



State of New Mexico  
Human Services Department  
**Human Services Register**



**I. DEPARTMENT**

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

**II. SUBJECT**

8.50.108.8 ESTABLISHMENT OF SUPPORT ORDER  
8.50.108.9 CHILD SUPPORT AWARD GUIDELINES  
8.50.108.12 MODIFICATION OF CHILD SUPPORT ORDERS  
8.50.108.13 8.50.108.13 REVIEW AND ADJUSTMENT OF SUPPORT ORDERS  
8.50.109.7 DEFINITIONS  
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**III. PROGRAM AFFECTED**

(TITLE IV) Child Support Enforcement

**IV. ACTION**

PROPOSED RULES

**V. BACKGROUND SUMMARY**

The Human Services Department (the Department) through the Child Support Enforcement Division (CSED), is proposing amendments to rules 8.50.108.8, 8.50.108.9, 8.50.108.12, 8.50.108.13, 8.50.109.7, 8.50.109.8.

Specifically, the changes include:

**8.50.108.8 ESTABLISHMENT OF SUPPORT ORDER**

Removing: determined and dependant.

Adding: legally established; pursuant to the requirements under 45 CFR §303.4(b)(1-4); dependent; and: in accordance with the child support guidelines.

**8.50.108.9 CHILD SUPPORT AWARD GUIDELINES:**

Removing: as appropriate

Adding: provided that the amount of support is established based on consideration of the required factors under 45 CFR §302.56(a-c); established pursuant to 45 CFR §302.56(f-h); and Incarceration may not be treated as voluntary unemployment when a support order is being established. 45 CFR §302.56 (c)(3).

**8.50.108.12 MODIFICATION OF CHILD SUPPORT ORDERS:**

Adding: child support; and without request by a party.

**8.50.108.13 REVIEW AND ADJUSTMENT OF SUPPORT ORDERS:**

Adding: 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.

**8.50.109.7 DEFINITIONS**

Removing: insurance; plan, medicaid; and not including medicaid.  
Adding: care coverage and Medicaid.

**8.50.109.8 ESTABLISHMENT OF MEDICAL SUPPORT:**

Removing: SCHIP, insurance; medicaid; and reflect.  
Adding: public health care; Determination of a reasonable cash medical support obligation is pursuant to 45 CFR §303.31(a)(3); care coverage; Medicaid; specify; and in accordance with 45 CFR §303.31(b)(1-4).

**VI. RULES**

These proposed rules will be contained in 8.50.108.8, 8.50.108.9, 8.50.108.12, 8.50.108.13, 8.50.109.7, 8.50.109.8. This register and the proposed changes are available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/Default.aspx>. If you do not have internet access, a copy of the proposed rules may be requested by contacting the Child Support Enforcement Division at (505) 476-7171.

**VII. EFFECTIVE DATE**

The Department proposes to implement these rules effective 7/1/2021.

**VIII. PUBLIC HEARING**

A public hearing to receive testimony on these proposed rules will be held online as per below:

Thu, May 20, 2021 10:00 AM - 11:00 AM (MDT)

**Please join my meeting from your computer, tablet or smartphone.**

<https://global.gotomeeting.com/join/620975581>

**You can also dial in using your phone.**

United States: [+1 \(872\) 240-3412](tel:+18722403412)

**Access Code:** 620-975-581

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Division toll free at 1-800-432-6217. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by CSED upon request by providing copies directly to a requestor or by making them available on the CSED website or at a location within the county of the requestor.

