

This is an amendment to 8.50.125 NMAC, Sections 6, 8 through 12, 15, 16 and 18, effective August 15, 2008.

**8.50.125.6 OBJECTIVE:** ~~[To repeal all existing regulations for the child support enforcement division filed at state records as 8 NMAC 5 CSE—000.000 through 979.000 and to replace the existing regulations with new regulations and conform the regulations with changes made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The regulations here codify present practices]~~ To provide regulations for fees, payments, services, and distribution of support obligations in accordance with federal and state law and regulations.

[8.50.125.6 NMAC - Rp 8 NMAC 5.CSE.000.6, 5/31/01; A, 8/15/08]

**8.50.125.8 CHILD SUPPORT PAYMENTS:**

A. The IV-D agency has in effect procedures for the payment of support through the IV-D agency upon the request of either the non-custodial ~~[parent]~~ party or the custodial ~~[parent]~~ party, regardless of whether arrearages exist or withholding procedures have been instituted. The IV-D agency is designated to administer the state's withholding system. The IV-D agency monitors all amounts paid and the dates of payments and records them on an individual payment record. ~~[In the case of non-IV-D income withholdings, the IV-D agency charges an annual fee of \$25 for the cost of providing the services described in this section.]~~ As a condition of receiving IV-D/title IV-A services, recipients must submit to the IV-D agency child support directly received from the non-custodial ~~[parent]~~ party. If the recipient of ~~[IV-A]~~ title XIX (medicaid) services elects to receive medical support services only, the recipient of ~~[IV-A]~~ title XIX (medicaid) services may keep child support payments received directly from the payor.

B. All support payments distributed by the IV-D agency shall be through electronic funds transfer (EFT). The custodial party must elect to receive the payments via direct deposit or a pre-paid debit card offered by the IV-D agency. If a custodial party receiving support payments fails to choose either option at the time of application or when requested by the IV-D agency, he/she will automatically be enrolled in the IV-D pre-paid debit card program. Exceptions to disbursements via EFT may be granted for exceptional circumstances. Those wishing to request an exemption should request an "EFT exemption form" from the IV-D agency. The form must be fully completed to include an explanation of the exceptional circumstances requiring an exemption from EFT. The IV-D agency will respond in writing either granting or denying the request for an exemption.

[8.50.125.8 NMAC - Rp 8 NMAC 5.CSE.255, 5/31/01; A, 8/15/08]

**8.50.125.9 STATE DISBURSEMENT UNIT:** The state IV-D agency has established and operates a state disbursement unit for the collection and disbursement of payments in all cases being enforced by the state IV-D agency, and in all cases not being enforced by the state IV-D agency under this part in which the support order was initially issued in the state on or after January 1, 1994, and in which the income of the non-custodial ~~[parent]~~ party is subject to immediate income withholding, regardless of whether support payments by such ~~[parent]~~ party are in arrears, on the effective date of the order. (42 USC 654 ~~[b(c)]~~ a).

[8.50.125.9 NMAC - N, 5/31/01; A, 8/15/08]

**8.50.125.10 COLLECTION OF FEES/RECOUPMENTS:** New Mexico is a cost recovery state, and other states' IV-D agencies have been notified of this fact. All fees charged to the custodial party are deducted from payments the IV-D agency distributes to the ~~[IV-D payee]~~ custodial party. The amount the IV-D agency deducts from each payment will not exceed ten percent of the total amount of the distribution. Once the percentage for the fee is deducted, the balance of the distribution is sent to the ~~[payee]~~ custodial party. Title IV-A, Title IV-E and medicaid-only (Title XIX) recipients are not charged any fees; federal regulations will not allow cost recovery on these cases.

A. Fee types and amounts:

- (1) non-IV-D wage withholding payment processing: \$25 (annually)
- (2) non-IV-a full service IRS collection: applicable federal fee
- (3) paternity genetic testing: as charged by lab
- (4) non-IV-A/IV-E case processing: actual cost
- (5) parent locate only: \$60.
- (6) filing fee: actual cost
- (7) witness fee: actual cost
- (8) service of process: actual cost
- (9) expert witness fee: actual cost

