Potentially Expediting the Paternity Establishment Process.

Forty-three State child support agencies have authority to order parties in paternity cases to submit to genetic testing, with a few States granting this authority only within the last two years. Two other States have a quasi-judicial procedure in which child support agencies may order testing when approved by judicial authorities. In the six remaining States, only the courts may order genetic testing.

Federal law requiring States to empower their child support agencies with administrative authority to order testing is part of a general effort to expedite paternity establishment procedures. Until recently, paternity establishment was a highly judicial process - with family or juvenile courts handling such cases in most States. However, because many State judicial systems were overloaded, paternity cases could often take many months, even after location of the putative father. A local child support worker explains how court involvement can create significant delays in the paternity establishment process:

> *"He has the right to go to court, and can request a DNA test. He can't get a DNA test until he files an answer with the court, and requests the test. He will then go back to court, perhaps several months later, and request the results. It usually takes about 6-8 weeks to get the DNA results. So there could be three or four months from the first court date. Getting court dates takes more time than getting a DNA test result."*

States are using strategies to expedite judicial paternity procedures, such as having phlebotomists present on days when paternity cases are heard. If one of the parties requests testing, the judge can order all three parties into an adjacent room to provide DNA samples. Judges may also set a date for final settlement of the case a few days after the test results are expected.

Another strategy to expedite paternity establishment is to make it predominately an administrative procedure, requiring little court involvement.[7] Empowering State child support agencies with the authority to order testing is a necessary first step of this approach. In those States that consciously attempt to make paternity establishment an administrative process handled chiefly by the child support agency, respondents view genetic testing as quite simple. Once named as a putative father, a man may either voluntarily acknowledge paternity, voluntarily submit to genetic testing, or the agency may issue an administrative order for testing. Genetic material samples may be submitted at the local child support office, or at a nearby location, perhaps on a putative father's first visit to the office. The results of testing either exclude the man or create a legally binding presumption of paternity. Paternity is then established administratively and staff proceed to obligate the father for support. (See Appendix A for example language of State documents regarding ordering genetic testing.)

Genetic Testing May Be Used in Cases Where Paternity Has Already Been Established.

Local child support staff we interviewed report that genetic testing is occasionally used in cases in which paternity has already been established by other methods. Federal law allows that paternity may be established through voluntary acknowledgment of the mother and putative father. While the parties may chose to pursue genetic testing prior to voluntary acknowledgment, they are likely to sign an acknowledgment in the hospital immediately after the child's birth. Congress clearly requires that when such a voluntary acknowledgment of paternity is signed, States conclusively establish paternity, following a 60-day rescission period.[8] Beyond the rescission period, a voluntary paternity acknowledgment may only be challenged based on "fraud, duress or material mistake of fact."[9]

Some child support staff interpret Federal law to mean that child support agencies and courts should neither order nor pay for genetic testing once paternity has been conclusively established. They argue that even if the man who acknowledged paternity is not the biological father, he voluntarily chose to take responsibility, may already have a relationship with the child, and neither he nor the mother should be allowed to revoke his parentage. They warn that if paternities established through voluntary acknowledgment are commonly overturned through subsequent genetic testing, the in-hospital voluntary paternity acknowledgment program may be jeopardized. Other child support staff argue that if a man incorrectly acknowledges paternity the State has an obligation to make testing available, even months or years after the acknowledgment. If genetic testing excludes the man, the State could reverse the paternity establishment and discontinue collection of child support. They maintain that collection is difficult if the man believes he is not the father, and that the best interest of the child is served by a definitive ruling based on genetic testing.

Similar concerns arise regarding the use of genetic testing in cases in which paternity has been established by default. Federal law allows for paternity to be established through a default order issued by the child support agency or the courts if a putative father does not heed a summons to appear for genetic testing or other appointment. Although States are required to provide proper service, a putative father who fails to respond could have paternity established by default with no evidence other than the word of the mother.