### IX. ADDRESS

Interested persons may address written comments to:

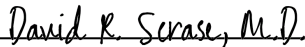
Human Services Department  
Office of the Secretary  
ATTN: Child Support Enforcement Division Public Comments  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 795-3251. Interested persons may also address comments via electronic mail to: [melinda.pineda@state.nm.us](mailto:melinda.pineda@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MST on May 20, 2021. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

### X. PUBLICATIONS

Publication of these rules approved by:

DocuSigned by:



DR. DAVID SCRASE, SECRETARY  
HUMAN SERVICES DEPARTMENT

**This is an amendment to 8.50.108 NMAC, Sections 8, 9, 12 and 13, effective 7/1/2021.**

**8.50.108.8 ESTABLISHMENT OF SUPPORT ORDER:** If parentage has been ~~[determined]~~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 his or her current employer, whether the parent has access to medical insurance coverage at reasonable cost 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, NMSA 1978, Section 40-4A1 et seq. 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 ~~[on]~~in a IV-D case for direct payments to him or her, 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, NMSA 1978, Section 40-6A-101 et seq., or reciprocal international agreements.

**C.** Public assistance: If a ~~[dependant]~~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 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/E, 8.50.108.8 NMAC, 1/1/2010; A, 12/30/2010; A, 7/1/2021]

**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 NMSA 1978, Section 40-4-11.1. If exact income information is unavailable, or if a party's earnings history is below minimum wage, the IV-D agency will seek to impute income to a party, ~~[as appropriate]~~ provided that the amount of support is established based on consideration of the required factors under 45 CFR §302.56(a-c). 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 §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 be in accordance with NMSA 1978, Section 40-4-11.2.

[8.50.108.9 NMAC - Rp/E, 8.50.108.9 NMAC, 1/1/2010; A, 12/30/2010; A, 7/1/2021]

**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 child support order. Applicable fees will be charged to the requesting party in compliance with 8.50.125.10 NMAC. The IV-D agency will not review a ~~[spousal]~~ child support order for modification without request by a party, unless the custodial parent 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/E, 8.50.108.14 NMAC, 1/1/2010; A, 12/30/2010; A, 7/1/2021]

**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 (20%) 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, child care costs, medical expenses to include insurance, 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 his or her 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/E, 8.50.108.15 NMAC, 1

**This is an amendment to 8.50.109 NMAC, Sections 7 and 8, effective 7/1/2021.**

**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 the cost of health ~~[insurance]~~ care coverage provided by a public entity (~~[medicaid]~~ Medicaid) or for other medical costs for minor child(ren) not covered by insurance.

B. **“Health ~~[insurance plan] or “plan”] care coverage~~”** means health insurance coverage ~~[, not including medicaid]~~, 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, or any other type of health ~~[insurance] care~~ coverage under which medical or dental services are provided, regardless of service delivery mechanism. Any health ~~[insurance] 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 ~~[insurance] coverage~~, dental insurance, vision insurance, or a percentage split between the custodial party and the non-custodial parent for uncovered medical bills for children.

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.

[8.50.109.7 NMAC - N, 10/1/2003; A, 8/14/2009; A, 7/1/2021]

**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 children. 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), coverage through Indian health services (IHS), state children's health insurance program ~~[(SCHIP)](Medicaid)~~, or the defense enrollment eligibility reporting services (DEERS), cash medical support, or a percentage split of uncovered medical expenses for the minor children. Determination of a reasonable cash medical support obligation is pursuant to 45 CFR §303.31(a)(3). If the children are covered by IHS, the IV-D agency will request that private health insurance be provided by either or both parents, when available. If the non-custodial parent provides health ~~[insurance] care~~ coverage and changes employment, and the new employer provides health ~~[insurance] 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 ~~[insurance]care coverage~~ is not available or when children cannot be added at the time the order is entered. The IV-D agency shall request the provision of cash medical support only if the case is actively enrolled in Title XIX ~~[medicaid]~~ Medicaid at the time medical support is established or modified. The cost of health ~~[insurance] care coverage~~ is calculated by determining the amount charged to the medical support obligor for adding children to the existing coverage, or the difference between individual and family coverage. The reasonableness of the cost of the ~~[insurance] care coverage~~ will be determined by stipulation of the parties or by the court. The IV-D agency may request the provision of health ~~[insurance] 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 ~~[reflect]~~ 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 NMAC 5.CSE.830, 5/31/2001; A, 10/1/2003; A, 8/14/2009; A, 7/1/2021]