

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

SUPERSEDES

CS 604.1 Genetic Testing, February 2, 2000

REFERENCES

MCA§40-5-232 through 40-5-235

Policy

Purpose and Applicability

The procedures in this section apply when negotiation or scheduling of genetic testing is indicated during initiation of the paternity case as in CS 602.1 Case Initiation—Mother Oblige or subsequent to a notice of parental responsibility (NPR) as in CS 605.2 Notice of Parental Responsibility—Single Allegation Cases.

Negotiations with Alleged/Presumed Father

In many cases, before genetic testing is ordered by a Genetic Testing Subpoena, the caseworker will have an opportunity to discuss the advantages of voluntary testing with the alleged/presumed father. These discussions may occur before or after the CSED issues the NPR and are **extremely important in expediting the case**. Procedures in this section cover negotiation of the three main testing issues--participation, written agreement, and cost recovery--and give the major negotiating points caseworkers may use to obtain cooperation.

CSED Contracted Testing Laboratory

The CSED contracts with a national testing laboratory for genetic testing services; this laboratory in turn arranges with individual facilities in and outside Montana to perform the actual tissue sampling, and to identify, package, and mail the samples to the laboratory for testing. The laboratory sets up appointments for the mother and child and the alleged/presumed father at the facilities closest to the participants' geographical locations. Some CSED regional offices also have agreements with individual phlebotomists or other medical technicians to perform tissue sampling at the regional office. An appointment with these on-site technicians can be scheduled directly by the region or the region can request that the national testing laboratory arrange the appointment with the technicians.

The laboratory maintains an automated system to schedule participants and tracks the drawing, handling, and testing of the tissue samples in each case. On-line access to the system is available at CSED regional offices; caseworkers can check the system directly for the date each sample in the case was drawn, the date each sample was received at the laboratory, the date(s) all the samples in the case were tested, the date the final report was shipped, and the results of testing in terms of numerical inclusion or exclusion.

Recovery of Testing Fees

Under the terms of the CSED's contract, the CSED pays the laboratory for testing only if results are received within 30 days after the last tissue sampling; later results are not payable. Also under the contract, the total fee for a two-sample case (a case where one of the participants is deceased or otherwise unavailable) may not exceed the total fee for a regular, three-sample case.

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

The CSED seeks reimbursement for the testing costs from the man found to be the father. (If a man is excluded by genetic testing, he is not liable for testing charges.) When positive results are received for one of the men tested in the case, the CSED requires that man to pay the testing costs incurred for the mother, the child(ren), and himself. The CSED can, in its discretion, waive recovery of testing fees. Fees may be waived **only before testing**, and **only under the following conditions**:

- **Single-Allegation Cases.** Costs may be waived **only with the supervisor's approval**. Approval should be based on some evidence the man would be unable to pay the amount of the charges, even in installments (for example, the man has limited or no income and no ability to earn income). If costs are waived the caseworker may seek a signed Consent to Genetic Testing that omits the cost language (to allow for a default action later on, if no NPR has been served), or may proceed without a signed consent.
- **Multiple-Allegation Cases.** Genetic testing costs may be waived without supervisor approval if both of the following conditions apply:
 - a. The caseworker has made a best effort to obtain a signed Consent to Genetic Testing with costs, and the alleged/presumed father has shown he will not be persuaded.
 - b. The waiver would act as a negotiating tool that would allow for definite progress in the case, for example, voluntary testing could reduce the multiple-allegation case to a single-allegation case.

Note:

Avoiding the Cost of service or Hearing. Avoiding the cost of service or hearing is not a sufficient basis for waiving testing costs in **any** case.

If costs are not waived, the CSED can either issue an order that enters an automatic judgment if the man is found to be the father (this requires a signed Consent to Genetic Testing or an NPR hearing, see the procedures below, or schedule the testing without an order for costs, with the intention of attempting to recover costs through a judgment at a later date. With the latter option, the caseworker must be **careful not to imply** that costs are being waived.