Some staff express concern over who pays for genetic testing and who has the authority to order testing in cases in which paternity has previously been established. If child support agencies routinely pay for these tests, total testing expenses would rise. On the other hand, if the agency refuses to pay, but allows genetic testing in these cases, some fear that only men with the financial ability to pay for testing in advance could avail themselves of the service. Similarly, if only courts may grant testing in such cases, those with greater resources could petition the courts to allow genetic testing and potentially revoke paternity.

Some have suggested that the circumstances of individual cases may be more critical than standardized policies. This view draws a distinction between cases in which child support staff and courts ‘routinely’ ignore voluntary paternity acknowledgments by ordering testing upon request, and cases in which only special circumstance can warrant paternity testing. For example, suppose an in-hospital paternity acknowledgment is signed at the time of birth, but the mother does not apply for public assistance or child support until the child is two years old. If child support staff will routinely grant a father’s request for genetic testing, the credibility of the original acknowledgment may be undermined. If, however, the Federal language of “fraud, duress or material mistake of fact” is demonstrated, unique cases may be handled without discarding the voluntary acknowledgment structure.

BARRIERS TO THE USE OF GENETIC TESTING

Many Mothers and Putative Fathers Have Incentives Not to Test.

State Child Support agencies and local staff agree that the greatest barrier to the effective use of genetic testing is a desire on the part of mothers and putative fathers not to establish paternity. State administrators report that putative fathers (43 States) and mothers (41 States) "do not want paternity established," and therefore avoid testing. Local child support office managers in our six focus States express similar concerns, identifying the desire of mothers (80 percent of offices) and putative fathers (72 percent) not to establish paternity as a barrier to the use of genetic testing.

Local child support staff explain that the perspective of mothers and putative fathers often depends on their current relationships. A mother may have a relationship with another man and fear that paternity and child support activities may disturb that relationship. Additionally, she may no longer have a relationship with the putative father and not want him involved with her children. Conversely, a mother may indeed have a relationship with the putative father, perhaps with him providing informal financial support to the family. If the mother receives public assistance, much of the father's formal financial support would likely go to the State as reimbursement for assistance rather than as support for the child. A putative father may have similar concerns. He may not want to be involved with the family, or may already provide informal support and wish to avoid participation in the formal child support system to maximize the amount of support reaching his children. Depending on circumstances, putative fathers, like mothers, may have significant incentives not to submit to genetic testing or to establish paternity.

The effect of these incentives is to increase the chance that one or more parties will not show up for genetic testing when scheduled. When fathers fail to appear for genetic testing, States either establish paternity by default immediately (10 States), provide a second opportunity or certain amount of time for testing before establishing paternity by default (25 States), or refer the case to court (11 States). Once a case is referred to the courts, judges may establish paternity by default or re-order genetic testing. Judicial options may also include fining putative fathers, citing them for contempt, or otherwise attempting to gain their compliance.

Mothers receiving public assistance risk being designated as non-cooperative and may face sanctions for failure to appear for genetic testing. Sixteen States immediately make this designation when a client fails to appear, while 32 States allow the mother a second opportunity or certain amount of time to comply. Most States appear to allow caseworkers some discretion, depending on the circumstances that caused the missed appointment. One State indicates that their policy requires child support staff to communicate with a non-compliant mother before making a determination of non-cooperation.[10] If the mother is not receiving public assistance, States cannot compel her to cooperate and generally begin case closure procedures once she fails to keep appointments. (See Appendix A for example language of State documents regarding ramifications of non-compliance.)

While the Cost of Genetic Testing Does Not Inhibit Its Use by Child Support Agencies and Staff, It May Be Seen as a Significant Barrier by Some Putative Fathers.

The cost of genetically testing all three parties to determine paternity ranges from $130 - $300 across States, with a national average of $204 per case. The Federal government reimburses States for 90 percent of their paternity testing expenses, although the Administration's FY 2000 budget proposes reducing the rate of reimbursement to 67 percent.

