

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 108 ESTABLISHMENT AND MODIFICATION OF SUPPORT ORDER

8.50.108.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.
[8.50.108.1 NMAC - Rp, 8.50.108.1 NMAC, 1/1/2024]

8.50.108.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of IV-D services.
[8.50.108.2 NMAC - Rp, 8.50.108.2 NMAC, 1/1/2024]

8.50.108.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 et seq., NMSA 1978. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).
[8.50.108.3 NMAC - Rp, 8.50.108.3 NMAC, 1/1/2024]

8.50.108.4 DURATION: Permanent.
[8.50.108.4 NMAC - Rp, 8.50.108.4 NMAC, 1/1/2024]

8.50.108.5 EFFECTIVE DATE: January 1, 2024 unless a later date is cited at the end of a section.
[8.50.108.5 NMAC - Rp, 8.50.108.5 NMAC, 1/1/2024]

8.50.108.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.
[8.50.108.6 NMAC - Rp, 8.50.108.6 NMAC, 1/1/2024]

8.50.108.7 DEFINITIONS: The following definition applies to this part. “Self-support reserve” means the support calculation ensures the payer parent has sufficient income to maintain a minimum standard of living. The self-support reserve is \$1,200 per month for one person which is slightly higher than one hundred percent of the federal poverty guideline. Additional definitions may be found under the general provisions at 8.50.100.7 NMAC.
[8.50.108.7 NMAC - N, 1/1/2024]

8.50.108.8 ESTABLISHMENT OF SUPPORT ORDER: If parentage has been legally established, and there is no support order in existence, the IV-D agency will pursue the establishment of a support order, as appropriate, pursuant to the requirements under 45 CFR §303.4(b)(1-4). All support orders obtained by the IV-D agency shall include a provision requiring the parties to keep the IV-D agency informed of their current addresses and, if the party is a parent, to also provide the name and address of their current employer, whether the parent has access to medical insurance coverage at reasonable cost, including health care coverage through a public entity and, if so, the medical insurance policy information.

A. Immediate income withholding: The IV-D agency will request an income withholding provision in accordance with the Support Enforcement Act, Section 40-4A-1 et seq., NMSA 1978. The IV-D agency will not agree to an exception to wage withholding, but will honor any court or administrative order that waives or excepts wage withholding. All payments on Title IV-D cases, whether paid through income withholding, direct withdrawal, or direct payment by the non-custodial parent shall be paid through the IV-D agency. If the custodial party obtains an order in a IV-D case for direct payments to them, the IV-D agency will begin non-cooperation procedures in active IV-A cases and close cases with no public assistance history.

B. Persons and agencies the IV-D agency will assist to establish a support order:

- (1) parent;
- (2) legal guardian by court or administrative order;
- (3) legal custodian by court or administrative order;
- (4) IV-B or IV-E agency;
- (5) another IV-D agency, state, U.S. territory or country pursuant to the Uniform Interstate Family Support Act, Section 40-6A-101 et seq., NMSA 1978, or reciprocal international agreements.

C. Public assistance: If a dependent child receives public assistance, the IV-D agency will pursue a support order against the non-custodial parent, unless the IV-D agency determines that the case involves rape, incest, or it would not be in the best interest of the child(ren). If neither parent has custody of the child, the IV-D agency will pursue a support order against both parents. If the custodian of the child(ren) receiving public assistance does not have legal standing to pursue support, the IV-D agency will seek to establish a support order solely in favor of the state as reimbursement for public assistance benefits expended on behalf of the child(ren) in accordance with the child support guidelines.

[8.50.108.8 NMAC - Rp, 8.50.108.8 NMAC, 1/1/2024]

8.50.108.9 CHILD SUPPORT AWARD GUIDELINES: The IV-D agency uses income information provided to the agency by the parties or other sources to apply the child support guidelines in Section 40-4-11.1., NMSA 1978 and the basic child support schedule now incorporated here as Appendix 1. If exact income information is unavailable, or if a party's earnings history is below minimum wage, the IV-D agency may seek to impute income to a party, provided that the amount of support is established based on consideration of the required factors under 45 CFR §302.56(a-c). Many low wage jobs offer less than 40 hours per week, so local labor market data shall be considered when imputing income. A request for retroactive support by the IV-D agency will only be for the minimal period in accordance with New Mexico law. The custodial party may seek a longer retroactive period in accordance with the law and is solely responsible for providing all documentation, presenting all evidence, and making all arguments at any hearing or during negotiations in support for the additional time period. The amount of retroactive support requested by the IV-D agency on behalf of the state or for a custodial party will be in accordance with the child support guidelines established pursuant to 45 CFR Section 302.56(f-h), or as otherwise stipulated to by the parties. Incarceration may not be treated as voluntary unemployment when a support order is being established, 45 CFR §302.56 (c)(3). Any deviations from the guidelines will contain a statement of the reason for deviation and shall be in accordance with Section 40-4-11.2 NMSA 1978.

[8.50.108.9 NMAC - Rp, 8.50.108.9 NMAC, 1/1/2024]

8.50.108.10 BASIC CHILD SUPPORT SCHEDULE AND THE SELF-SUPPORT RESERVE:

A. In any action to establish or modify child support, the child support guidelines schedule as set forth in this section shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. The basic child support schedule is reviewed quadrennially by the child support guideline commission pursuant to Section 40-4-11.3 NMSA.