Genetic Testing--Scientific Basis and Procedures

Genetic paternity testing is based on the principle that all persons inherit two sets of genes. One of these sets is inherited from the mother and the other from the father. These inherited characteristics are known as genetic markers. If a genetic marker is found in the child, but not in the mother, it must come from the father. If the alleged father does not have such a genetic marker, he is excluded as the biological father. When the alleged father has all the markers required to be the father, he cannot be excluded. Thereafter, a statistical probability of paternity can be calculated based on the likelihood that the same marker patterns will occur in the general population.

To perform genetic testing the laboratory needs genetic material from the person being tested. The tissue most often used for this purpose is epithelial cheek cells, although blood or other tissue can also be used. Cheek cells are generally preferred because they can be collected using a non-invasive procedure called a buccal swab.

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

The laboratory performs DNA testing on the tissue sample to identify the person's genetic markers. DNA testing will either exclude the alleged/presumed father (when one or more genetic markers are found in the child's tissue that are not present in the genetic material of either the mother or the alleged/presumed father) or establish a probability of 95% or greater that the alleged/presumed father is the child's natural father.

Legal Consequences and CSED Weight of Genetic Testing Results

Under section 40-5-234, MCA, positive testing results (a probability of paternity greater than or equal to 95%) create a legal presumption of paternity for the man tested. The CSED uses this rebuttable presumption as a basis for establishing paternity for that man. Furthermore, if there are other allegations or rebuttable presumptions in the case, these **other men are automatically excluded** by the positive results that created the presumption.

Also under 40-5-234, where genetic testing results show conclusively the man tested could not be the father, the CSED must exclude that man as father even if there is a rebuttable presumption in favor of his paternity.

Procedures

CAUTION: In third-party obligee cases (CS 602.2 Case Initiation—Third-Party Obligee) for proper procedures in all steps specifically referring to the "mother" below.

Steps 1 through 4 apply to voluntary testing only, before OR after the NPR is served.

Procedures for Caseworker

1. Contact Concerning Genetic Testing. Upon being contacted by (or upon contacting) the alleged or presumed father concerning genetic testing, discusses the advantages of voluntary testing and explains the procedures involved. Advantages specifically applicable to the case may include one or more of the following:

EXCEPTION: If "contact" is the return of the Consent to Genetic Testing, skip to step 3.

- 1) Produces definite information about the paternity of the child. Genetic testing will result in conclusive scientific evidence that either excludes the man as father or shows a probability of 95% or higher the man is the father.
- 2) Removes requirement for notice, if NPR not yet served. If the alleged/presumed father does not agree to testing, the CSED will initiate legal action by serving on him formal NPR.
- 3) Avoids formal hearing. If the alleged/presumed father does not agree to voluntary testing he will be ordered to appear for hearing; the Administrative Law Judge can order testing if there is any reason to believe the man could be the child's father.
- 4) Allows CSED to enter paternity order based on father's consent (multiple-allegation cases). If the alleged/ presumed father in a multiple-allegation case has signed an Admission of Paternity, the Admission has no effect without confirmation by genetic testing.
- 5) **Applicable cases only.** Is available at no cost. The CSED can waive testing costs if the alleged/presumed father participates voluntarily; if he does not, the CSED will order genetic testing and will require him to pay the testing costs if he is found to be the father.

CAUTION: This option is **not** standard procedure; it is available only under very strict conditions, refer to Recovery of Testing Fees in the policy above.

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

2. Obtaining a Written Consent to Genetic Testing. Acts on the results of the discussion in step 1 as follows:
 - a. If the alleged/presumed father agrees to voluntary testing, attempts to obtain his signature on the Consent to Genetic Testing this form accompanies both the father letter and the NPR.
 - i. If the alleged/presumed father signs and returns the Consent to Genetic Testing (standard version), proceeds to step 3.
 - ii. If the alleged/presumed father is willing to sign the Consent to Genetic Testing except for the costs provision, **and** conditions for waiving fees apply, prepares, and sends to him a variation of the consent form omitting the cost agreement; upon receipt of the signed form, proceeds to step 3.
 - iii. If sub steps 2a(i) and 2a(ii) above do not apply, **either** schedules testing without a signed consent, if applicable; proceeds to step 5, **or** does not schedule testing; proceeds as in step 2b.