While almost all States appear to attempt recoupment of testing costs from men determined to be fathers, 15 States allow local staff and courts discretion in seeking recoupment on a case-by-case basis. Only one State indicates they do not try to collect reimbursement in any cases.[11] Local staff view cost and recoupment issues from a very practical perspective. As one worker explains, cost concerns are often viewed as secondary to establishing paternity:

> *"Cost is not an issue. We would never discourage someone from taking the test because of cost. Just the opposite. When there are any reservations, we would tell him it is in his best interest to have the test. We don't ask for reimbursement, even if the test is positive."*

While some local offices may not try to recoup costs, many fathers are charged for testing, and the cost may constitute a significant barrier for them. Eighteen State agencies report the fees charged for genetic tests are a barrier to putative fathers' use of testing. To understand how cost could discourage use of testing, imagine a situation in which a low-income or unemployed man is alleged to be the father of a child. Suppose he questions that the child is his, yet knows paternity is a strong possibility. The effect of recoupment policies is that the man in this scenario must risk up to $300 to find out whether the child is his. His other options are to wait for a default order of paternity to be issued or voluntarily acknowledge paternity. In each case, he technically gives up his right to genetic testing. For many men, the $300 gamble may prevent them from testing and learning definitively whether they are the father. Since staff freely encourage testing, they may be waiving the recoupment policy in similar situations. However, unless caseworkers have clear authority to waive recoupment, some fathers may not test because of the cost.

Two factors determine the cost of genetic testing for individual paternity cases: whether the same parties have to be re-tested for any reason; and whether multiple men have to be tested before paternity is established. Re-testing the same parties is occasionally required and occurs when samples are contaminated or otherwise insufficient for conclusive results. Child support agencies typically cover the cost of this rare type of re-testing, with no recoupment. Parties in paternity cases may also wish to re-test because they are dissatisfied with, or doubt, the results of an earlier test. Typically, if a second test is granted, the party requesting the test must pay the costs in advance.

Testing of multiple partners may be required to determine paternity. Local staff report that while most women know who the father is with certainty, some women name two, three, or four men as possibly the father. Rarely, even more men are named. In most States, paternity workers use practiced interview skills to help a mother determine the most likely candidate from among the

possibilities. Child support offices typically perform genetic testing in the order of likelihood, and only test others if the first man is excluded. However, in a focus State that primarily uses a judicial process for establishing paternity, workers report testing as many as three men at the same time before making a pleading in court. Because it took so long in this locality to arrange court dates, it was more prudent for child support attorneys to get permission to test all alleged fathers at once than it was to go before the judge after each possible exclusion. These workers suggested that their decisions often involved a trade-off between time and money.

The Time, Location and Method of Sample Collection Present Significant Barriers to Testing.

State and local staff report that getting parties to testing sites is problematic. Lack of transportation to the testing facility was identified as a barrier to mothers (41 States) and putative fathers (25 States). Inconvenient testing locations was also identified as a barrier for mothers (23 States) and putative fathers (16 States). Local office managers in focus States agreed, identifying transportation as a barrier for mothers (71%) and putative fathers (35%), and inconvenient locations as a barrier for mothers (26%) and putative fathers (12%).

About forty percent of State agencies also identified client fear of needles as a barrier to the use of genetic testing for both mothers and putative fathers. Some State administrators indicate a reluctance to using needles for collecting samples from infants under a certain age. Additionally, many prisons do not allow phlebotomists to bring in needles for collecting samples from prisoners.

While Genetic Testing Mostly Expedites the Paternity Establishment Process, Staff are Concerned About Scheduling Delays and Parties Intentionally Using Testing to Delay Paternity Establishment.

Thirty-nine State child support agencies report that genetic testing sometimes prolongs the paternity establishment process, yet only seven view these delays as a problem. Similarly, only eight percent of local child support office managers in focus States view delays attributed to genetic testing as a problem. Test results are typically returned to local offices two to four weeks after genetic samples are submitted, but occasionally take longer. Time may be wasted prior to the test because caseworkers report difficulty in scheduling appointments for parties to submit samples of genetic material. Finally, mothers and putative fathers often use the genetic testing process to undermine or stall paternity establishment efforts. Local workers in several offices reported frustration caused by these delays:

