

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 109 MEDICAL SUPPORT

8.50.109.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.50.109.1 NMAC - Rp, 8.50.109.1 NMAC 1/1/2024; A, 7/1/2024]

8.50.109.2 SCOPE: To the general public. For use by the Title IV-D agency and recipient of Title IV-D services.
[8.50.109.2 NMAC - Rp, 8.50.109.2 NMAC 1/1/2024]

8.50.109.3 STATUTORY AUTHORITY: Public Assistance Act, Section 27-2-27 et seq., NMSA 1978. The health care authority (HCA) 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.) Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.50.109.3 NMAC - Rp, 8.50.109.3 NMAC 1/1/2024; A, 7/1/2024]

8.50.109.4 DURATION: Permanent.
[8.50.109.4 NMAC - Rp, 8.50.109.4 NMAC 1/1/2024]

8.50.109.5 EFFECTIVE DATE: January 1, 2024 unless a later date is cited at the end of a section.
[8.50.109.5 NMAC - Rp, 8.50.109.5 NMAC 1/1/2024]

8.50.109.6 OBJECTIVE: To provide regulations in accordance with federal and state laws and regulations.
[8.50.109.6 NMAC - Rp, 8.50.109.6 NMAC 1/1/2024]

8.50.109.7 DEFINITIONS: The following definitions apply to this part. Additional definitions may be found under child support enforcement program general provisions at 8.50.100.7 NMAC.

A. “Cash medical support” means an amount ordered to be paid toward medical costs for minor child(ren) not covered by insurance.

B. “Health care coverage” means health insurance coverage, generally associated with a medical, dental or vision plan of benefits, whether it be an employment-related or other group health plan, a health maintenance organization, a non-profit health plan, coverage provided by a public entity (medicaid), or any other type of health care coverage under which medical, vision or dental services are provided, regardless of service delivery mechanism. Any health care plan coverage of a minor child shall, at a minimum, meet the standards of minimum health care protection as defined in the New Mexico Insurance Code, Section 59A-23B NMSA 1978.

C. “Medical support” means cash medical support, health care coverage, dental insurance, vision insurance, or a percentage split between the custodial party and the non-custodial parent for uncovered medical bills for the minor child(ren).

D. “National medical support notice” or “notice” means a qualified notice pursuant to a court order sent to an employer stating that an employee’s children must be covered by the employment-related health care insurance plan if it is available and at a reasonable cost.

[8.50.109.7 NMAC - Rp, 8.50.109.7 NMAC 1/1/2024]

8.50.109.8 ESTABLISHMENT OF MEDICAL SUPPORT: All orders obtained by the IV-D agency must include a provision for medical support for the minor child(ren). For the purposes of the IV-D program reporting, medical support includes any one of the following: private health insurance, public health care coverage (health, dental, or vision), provided by a public entity (medicaid), coverage through Indian health services (IHS), the defense enrollment eligibility reporting services (DEERS), cash medical support, or a percentage split of uncovered medical expenses for the minor child(ren). Determination of a reasonable cash medical support obligation is pursuant to 45 CFR § 303.31(a)(3). If the child(ren) are covered by IHS, the IV-D agency will request that private care coverage or health care coverage provided by a public entity (medicaid) be provided by either or both parties, when available. If the non-custodial parent provides health care coverage and changes employment, and the new employer provides health care coverage, the IV-D agency must transfer notice of the provision to the new employer. The IV-D agency must request the inclusion of a medical support provision even when employment-related or other group health care

coverage is not available or when the child(ren) cannot be added at the time the order is entered. Health care coverage provided by a public entity meets the standards required under the Mandatory Medical Support Act and either party can be deemed a medical support obligor if they meet eligibility requirements for health care coverage through a public entity (medicaid). The cost of health care coverage is calculated by determining the amount charged to the medical support obligor for adding the minor child(ren) to the existing coverage, or the difference between individual and family coverage. The reasonableness of the cost of the health care coverage is if the cost to the party responsible for providing medical support does not exceed five percent of their gross income pursuant to 45 CFR §303.31(a)(b). The IV-D agency may request the provision of health care coverage by either or both the custodial party and the non-custodial parent and that the parties should be responsible for any uncovered medical expenses in proportion to their incomes on the current child support worksheet. If the court does not enter an order for medical support, the IV-D case record must specify that a provision for medical support was requested but was not issued, in accordance with 45 CFR §303.31(b)(1-4).
[8.50.109.8 NMAC - Rp, 8.50.109.8 NMAC 1/1/2024]