NOTE:

Advantages of Formal Consent. In cases where voluntary testing is agreeable the caseworker should make every effort to obtain a signed Consent to Genetic Testing. This document increases the likelihood the man will appear for drawing, and gives the CSED the authority (1) to proceed against the man if he fails to appear for drawing and (2) unless costs are waived, to enforce payment of testing costs.

- b. If the alleged/presumed father will not agree to voluntary testing, resumes case initiation procedures in CS 602.1 or 602.2, or proceeds with the contested case as directed in section CS 605.2 or 605.3 Notice of Parental Responsibility—Multiple Allegation Cases.
3. Initiating a Genetic Testing Order. Upon receipt of a signed Consent to Genetic Testing, proceeds as in 3a and 3b below.
 - a. Checks SEARCHS for any reason to protect the address of the alleged/presumed father. If a reason is found, and the alleged/presumed father's address appears in the Certificate of Mailing, or he has entered his address, telephone, or social security number on the form by hand, attaches a note to the document warning that the alleged/presumed father's address or other personal information should be deleted from any copy sent to the obligee or mother in step 4.
 - b. Forwards the original signed Consent to Genetic Testing to the Office of Fair Hearings (OFH) retains a copy in the case file.

Procedure for Office of Fair Hearings (OFH)

4. Issuing a Genetic Testing Order. Obtains the signature of the Administrative Law Judge (ALJ) on, and issues, a genetic testing order (incorporated in the Consent to Genetic Testing); mails copies to the alleged or presumed father, the obligee, the mother if she is not the obligee, and the caseworker.

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

Steps 5 through 17 apply to voluntary testing, as well as, testing required after a hearing.

Procedures for Caseworker

5. Scheduling. Arranges for tissue sampling or "drawing" of the participants (the alleged/ presumed father, the mother, and the child) as in step 5a, 5b, or both; the mother's appointment will include the child, unless the mother is not the obligee (see section CS 602.2).
 - a. Accesses the on-line system to request the CSED's contracted testing laboratory, identifying the participant(s) and giving the necessary information; enters the SEARCHS event for the request. In the event that the on-line access is not available, caseworker prepares and faxes the above information to the laboratory. The laboratory will set up each requested appointment according to the participant's geographical location (including out-of-state locations), and will inform the caseworker of the scheduled date, time, and place, and the name and telephone number of the contact person at the draw site.
 - b. If drawing is available on-site at the regional office and any of the participants live in the area, schedules the appointment(s) directly with the phlebotomist/medical technician or requests the national testing laboratory to schedule the appointment(s). Enters a SEARCHS event for the appointment(s) scheduled.

NOTE:

Scheduling Mother and Child. If there is any reason to believe the alleged/presumed father may not appear for the drawing, the caseworker should request (or schedule) an appointment date for the mother and child that is later than the appointment date for the alleged/presumed father. Normally, only one appointment is needed for the mother and child, regardless of the number of allegations in the case.

6. Notifying Testing Participants; Monitoring Appearances. For each appointment scheduled--the alleged/presumed father, and the mother and child--takes actions as follows:
 - a. Prepares form CS-601.1M or CS-601.1F, Genetic Testing Scheduling Letter, including the name of the contact person at the draw site if needed; sends the letter by regular mail to the person to be tested. (If the person has been or will be served with a Genetic Testing Subpoena under the procedures in section CS 605.2, the scheduling letter is not necessary.)
 - b. Enters a SEARCHS case note for the drawing scheduled, giving the date, time, and place.
 - c. Monitors for the participant's appearance at the scheduled appointment by either calling the draw site, or checking the case status on line via the automated tracking program provided by the laboratory.
7. Enforcing the Participants' Appearance. [This step applies only where genetic testing has not been ordered by a Genetic Testing Subpoena. For procedures following failure to appear for drawing for **subpoena-ordered** genetic testing, see section CS 605.2 or 605.3.] If any participant fails to appear for a drawing, enters a SEARCHS case note for the failure to appear and contacts the participant about rescheduling the appointment. If the participant will not cooperate, takes action as follows:
 - a. If the alleged/presumed father fails to appear for a drawing and has signed a Consent to Genetic Testing, proceeds as follows:

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

- i. In a single-allegation case, follows the procedures in section CS 606.1 for obtaining a Paternity Default Order; also if applicable, proceeds to step 15 for recovering any testing costs for the mother and child.
- ii. In a multiple-allegation case, consults with the CSED staff attorney to determine the appropriate remedy; works with the attorney in obtaining a district court order or in taking administrative action (contempt, license suspension) to compel submission. Returns to this section (step 8) when and if the alleged/ presumed father finally participates.