> *"He comes in and wants to be drawn. I have to wait two months for a draw date, and then it's going to take six to eight weeks for the results to come back. Well, that's not going to meet our 90 day [goal] right there. I don't see how it could be improved, unless we did it weekly. So that's a barrier, not having testing as often as you'd like."*
>
> *"A lot of [putative fathers] have learned if they ask for a blood test, it's going to prolong it. So a lot of them ask for it even though they know they are the father. They've just learned to work the system."*

As previously noted, the major reason genetic testing delays paternity establishment is because parents delay testing. Mothers and putative fathers frequently fail to appear for scheduled testing appointments. This situation requires re-scheduling or may cause a case to be switched from administrative to judicial procedures. If only the courts may order testing, or must approve orders for testing, further delays may ensue. States attempt to overcome these delays by testing parties, especially putative fathers, the first time they appear at a local child support office or at court. Many offices arrange appointments with putative fathers and mothers on specific days in which phlebotomists are scheduled to be in the office or at court.

Cases are also delayed when mothers intentionally name the wrong man as the father. It may take weeks or months to exclude the first putative father, before workers can get another name and begin the genetic testing process again. To discourage these intentional delays, one focus State instituted a policy of designating a mother on public assistance as non-cooperative, and imposing sanctions, if the first two men she named as father were excluded by genetic testing. This policy has been challenged in court because it is difficult for caseworkers to determine if mothers are attempting to defraud the system, or truly do not know which of several men is the father of her child.

STRATEGIES FOR SURMOUNTING BARRIERS

Some State agencies and local child support offices are using promising strategies to overcome barriers to the use of genetic testing including, as previously discussed, not charging fathers for paternity testing. Other promising strategies include: collecting genetic samples without using needles, and; immediate collection of genetic samples at local child support offices.

While Buccal Swab Sampling Overcomes Barriers Associated With Drawing Blood, Its Use is Limited and Some Authorities Still Prefer Blood Samples.

Only three States do not yet use buccal swab sampling, a method that uses cells swabbed from the cheek instead of drawn blood, to obtain genetic material needed in paternity testing. Despite the widespread acceptance of swab sampling in States, clients may not have access to the method in some areas. Offices in three of our six focus States have near universal access to swab sampling, yet access in the other three States is limited with 38 percent of local offices reporting no swab sampling. There appears to be confusion among some State and local offices regarding the acceptance of swab sampling. State agency respondents in one focus State indicate buccal swab sampling is not allowed for paternity testing in their State, yet 13 local child support office managers (68%) report some use of the method in their areas.

Child support staff suggest three explanations for local variation in access to swab sampling. In one respect, inconsistent implementation may simply reflect which services are provided by genetic testing vendors. Many States contract with private companies to collect samples and test for paternity. If a vendor handling a region of the State only uses drawn blood, parties may not have other options. A second explanation involves possible resistance to the buccal swab method by local judicial authorities. Many local child support offices still rely heavily on the court system and appear to conform testing procedures to the preferences of local judges. Third, child support

office managers in half of our focus States report having local discretion to determine sampling procedures.

Buccal swab sampling is preferred over drawing blood by 29 State child support agencies and 41 percent of local office managers in the six focus States.[12] Swab sampling is preferred primarily because it is less invasive for all parties, especially children. Swabbing also avoids client fear of needles, which was identified by about 40 percent of State agencies as a barrier to the use of genetic testing for both mothers and putative fathers. The method is also viewed as easier, faster and safer to administer than blood sampling. With no fear of the safety risks associated with handling blood, a few local managers note that their staff has been trained to perform the simple swabbing procedure. State administrators also indicate that swab sampling is the most acceptable method for collecting samples from infants under a certain age. Finally, many prisons do not allow needles, leaving swabbing as the only method for obtaining samples from prisoners. A local child support worker describes the typical view of sample collection using swabs, reporting:

> *"We do buccal swab here, so I tell the client there are no needles, and no blood, and that makes it easier because sometime they have young kids and don't want to get them stuck."*

Eleven State agencies and 23 percent of local child support managers in focus States prefer drawn blood sampling. The primary reason given for preferring blood to swabs is a misconception that it provides scientifically more reliable results. Phlebotomists explain, however, that the DNA is the same in every cell of the body and the accuracy of testing performed on cheek cells collected with a swab is the same as using blood.[13] Another reason for preferring blood samples is that, if performed improperly, swabbing may not collect enough cells for paternity testing and may require re-sampling. Some child support staff indicate that blood samples have stronger standing in court proceedings. One worker suggests that blood sampling is less vulnerable to fraud and another believes it "*motivates some putative fathers to sign the [voluntary acknowledgment],*" because they do not want to face the needle.