B. Effective January 1, 2024, the basic child support schedule incorporates a self-support reserve (SSR). The SSR is demonstrated in the shaded area of the basic child support schedule and provides that if the payer parent's income and number of children fall into the shaded area, only the payer-parent's income is considered in the child support calculation. As a result, the payer-parent is one hundred percent responsible for SSR adjusted child support obligation from the schedule. This ensures that the SSR is effective at considering basic subsistence needs of the payer-parent who has a limited ability to pay, even if the other parent has significantly more income and their combined income is above the SSR adjusted area of the schedule. Support calculation using the SSR method is reliant on using a worksheet A only and should not take into consideration childcare cost, medical expenses to include insurance premiums, and other appropriate expenses that are otherwise considered by the child support guidelines pursuant to Subparagraph (b) of Paragraph (2) of Subsection M of Section 40-4-11.1 NMSA, 1978.

C. For shared responsibility arrangements, the basic child support obligation shall be calculated using the basic child support schedule, worksheet B and instructions contained in Subsection M of Section 40-4-11 NMSA 1978. Support calculations using worksheet B are not subject to the SSR method.

[8.50.108.10 NMAC - N, 1/1/2024]

8.50.108.11 DEFAULT JUDGMENT: The IV-D agency may seek entry of a default order by the court or administrative authority according to state law and rules of procedure regarding default orders.

[8.50.108.10 NMAC - Rp, 8.50.108.10 NMAC, 1/1/2024]

8.50.108.12 MODIFICATION OF CHILD SUPPORT ORDERS: Either party may request the IV-D agency to provide the service of seeking the modification of a support order. Applicable fees will be charged to the requesting party in compliance with 8.50.125.10 NMAC. The IV-D agency may seek a modification if the non-custodial parent will be incarcerated for more than 180 calendar days. The IV-D agency will not review a support order for modification without request by a party, unless the custodial party is currently receiving public assistance.

In accordance with federal and state laws, a modification of a support order is retroactive only to the time period that a petition or motion was filed with a court and was pending a decision.
[8.50.108.12 NMAC - Rp, 8.50.108.12 NMAC, 1/1/2024]

8.50.108.13 REVIEW AND ADJUSTMENT OF SUPPORT ORDERS: The IV-D agency conducts a review for modification of support orders in the IV-D caseload three years from the effective date of the last support order. At the time of review, if the case is actively receiving public assistance, the IV-D agency must pursue a modification either upward or downward if its review indicates that there will be at least a twenty percent change from the current obligation of support. The review is conducted based on information provided by the parties and other sources that report income. Both parties are sent notice at the time of review to request current information from them regarding income, childcare costs, medical expenses to include insurance premiums, and any other appropriate expenses that are considered by the child support guidelines. Both parties are notified of the result of the review conducted by the IV-D agency. If the IV-D agency chooses not to pursue a modification, any party may independently pursue their own request for a modification of a support order. The state may initiate a review of an order, without a specific request for review, if information is received by the IV-D agency that the non-custodial parent will be incarcerated for more than 180 calendar days, pursuant to the conditions specified in 45 CFR §303.8(b)(2), (7), and (c). Under 45 CFR §302.56 (c)(3), incarceration may not be treated as voluntary unemployment when a support order is being modified.
[8.50.108.13 NMAC - Rp, 8.50.108.13 NMAC, 1/1/2024]

8.50.108.14 PROVISION OF SERVICES TO IV-B AND IV-E PROGRAMS: Upon request for services from the state IV-B or IV-E program, the IV-D agency will review its caseload to determine if there is an active IV-D case. The IV-D agency will send a letter to both the custodial party and non-custodial parent(s) notifying them that the IV-B or IV-E agency has requested services due to the minor child(ren) being in state custody. If there is a current order of support in place, the IV-D agency will review the case for appropriate legal action. If there is not a current support order in place, the IV-D agency will work with the IV-B or IV-E agency to obtain a mutually agreed upon support order between the IV-B or IV-E agency and the IV-D agency.
[8.50.108.14 NMAC - Rp, 8.50.108.14 NMAC 1/1/2024]

8.50.108.15 FURNISHING CONSUMER REPORTS FOR CERTAIN PURPOSES RELATING TO CHILD SUPPORT: Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) authorizes the release of information contained in a non-custodial parent's credit report to the New Mexico IV-D agency. The information obtained from the consumer reporting agency is to be used solely for the purpose of establishing or modifying an order of support.
[8.50.108.11 NMAC - Rp, 8.50.108.11 NMAC, 1/1/2024]

History of 8.50.108 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
ISD CSEB 501.1100, State and Local Requirements, filed 6/23/1980.

NMAC History:

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, filed 12/30/1994.

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement, filed 12/30/94 - Repealed effective 5/31/2001.
8.50.108 NMAC, Establishment of Support Order, filed 5/14/2001 - Repealed effective 1/1/2010.
8.50.108 NMAC, Establishment of Support Order, filed 12/30/2009 - Repealed effective 1/1/2024.

Other History:

8.50.108 NMAC, Establishment of Support Order, filed 12/30/2009 - Replaced by 8.50.108 NMAC, Establishment of Support Order, effective 1/1/2024.