Note:

Genetic Testing Subpoena. A Genetic Testing Subpoena is not needed in this situation--the order contained in the Consent to Genetic Testing has the same force and effect as the subpoena in allowing the CSED to pursue harsher remedies.

- b. If the alleged/presumed father fails to appear for a drawing and has not signed a Consent to Genetic Testing, begins or resumes contested case procedures as described in section CS 605.2 or 605.3, subject to the NOTE below.
- c. If the mother and child (or either one) fail to appear for a drawing, takes action as in section CS 605.2 to obtain the mother's participation. Returns to this section (step 11) when and if the mother finally participates.

NOTE:

Rescheduling Missed Appointments--Caseworker Discretion. The caseworker must determine on a case-by-case basis whether rescheduling is feasible. If the person seems likely to cooperate, it is in the CSED's interest to attempt to reschedule the appointment before taking any adverse action.

8. **Unintended Person Tested.** If circumstances indicate that a person who appeared for and submitted to a drawing under this section was not the participant intended by the CSED, and
 - genetic testing was ordered by the CSED, either by Consent to Genetic Testing or by Genetic Testing Subpoena, contacts the OFH and requests a hearing on the matter; proceeds to step 10.
 - genetic testing was not ordered by the CSED, takes one of following steps, as appropriate:
 - begins or resumes contested case procedures against the alleged/ presumed father as described in section CS 605.2
 - takes action against the mother to compel participation as in section CS 605.2

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

Procedures for Administrative Law Judge (ALJ) & Office of Fair Hearings

9. Identity Hearing. Upon receiving a request from the caseworker for a hearing on the identity of a person tested, proceeds as follows:

OFH

- a. Submits the request to the Administrative Law Judge (ALJ) for a determination. If the ALJ determines there is reasonable cause to suggest the wrong person was tested, schedules a hearing on the matter, and sends copies of the resulting decision and order to the alleged/presumed father, the obligee, the mother if she is not the obligee, and the caseworker.

ALJ

- b. If reasonable cause exists, conducts a hearing to determine the identity of the person tested or the chain of custody of the sample. (If the alleged/presumed father fails to appear for the hearing, proceeds to determine the issue based on the evidence presented.) Issues a decision and order either upholding the validity of the sample or ordering the retesting of the participant in question.

NOTE:

Limited Retesting. For any retesting ordered in this sub step (9b), if after the retesting is completed a second identity hearing is requested and granted, and the ALJ determines at that hearing that the sample obtained is not valid, the CSED will not order additional retesting, but will proceed as for a failure to appear for genetic testing.

Caseworker

10. Role in and Results of the Identity Hearing. Prepares evidence for the hearing; attends the hearing and appears as a witness.
 - a. If the ALJ upholds the validity of the sample, proceeds to step 11.
 - b. If the ALJ orders retesting, proceeds as for testing ordered after an NPR hearing in section CS 605.2.
11. Obtaining Testing Results. If all participants appear for their drawings, and there is no question about the identity of any of the samples drawn, enters a SEARCHS case note documenting the appearances. Monitors for receipt of the testing results from the contracted testing laboratory within 30 days after the last participant's sample was drawn. If useful, checks the status of testing on line, via the automated tracking program provided by the laboratory.
12. Processing Testing Results. Upon receipt of the testing results from the laboratory, follows the procedures in section CS 602.1, 605.2, or 605.3 for notifying the applicable parties, sending the results to the Paternity Registry, updating SEARCHS, and taking any applicable NOCS actions; pursues cost recovery as in step 15. In addition, if the results are negative (the man tested is excluded), proceeds according to steps 12a and 12b.