- (10) court costs: as assessed
  - (11) establishment of support obligation [~~and/or~~] and paternity (if necessary): \$250
  - (12) modification: [~~as charged by IV-D agency~~] \$150
  - (13) enforcement: \$250
  - (14) tax intercept related: as determined by federal regulations
  - (15) IRS tax intercept service: \$25
  - (16) TRD tax intercept service: [~~\$25~~] \$20
  - B. Refund of fees: Fees are to be refunded only under the following conditions:
    - (1) fees have been charged in error or overcharged;
    - (2) the court orders a refund.
  - C. Fees are assessed to the custodial or non-custodial party requesting an action or service (i.e. establishment of paternity, modification or enforcement of support obligation) in a IV-D case in accordance with the fee schedule above.
  - D. Genetic testing fees: The IV-D agency shall advance the cost of genetic testing. If the non-custodial party is not excluded from the probability of paternity, he/she shall reimburse the IV-D agency for any advanced testing cost.
  - E. Recoupment: The IV-D agency will recoup from the custodial party for any over-distribution of funds and for any funds collected from the non-custodial party that are returned for insufficient funds. If the recoupment is pursuant to an over-distribution of funds, the recoupment amount shall not exceed twenty-five percent of any future distribution to the custodial party until paid in full. If the recoupment is pursuant to insufficient funds received from the non-custodial party's payment, the recoupment amount shall be one hundred percent of any future distribution to the custodial party until paid in full.
- [8.50.125.10 NMAC - Rp 8 NMAC 5.CSE.801, 5/31/01; A, 8/15/08]

**8.50.125.11 DISTRIBUTION OF COLLECTIONS (EXCEPT FOR FEDERAL INCOME TAX REFUND OFFSETS):**

- A. In accordance with federal regulations, for purposes of distribution in a IV-D case, amounts collected, except for amounts collected through federal income tax refund offset, must be distributed as follows:
  - (1) current support (monthly payment ordered for current support)
  - (2) past due support (monthly payment on [~~judgement~~] judgment)
  - (3) current support arrears
  - (4) past due support arrears.
- B. The requirement to apply collections first to satisfy the current support obligation is critical in all IV-D cases to ensure that payment records are consistent in interstate cases, regardless of whether the amount applied to current support is paid to the family (as in a former assistance case) or retained by the state to recover unreimbursed assistance in a current assistance case.
- C. Current assistance cases: The state will (not exceeding the cumulative amount of unreimbursed assistance paid to the family):
  - (1) pay to the federal government the federal share of the entire amount collected;
  - (2) retain the state share of the amount collected; and
  - (3) reduce the cumulative amount of unreimbursed assistance by the total amount collected and disbursed under (1) and (2), and distribute collections exceeding the cumulative amount of unreimbursed assistance to the family.
- D. Federal statute does not specify the order in which collections are applied to satisfy assigned arrearages in current assistance cases. The state of New Mexico has selected the following option:
  - (1) collections will be first applied to temporarily assigned arrearages; and
  - (2) additional collections will be applied to permanently assigned arrearages.
- E. At the discretion of the New Mexico legislature, the IV-D agency may, on a monthly basis, disburse to the IV-A service recipient a specified amount from collections on current support.
- F. Former assistance cases: For collections made prior to October 1, 1998 (other than through federal income tax refund offset), the state shall:
  - (1) first, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;
  - (2) second, distribute any amount above the current monthly support obligation to arrearages owed to the family or assigned to the state; the federal statute does not specify the order in which collections are applied to satisfy arrearages; the state must have procedures which specify the order in which assigned arrearages will be

satisfied; if the state distributes any amount to assigned arrearages, the state must pay to the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected, with one exception; the state may retain or pay to the family the state share of collections applied to arrearages which accrued while the family was receiving assistance after October 1, 1996.

G. For collections made on or after October 1, 1998, or earlier at state option (other than collections through federal income tax refund offset), the state shall:

(1) distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

(2) distribute any amount above the current monthly support obligation to satisfy never-assigned arrearages and pay that amount to the family;

(3) distribute any amount above amounts distributed in (1) and (2) to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages and pay that amount to the family.

(4) distribute any amount above amounts distributed in (1), (2) and (3) to satisfy permanently-assigned arrearages; the state must pay the federal government the federal share of the amount so collected; the state must retain the state share of the amount so collected with one exception; the state may retain or pay to the family the state share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996;

(5) reduce the cumulative amount of unreimbursed assistance by the total amount distributed under (4), distribute collections exceeding the cumulative amount of unreimbursed assistance to satisfy unassigned during-assistance arrearages and pay those amounts to the family.

H. Never-assistance cases: All support collections in never-assistance cases must be paid to the family.

I. No ~~monies collected~~ collections of funds will be sent to third parties, attorneys, or agents, except in cases where there is a ~~protective payee~~ court order directing the support payment(s) to a person or entity other than the custodial party.

[8.50.125.11 NMAC - Rp 8 NMAC 5.CSE.802, 5/31/01; A, 8/15/08]

#### **8.50.125.12 DISTRIBUTION OF COLLECTIONS THROUGH FEDERAL INCOME TAX REFUND**

**OFFSET:** Any amount of support collected through federal income tax refund offset will be retained by the state to the extent past-due support has been assigned to the state up to the amount necessary to reimburse the state for cumulative amounts paid to the family as assistance by the state. The state will pay to the federal government the federal share of the amounts so retained. To the extent the amount collected exceeds the amount required to be retained, the state will pay the excess to the family.