8.50.109.9 TIME FRAMES AND REQUIREMENTS: For all referral cases, within 90 calendar days of locating a non-custodial parent or of establishing parentage, a support order must be established or service of process must be completed to establish a support order. If service of process cannot be completed, then the case record must reflect unsuccessful attempts to serve process. If the court dismisses a petition for support order without prejudice, the office must, at the time of dismissal, examine the reasons for dismissal and determine when it could be appropriate to seek a support order in the future and seek a support order at that time.
[8.50.109.9 NMAC - Rp, 8.50.109.9 NMAC 1/1/2024]

8.50.109.10 AVAILABILITY OF MEDICAL CARE COVERAGE: Medical support will be addressed in actions to establish, enforce, or modify a support order for the minor child(ren). All support orders obtained or modified by the IV-D agency will include a provision requiring either or both custodial party and the non-custodial parent to promptly inform the IV-D agency of the name and address of their current employer(s), whether either the custodial party or the non-custodial parent has access to health care coverage and, if so, the health care coverage policy information.

A. The non-custodial parent may be required to provide immediate health, dental, or vision care coverage for the minor child(ren) if health care coverage is not available to the custodial party at a more reasonable cost than to the non-custodial parent for coverage of the minor child(ren); and it is available to the non-custodial parent through an employment-related or other group health insurance plan, regardless of service delivery mechanism, which may be a labor organization, union, non-profit organization or professional association.

B. If medical care coverage is not available to the non-custodial parent through an employment-related or other group health care coverage plan, and health care coverage is not being provided by the custodial party, the non-custodial parent may be required to provide immediate health insurance coverage for the minor child(ren) when it becomes available through an employment-related or other group health insurance plan.

C. Either the custodial party or the non-custodial parent may be deemed to be a medical support obligor based on the availability of health care coverage through a public entity when either party meets eligibility requirements.

D. Failure by a non-custodial parent to provide medical support for the minor child(ren), and to provide information concerning health care coverage, will subject the non-custodial parent to legal proceedings requiring the non-custodial parent to show cause as to why the non-custodial parent should not be held in contempt of court for failure to fulfill the requirements of the court order. This will be true even if medical support is the only area in which the non-custodial parent is not in compliance with the terms of the order.

[8.50.109.10 NMAC - Rp, 8.50.109.10 NMAC 1/1/2024]

8.50.109.11 PROVIDING CUSTODIAL PARTIES WITH HEALTH CARE COVERAGE

INFORMATION: If the non-custodial parent is responsible for providing health care coverage, the IV-D agency will provide the custodial party with available health care coverage plan information when the non-custodial parent secures coverage for the minor child(ren). This includes any information available to the IV-D agency about the health care coverage plan that would permit a claim to be filed or services to be provided. In cases enforced by the national medical support notice, the health care coverage plan shall provide this information to the custodial party and the IV-D agency, as outlined on the notice.

[8.50.109.11 NMAC - Rp, 8.50.109.11 NMAC 1/1/2024]

8.50.109.12 MONITORING AND ENFORCING COVERAGE: In all cases in which there is a court order with no medical support ordered, the case will be reviewed pursuant to the IV-D agency's plan for automatic review of all IV-D cases every three years. Even if no other modification is expected, the IV-D agency must seek modification to include medical support, except in non-IV-A non-medicaid cases where the custodial party has not consented to the IV-D agency obtaining medical support. All remedies available for the collection and enforcement of child support apply to medical support. In cases where the non-custodial parent is required to provide health care coverage through an employment-related or other group health care coverage plan pursuant to a support order, the IV-D agency shall use, where appropriate, the national medical support notice to enforce the provisions of health care coverage for the minor child(ren).

A. The IV-D agency must use the notice, when appropriate, to notify employers of the provision for health care coverage of the minor child(ren). The IV-D agency must transfer the notice to the employer within two business days after the date of entry of an employee who is an obligor in an IV-D case in the state directory of new hires.

B. Employers must transfer the notice to the appropriate group health care coverage plan for which the minor child(ren) are eligible within 20 business days after the date of the notice.

C. Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the minor child(ren) and send any amount withheld directly to the health care coverage plan. Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must proceed with withholding until such time as the employer receives notice from the IV-D agency that the contest is resolved.

D. Upon receipt of the national medical support notice, the employer shall enroll the medical support obligor's minor child(ren) in a qualified health care coverage plan as eligible dependents. Except as specifically outlined on the notice, the health care coverage plan shall not be required to provide benefits or eligibility for such benefits in addition to those provided under the terms of the plan immediately before receipt of the notice.