NOTE:

CAUTION! Consequences of SEARCHS Processing. Certain direct, case-note entry actions automatically set up SEARCHS fee accounts. In updating SEARCHS information to document receipt of testing results, the caseworker should take care **not** to create a fee account unless it is specifically intended. See step 15 for specific conditions under which the CSED may set up a fee account for genetic testing costs.

Additional steps for negative testing results:

- a. **Mother's Confirmation of Identity.** Determines whether the mother's confirmation of the tested man's identity is needed. If so, arranges for the mother to look at the photograph of the man taken at the drawing site. (If possible, the mother should come to the CSED office to look at the original photograph; if this is not possible, the caseworker should obtain a best copy of the photograph and send it to the mother for confirmation.) If the mother confirms the man's identity, or if confirmation is not needed, proceeds to step 12b.

If the mother claims the pictured man is not the alleged/presumed father, proceeds as in step 8.

NOTE:

Determining Need for Confirmation. Confirmation of an excluded man's identity via step 12a is standard CSED procedure. Regional policy, however, may limit this requirement to certain types of situations. For example, a region may elect to require confirmation only when (1) the caseworker suspects a man other than the alleged/presumed father was tested or (2) testing results exclude the last remaining alleged father **and** the mother claims she cannot provide any other names because no other men had sexual access during the period of conception. In this situation, confirmation of all the tested men's identities would be indicated.

- b. **Order of Nonpaternity.** If requested by the excluded man, the obligee, the mother if she is not the obligee, or another state, prepares form CS-604.1A, Order of Nonpaternity, and sends it to the OFH with the testing results and includes,
 - stuffers for mailing to the alleged/ presumed father, the obligee, and the mother if she is not the obligee,
 - a certified copy of the abstract of the Montana birth certificate (if the excluded man is named on the document),
 - any CSED order to be vacated or terminated by the Order of Nonpaternity (examples: Paternity Default Order, CSED support order), and
 - (optional) any voluntary acknowledgment of paternity, or registration in the Putative Father Registry, signed by the excluded man (helpful for any OFH discussions with the Office of Vital Statistics).

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

OFH

- c. Issuing the Order of Nonpaternity. Upon receipt of form CS-604.1A, obtains the signature of the ALJ and issues the Order of Nonpaternity; mails copies to the appropriate persons (see step 12) and the caseworker; files the genetic testing results and the original Order of Nonpaternity, along with any accompanying documents, in the Paternity Registry.

Regional Manager or Designee

- d. Testing Costs Payable. Upon receipt of a bill from the laboratory for the total genetic testing costs in a case, verifies the bill with the caseworker (confirms the testing was for a CSED paternity case, the results were received in the region within 30 days after the last participant was drawn, and there are no extra charges if one of the participants is deceased (see POLICY)); approves the bill for payment and forwards it to the Administrative Services Bureau (ASB). ASB will arrange for payment to the laboratory for all persons tested.

Caseworker

15. Assessing Genetic Testing Fees. Using the cost recovery table following these

PROCEDURES, determines whether and how to seek reimbursement for the total testing costs paid by the CSED. Takes action in step 15a, 15b, or 15c, as appropriate. (If the alleged/ presumed father pays the testing costs before a fee account is set up, discontinues action in this step and proceeds directly to step 16.)

- a. Sets up a fee account on SEARCHS; includes the amount in the debt for future enforcement.
- b. Includes a proposed judgment in the NOCS or subsequent notice, or, if applicable, in the Admission of Paternity and Application for Paternity Consent Order sent to the alleged/presumed father with the positive testing results. Sets up a fee account when the order resulting from the notice or Admission is entered; includes the amount in the debt for future enforcement.
- c. Takes no action to recover the testing costs; does not set up a fee account.

NOTE 1:

Requirements for Fee Accounts. The CSED will set up a SEARCHS fee account for testing costs not yet paid by the alleged/presumed father **only if** a judgment has been entered for the fee amount. A judgment is "entered" for purposes of establishing a fee account as soon as **both** of the following conditions are met:

- 1) The CSED has issued an order listing the dollar amounts payable if test results are positive or if a default applies. (The order may be issued subsequent to a genetic testing hearing, or upon receipt of a signed Consent to Genetic Testing or Admission of Paternity and Application for Paternity Consent Order that includes testing costs, or subsequent to any CSED notice that proposes a judgment for testing fees.)
- 2) Results of genetic testing are positive, or a default applies.