A. Current assistance cases: Support collections through federal income tax refund offsets in current assistance cases are retained by the state up to the cumulative amount of unreimbursed assistance paid to the family. Collections over and above the cumulative amount of unreimbursed assistance are paid to the family.

B. Former assistance cases: Support collections made through federal income tax refund offsets in former assistance cases shall first be applied to assigned arrearages. This includes ~~temporarily assigned and~~ any conditionally-assigned arrearages. These collections shall be retained by the state up to the cumulative amount of unreimbursed assistance paid to the family. Collections over and above the cumulative amount of unreimbursed assistance are paid to the family.

C. Never-assistance cases: Support collections through federal income tax refund offsets in non-assistance cases are paid to the family.

[8.50.125.12 NMAC - N, 5/31/01; A, 8/15/08]

#### **8.50.125.15 CHILD LEVEL ACCOUNTING:** ~~[As a condition of eligibility for assistance under title IV-A~~

~~of the act, a member of a family must assign to the state any rights a family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving assistance) to support from any other person, which accrue (or have accrued) before the date the family leaves the program.] An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to from any other person, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for receiving assistance. The assignment includes all support rights that have accrued at the time of application for public assistance and continues as an assignment of all support rights the applicant is entitled to for as long as the applicant receives public assistance.~~ Therefore, in current or former assistance cases, states may not use child-level accounting by splitting or pro-rating the family grant amount on a

per-child basis when the child is (or was) included in the family unit and must continue to apply collections to the cumulative amount of unreimbursed assistance balances based on the total monthly family grant amount.  
[8.50.125.15 NMAC - N, 5/31/01; A, 8/15/08]

**8.50.125.16 CHILD SUPPORT RECEIVED DIRECTLY FROM PAYORS:** As a condition of receiving IV-D services, all recipients must submit to the IV-D agency all court ordered, voluntary agreement and voluntary contribution child support directly received from the non-custodial ~~parent~~ party. Failure to cooperate with this requirement may constitute cause for closing the IV-D case for non-cooperation. If the recipient of IV-D services elects to receive medical support services only, the recipient of IV-D services may keep child support payments received directly from the payor.  
[8.50.125.16 NMAC - Rp 8 NMAC 5.CSE.802.4, 5/31/01; A, 8/15/08]

**8.50.125.18 CHILD SUPPORT CASE SERVICES:** The IV-D agency provides two types of case services: full service and payment processing.

A. Full services cases: Recipients of IV-A services are automatically enrolled for full services and recipients of title XIX may elect to receive full services for all support or solely for medical support. Applicants not receiving any type of public assistance may also request full services which include:

- (1) establishment of paternity;
- (2) establishment of a child support, medical support order, or both;
- (3) enforcement of a child support orders, spousal support orders (so long as there is a current order for child support), and medical support orders;
- (4) administrative enforcement of orders, including referrals for tax intercepts, passport denial, license revocation, and financial institution data match;
- (5) issuance of wage withholding against a non-custodial party's earnings/wages for support obligations; and
- (6) modification of child support orders, if appropriate.

B. Payment processing cases: A custodial party currently receiving full services from the IV-D agency or is opening a new case with the IV-D agency may elect to receive payment process services so long as he/she is not currently receiving public assistance (title IV-A or title XIX) and does not have an outstanding balance of arrears owed to the state for prior public assistance. Payment processing services are charged an annual fee as stated in section 10 above. In order to receive payment processing services, the custodial party must produce a valid court order (either issued by or registered by a court in New Mexico) for a support obligation and a copy of a wage withholding order indicating that payments are to be sent to the IV-D agency.

- (1) The IV-D agency is not responsible for:
  - (a) establishing, modifying, or enforcing the support obligation;
  - (b) establishing, modifying, enforcing, or terminating the wage withholding order;
  - (c) calculating or determining the appropriate amount of support, payment toward arrears, delinquencies, and arrearages;
  - (d) appearing in court for any issues involving the establishment, modification, enforcement or termination of the support obligations.

(2) The IV-D agency will provide either the custodial party or the non-custodial party a printout of the payments received by the IV-D agency after receiving a written request.

(3) The IV-D agency may terminate the payment processing services if the employer withheld payments cease.

(4) The IV-D agency can only accept employer withheld payments for payment processing cases. Direct payments from the non-custodial party or from any other source will not be accepted.

[8.50.125.18 NMAC - N, 8/15/08]