Collection of Genetic Samples in Local Child Support Offices Surmounts Barriers That Delay Paternity Establishment, But This Service is Not Offered in Most Areas.

Some States are attempting immediate collection of genetic samples, on-site, at local child support offices or in court. Parties may submit samples of genetic material at local child support offices in 29 States. However, implementation is rarely Statewide and often only a fraction of local offices offer this service. Fourteen of these States do report that all or nearly all of their local child support offices are equipped to draw blood or perform swab sampling. However, 12 States report that only a few offices have sampling equipment and 20 States report that none of their local offices are equipped for sample collection.

Local child support staff indicate that having sample collection in their offices or at a nearby location, so that parties may submit samples the same day, is of critical importance. Two workers contrast immediate sample collection with delayed submission of genetic material:

> *"Some counties have genetic testing on site. We are doing it here, since we already have the alleged father here. That way the man doesn't have the option of not showing up later. [This makes our method] the same as the court option. They take samples at court."*

> *"It happens very often that they come in today and just sign saying they are going to take the genetic test, and then the genetic test date comes and they don't show up, so it's delayed again. Most of them won't show up for that [later] paternity test."*

When genetic samples are not submitted at local child support offices, staff typically send parties to locations arranged by contracted private vendors or to local hospitals, clinics and doctors' offices. Parties may submit samples at court in several States, and three States report taking samples at local public assistance offices.

R E C O M M E N D A T I O N S

OCSE Should Encourage All States to Fully Comply With Welfare Reform Legislation by Giving Their Child Support Agencies Administrative Authority to Order Genetic Testing.

Welfare reform legislation requires States to empower their child support agencies with administrative authority to order genetic testing. Child support agencies in eight States report their legislatures had not granted them this authority two years after welfare reform took effect. Having authority to order testing is a necessary first step for child support workers to administratively establish paternity, thereby avoiding significant delays in some judicial systems. OCSE should encourage the remaining States to give their child support agencies this important tool to increase the effectiveness of their paternity establishment efforts.

OCSE Should Encourage the Use of Innovative Testing Strategies, Including Buccal Swab Sampling and Collection of Genetic Material at Local Child Support Offices.

Sample collection at local child support offices and use of buccal swab sampling help child support workers surmount barriers to the use of genetic testing. Staff report that collecting genetic samples from parties at the child support office helps avoid delays and transportation problems. Buccal swab sampling appears to be safer, easier and faster than drawing blood, and often meets less resistance from parties who may be afraid of needles.

OCSE Should Encourage States to Exercise Care in Allowing Genetic Testing in Cases in Which Paternity Has Already Been Established.

Routine use of genetic testing in cases in which paternity has already been legally established through voluntary acknowledgment or by default may have serious long-term consequences. Such practice could weaken the legal standing of acknowledged or defaulted paternities. Some question the usefulness of devoting State resources to a task that could reverse a legitimate paternity establishment. Others argue, however, that the State has a vital interest in knowing the biological truth of paternity. State child support agencies should be encouraged to work with their legislatures, vital records agencies and court systems to develop consistent procedures regarding use of genetic testing when paternity has already been established.

AGENCY COMMENTS

The Administration for Children and Families (ACF) agreed with our recommendation that all States should grant their child support enforcement agency administrative authority to order genetic testing. They requested that we provide the names of States who reported they were not fully compliant with this welfare reform provision at the time of our inspection so they could pursue the necessary steps to obtain compliance, which we will do.

ACF concurred with our recommendation that they encourage States to use innovative genetic testing strategies and will promote good ideas through their OCSE Newsletter and Internet site.