In cases where payment is received before one or both above conditions are met, procedures in step 16 apply.

NOTE 2:

Special Situations for Cost Recovery. The caseworker may, with the approval of the CSED staff attorney and the voluntary cooperation of the mother, arrange testing for a defaulted (established) father at his request. In this situation the CSED **must** collect the associated, non-refundable testing costs from the father **before** the costs are incurred (see step 16). In another situation, if the father claims paternity and the mother denies he is the father, and testing then results in a 95% probability of paternity, the caseworker **may** pursue a judgment against and repayment from the mother; consultation with the CSED staff attorney in this situation is required.

NOTE 3:

Testing in a Non-CSED Case. Where CSED assistance is requested in arranging genetic testing for individuals who are not participants in a CSED case, the CSED refers the parties directly to the contracted testing laboratory and **does not** incur testing costs on their behalf. (See section CS 601.4, Requesting Genetic Testing, for case participants' options outside the CSED's regular administrative paternity establishment process.)

16. Processing Payments for Genetic Testing Fees. Upon receipt of a payment for testing costs from the alleged/ presumed father proceeds as follow, for any that apply:
 - a. Sets up a fee account if one does not already exist. If necessary, performs the required SEARCHS processing to create a fee account in the absence of an order (judgment) for fees.
 - b. If a manual payment instruction (MPI) is appropriate (see the NOTE below), enters an MPI on SEARCHS to apply the payment to the fee account, and makes a notation on the check identifying the payment for genetic testing fees; forwards the check to TAPP. If an MPI is not appropriate, forwards the check to TAPP for regular processing through the SEARCHS algorithm.

NOTE:

Manual Payment Instruction for Fee Payments. An MPI is appropriate only when both of the following conditions are satisfied:

- 1) Posting to a fee account is proper. This is true when the support obligation of the alleged/presumed father for this child has not yet been established, so there is no current support account to satisfy.
 - 2) There are other SEARCHS accounts (in addition to the fee account created in 16a) to which the payment would be posted if run through the regular SEARCHS algorithm. For example, the alleged/presumed father may be an obligor in another case.
- c. If the payment is received before the genetic testing results are received, processes the payment as in 16a and 16b above and awaits the testing results. If the results are negative (and the special situations in step 15, NOTE 2 do not apply), initiates a SEARCHS adjustment to refund the payment.

PATERNITY ESTABLISHMENT

Genetic Testing

CS 604.1

Recovery of Genetic Testing (GT) Costs

Scenario	Liabile Party	Recovery Procedures
All parties appear for testing, results=95% – Signed Consent to GT with costs (automatic judgement)	Father	Set-up fee account include in debt for future enforcement
– Oral agreement to GT, cost not waived by caseworker	Father	Include proposed judgment in NOCS, subsequent notice, or Admission; set-up fee account when order following notice/Admission entered; include in debt for future enforcement
– GT Subpoena	Father	Set-up fee account; include in debt for future enforcement
○ Judgment for costs awarded at hearing (automatic judgement)		
○ Judgment for costs denied at hearing	CSED	N/A
Oral or written consent to GT, costs waived by caseworker	CSED	N/A
All parties appear, results exclude AF/PF	CSED	N/A
AF/PF does not appear; mother and child tested – Signed Consent to GT with costs (automatic judgment)	*Father, upon default	Set-up fee account; include in debt for future enforcement
– Oral agreement to GT	CSED	N/A
– GT Subpoena ○ Judgement for costs awarded at hearing (automatic judgment)	*Father, upon default	Set-up fee account; include in debt for future enforcement
○ Judgement for costs denied at hearing	CSED	N/A
– Written consent to GT, costs waived by caseworker	CSED	N/A
AF/PF tested, mother and child do not appear	CSED	N/A

*Single-allegation cases only. In multiple-allegation cases where a man does not appear for genetic testing, the CSED pays costs. If a non-appearing man is later established as the father by exclusion of all other parties, single-allegation cost recovery then applies.