E. If the medical support obligor is enrolled in a qualified health care coverage plan, the minor child(ren) shall be enrolled in the same health care coverage plan in which the medical support obligor is enrolled. If the medical support obligor is not enrolled in a qualified health care coverage plan, the premiums charged for enrollment of the minor child(ren) only shall be the same as would be charged for enrollment of the medical support obligor only. If the medical support obligor is not enrolled in a qualified health care coverage plan and there is more than one health care coverage plan option available for enrollment of the minor child(ren), the employer shall notify the IV-D agency and the IV-D agency, in consultation with the custodial party, will select a qualified health care coverage plan option. If the custodial party does not notify the IV-D agency of the selected qualified health care coverage plan option within the timeframe required by the IV-D agency, the minor child(ren) shall be enrolled in the qualified health care coverage plan's default option, which is defined as the least costly health care coverage plan that conforms with the minimum health care protection as defined in the New Mexico Insurance Code, Section 59A-23B-1 et seq NMSA 1978.

F. The health care coverage plan must notify the IV-D agency of the status of health care coverage for the minor child(ren), as outlined on the notice, within 40 business days after the date of the notice. The plan shall also promptly notify the custodial party of the plan coverage and effective date, as outlined on the notice.

G. Employers must notify the IV-D agency promptly whenever the medical support obligor's employment is terminated, in the same manner as is required for income withholding cases.

H. The IV-D agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

I. In instances in which a minor child is covered through a public entity, the medical support obligor is required to maintain the recertification of the health care coverage as long as the medical support obligor meets eligibility requirements.

[8.50.109.12 NMAC - Rp, 8.50.109.12 NMAC 1/1/2024]

8.50.109.13 MEDICAL SUPPORT PROVIDED BY THE CUSTODIAL PARTY: In cases where the custodial party has satisfactory medical care coverage for the minor child(ren), the amount expended by the custodial party for health care coverage will be taken into account pursuant to the New Mexico child support guidelines worksheet that will be attached to the order, if applicable. The IV-D agency will not enforce court ordered medical support against a custodial party.

[8.50.109.13 NMAC - Rp, 8.50.109.13 NMAC 1/1/2024]

8.50.109.14 COMMUNICATION WITH THE MEDICAL ASSISTANCE DIVISION: The IV-D agency is required to relay information regarding private health, dental, or vision care coverage to the medical assistance division. This information includes newly obtained coverage, changes in coverage, or coverage lapses. The IV-D agency must report to the medical assistance division any medical support payments made directly to the custodial party if there is an assignment of medical support pursuant to 42 CFR 433.146. The IV-D agency in cooperation with the medical assistance division will communicate to determine if there are any lapses in health care coverage for medicaid applicant/recipient.

[8.50.109.14 NMAC - Rp, 8.50.109.14 NMAC 1/1/2024]

8.50.109.15 ORDERING SPECIFIC DOLLAR AMOUNTS FOR MEDICAL SUPPORT: The support order should include a set amount and specify that the amount is designated for cash medical support as outlined in Section 40-4C-3 NMSA 1978. This amount should be in addition to and not in lieu of the non-custodial parent's obligation to pay a percentage of unreimbursed medical expenses. Either the custodial party or the non-custodial parent may request the court to order the provision of cash medical support. The IV-D agency will enforce a provision for cash medical support established or modified by any party so long as the support order designates a specific dollar amount to be paid in regular, equal installments (i.e., monthly, bi-weekly, weekly). If the order does not designate a specific dollar amount for medical support purposes, the IV-D agency is not required to collect the money.

[8.50.109.15 NMAC - Rp, 8.50.109.15 NMAC 1/1/2024]

8.50.109.16 DISTRIBUTION OF MEDICAL SUPPORT: The IV-D agency collects and distributes cash medical support and payments toward medical support judgments. Medical support shall be distributed directly to the custodial party when a court has ordered a cash medical support obligation in favor of the custodial party. The IV-D agency is not pursuing cash medical support on cases in which the minor child(ren) receive health care coverage through a public entity.

[8.50.109.16 NMAC - Rp, 8.50.109.16 NMAC 1/1/2024]

8.50.109.17 FEES: In IV-D cases being enforced for medical support pursuant to the requirements of the national medical support notice, an employer may not assess a fee for withholding or for sending to the health care coverage plan, the employee contributions necessary for health care coverage of the minor child(ren).

[8.50.109.17 NMAC - Rp, 8.50.109.17 NMAC 1/1/2024]

History of 8.50.109 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, 6/23/1980.

NMAC History:

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

History of Repealed Material:

8 NMAC 5.CSE, Child Support Enforcement - Repealed 5/31/2001.

8.50.109 NMAC, Medical Support, filed 5/14/2001 - Repealed effective 1/1/2024.

Other History:

8.50.109 NMAC, Medical Support, filed 5/14/2001 - Replaced by 8.50.109 NMAC, Medical Support, effective 1/1/2024.