Regarding our recommendation that they encourage States to exercise care in genetic testing when paternity has already been established administratively, ACF prefers to leave this to State discretion. Nevertheless, they agreed to advise States that our findings suggest the need for States to review their own policies and practices for consistency and appropriateness.

We have withdrawn a final recommendation that OCSE encourage States to review whether their recoupment policies are counterproductive to their paternity establishment objectives. ACF prefers to let States decide whether to recoup genetic testing costs in view of the mixed opinion and absence of effectiveness data on this matter. We note that State reviews of whether their recoupment practices are counterproductive might yield insightful effectiveness data and need not remove this policy from State control.

ACF's comments are provided in their entirety in Appendix B.

E N D N O T E S

1. Social Security Act, Title IV, Part D. Sec. 455 (C).

2. Social Security Act, Title IV, Part D. Sec. 466(c)(1).

3. Social Security Act, Title IV, Part D. Sec. 466 (a)(5)(B)(ii).

4. These State and local offices were not randomly selected and their responses should not be interpreted as representative of all local offices in the nation or even within their own State.

5. We surveyed all local offices in Illinois, New Jersey and Virginia, and approximately a third of local offices in California, Georgia and Texas.

6. By identifying the child's genetic characteristics inherited from the mother, testing can more accurately demonstrate that all other genetic traits derive from the man.

7. Our forthcoming report, Paternity Establishment: Administrative and Judicial Methods (OEI 06-98-00050) will provide a detailed analysis of judicial and administrative methods of paternity establishment.

8. States may establish paternity earlier if an administrative or judicial order for child support is issued before the 60 days has passed.

9. Social Security Act, Title IV, Part D. Sec. 466 (a)(5)(D)(iv).

10. Our forthcoming report, Client Cooperation With Child Support Enforcement: State Policies and Practices (OEI 06-98-00040) will provide a detailed analysis of why some public assistance clients avoid cooperation with child support enforcement and the effects of non-cooperation.

11. One State reports charging mothers for testing if the putative father is excluded.

12. Nine State agencies and 29 percent of local office managers indicate no preference.

13. Similarly, other sources of genetic material are also adequate for paternity testing, including umbilical cord tissue samples, semen and post-mortem specimens.

A P P E N D I X A

Examples of Language Used in State Genetic Testing Documents

Voluntary Agreements

- I, [name,] am voluntarily agreeing to submit to blood testing of either proving or disproving that I am the biological father of [children.] I understand that if the results of this blood testing show that the probability of my being the father is at least 98%, I will ... be declared the legal father of the above named child and therefore responsible for the payment of child support and the provision of medical support, if available at reasonable cost, until that child reaches the age of 18 years or beyond if required by law to support beyond age 18. Also, I understand that if I am found to be the father of the above named child, I will be responsible for the cost of the blood testing.

- By virtue of [her/his] notarized signature on this document: [mother/alleged father] agrees to be bound by the results of genetic testing conducted by a certified laboratory regarding the paternity of the child indicated below.

Administrative Orders for Genetic Testing

- Whereas, [State law] allows the Department of Social Services to enter administrative orders for genetic testing for purposes of paternity actions ... [the parties] shall submit to genetic testing in this matter. You are further notified that you are legally required to comply with this Administrative Order for Genetic Testing and your intentional failure to do so is a petty offense under the laws of the [State.]

- This is an order for you to submit to paternity testing. We issue a standing order for paternity testing when the identity of the biological father is disputed. When paternity is questioned, the Child Support Enforcement Division will schedule appointments for genetic testing for the alleged father, the mother and the child. State law is clear: the alleged father, the mother and the child must submit to paternity tests, when scheduled. If you do not comply with this order, you may be subject to legal sanctions, including a legally-binding determination of paternity. We reserve the right to recover genetic testing costs.

Judicial Orders for Genetic Testing

- The Department of Human Services has been appointed in the above-referenced court order as the agency responsible for arranging genetic testing. The genetic test for all parties has been scheduled as follows: [time, date and location]. ... If you are unable to have the genetic test performed at the scheduled time, please contact [us] immediately. Failure to appear could result in a recommendation for a court hearing to resolve the matter.

- If you are court ordered to appear for a blood test, and fail to do so at the scheduled time and place, contempt of court proceedings may be commenced against you for violating the court order.

- The alleged biological father, the alleged biological mother, and the child named above present themselves at [date, time, and location.] The parties are to conduct themselves in a proper manner while at the site. The willful failure of any of the parties to present and conduct themselves as ordered may result in the punishment of such parties by a jail sentence or by a fine or by both. Further, the court may order such parties to reimburse the payor for any costs assessed against it for their failure to appear as scheduled or to behave.

Letters to Mothers Regarding Genetic Testing

- Please be advised that blood testing for you and the above named children, has been scheduled on [time, date and location]. You must keep this appointment to cooperate with the child support program. If you receive State assistance, your benefits may be reduced if you do not cooperate with the child support program.

- Failure to appear can result in court action or the reduction of the [assistance] grant.

Letters to Alleged Fathers Regarding Genetic Testing

- If you deny or are unsure that you are the father, you must submit to genetic testing. This testing will show whether it is possible that you are the father of the child. If the test results show a 95% or greater chance that you are the biological father, you will be subject to all laws that impose duties upon a legal father. You will then have to reimburse us for the cost of testing.

- You have been scheduled for genetic testing [time, date and location.] If you fail to appear for your genetic test, an order based on the Notice of Agency Action will be issued declaring you as the father and ordering you to pay child support.

Payment for Genetic Testing

- The Department of Economic Security agrees to advance all costs necessary to complete genetic testing of the following individuals: [names of parties.] In the event that genetic testing does not exclude [alleged father] as the biological father of the minor children, he agrees to reimburse the Department of Economic Security for all genetic testing costs.

- If the alleged biological father is found to be the biological father, then he may be required to reimburse the payor for all costs incurred in obtaining and testing the blood samples. However, final assessment of such costs shall be made at the end of the case.

APPENDIX B

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

DATE: July 22, 1999

TO: June Gibbs Brown
Inspector General

FROM: Olivia A. Golden
Assistant Secretary
for Children and Families

Olivia A Golden

SUBJECT: Comments on the OIG Draft Reports on Paternity Establishment--State Use of Genetic Testing (OEI-06-98-00054) and the Role of Vital Records Agencies (OEI-06-98-00055)

Thank you for the opportunity to comment on these reports. If you have questions, please contact David Gray Ross, Commissioner, Office of Child Support Enforcement, at (202) 401-9370.

Attachment

Comments of the Administration for Children and Families on the Office of Inspector General's Draft Reports on Paternity Establishment—State Use of Genetic Testing (OEI-06-98-00054 and the Role of Vital Records Agencies (OEI-06-98-00055).

General Comments:

The Federal Office of Child Support Enforcement (OCSE) thanks the Office of Inspector General (OIG) for the opportunity to comment on these two draft reports.

Background:

Paternity establishment is a crucial step to establishing a legal relationship between a child and father. Paternity establishment can provide basic emotional, social, and economic ties between a father and his child. It can also provide a child with legal rights and privileges including rights to inheritance, rights to a father's medical and life insurance benefits, social security and possibly veterans' benefits. It also provides a child the opportunity to develop a sense of identity and connection with the father, and may be important for the health of the child for doctors to have knowledge of the father's medical history. Paternity establishment is also the first step to establishing an enforceable child support order.

The administration has made paternity establishment a top priority. In fiscal year 1998, an estimated 1.5 million paternities were established and acknowledged. Of these, nearly 615,000 were in-hospital paternities that were voluntarily acknowledged. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) streamlined the legal process for paternity establishment and required States to publicize the availability of and encourage the use of the paternity establishment process.

Paternity Establishment: State Use of Genetic Testing (OEI-06-98-00054)

OIG Recommendation:

OCSE Should Encourage All States to Fully Comply With Welfare Reform Legislation by Giving Their Child Support Agencies Administrative Authority to Order Genetic Testing.

ACF Response:

The report says that two years after the 1996 passage of PRWORA, eight State CSE agencies did not have legislated authority to administratively order genetic testing. Please advise which states lacked this authority. If, since the inspection was conducted, these states are still non-compliant with PRWORA, OCSE will take the necessary steps to obtain compliance. We believe it is in the best interests of our federal-state partnership to focus our effort on the states in question rather than on all states.

OIG Recommendation:

OCSE Should Encourage the Use of Innovative Testing Strategies, Including Buccal Swab Sampling and Collection of Genetic Material at Local Child Support Offices.

ACF Response:

We will promote the good ideas identified in the report through the OCSE newsletter and by making more information available on the OCSE internet site. These ideas include: using buccal swab as an effective and accurate substitute for blood tests, particularly when drawing blood may be a barrier; enabling local staff to perform buccal swab tests for convenience and quick turnaround. We will also suggest that states consider writing into their lab contracts the need for returning test results rapidly. State agencies will be encouraged to share this information with local offices and with any courts which may not be aware of the accuracy of the buccal swab procedure.

OIG Recommendation:

OCSE Should Encourage States to Exercise Care in Allowing Genetic Testing in Cases in Which Paternity Has Already Been Established.

ACF Response:

The report gives examples of cases which suggest that the use of post-establishment genetic testing is somewhat controversial. We agree, to an extent. We believe it is in the child's best interest to know the inheritable health issues of her biological parents. In the absence of data on the extent of post-acknowledgement testing, we are not certain the use of post-establishment testing would weaken the voluntary or default procedures. We also believe its use should continue to be at a state's discretion, on a case-by-case basis. Rather than take a federal policy position, we will advise states that your findings suggest they review their own policy and practice for consistency and appropriateness.

OIG Recommendation:

OCSE Should Encourage States to Review Whether Their Recoupment Policies Are Counterproductive to Their Paternity Establishment Objectives.

We believe cost recovery for genetic testing should continue to be a state decision particularly given the mixed opinions among states cited in the report. If full repayment created hardship in an individual case, then recoupment could be collected gradually as part of the support order. Personal responsibility is underscored to the payor by recovering an overpayment. If you are aware of any states with data on effective recoupment practices, we would appreciate having that information for technical assistance purposes.

Miscellaneous Comments:

On page 3, second paragraph, the report says that "...states may be forced to test without the mother if she cannot be located, or is incarcerated or deceased." Current lab technology allows for testing of an absent parent's biological parents and siblings. It also allows for testing of the deceased. Further, those who are incarcerated can be tested.

On page 7, last paragraph, the report talks about multiple partners. Mentioning the single incidence of a case with 19 partners does not strengthen the argument for using genetic tests. It also unintentionally furthers an offensive and negative misconception about the sexual practices of IV-D cases. We recommend excluding the reference to 19 partners.

Paternity Establishment: The Role of Vital Records Agencies (OEI-06-98-00055)

OIG Recommendation:

OCSE Should Promote Notification of Vital Records Agencies When Paternities are Established or Rescinded, and Encourage Automatic Amendment of the Birth Record.

ACF Response:

We agree and will so notify and encourage states. We would appreciate knowing which states the OIG has determined have exemplary practices and those with problematic practices. This will help us target technical assistance.

OIG Recommendation:

OCSE Should Promote State Training of Local Child Support Staff on Methods of Retrieving Data from Vital Records Agencies, and Promote Use of Vital Records Agency Information.

ACF Response:

We will alert all states of the IG findings as an advisory and encourage states to review their training practices. We would appreciate knowing in which states the IG has identified consistent rather than isolated problematic practices so that we may provide for targeted technical assistance. At this time, we believe focused assistance is the more efficient use of federal resources and reserve the right to reconsider our position.

OIG Recommendation:

OCSE Should Encourage States to Make Training and Materials on Acknowledgement Procedures Created for Hospital Staff Widely Available to Local Vital Records Agency Staff.

ACF Response:

We agree, and will recommend that states make relevant training and materials available to vital records agency staff.