

This is an amendment to 8.50.125 NMAC, Section 10 and 11, effective 7/1/2019.

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 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 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 only: \$25 (annually);
- (2) non-IV- [a] 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)~~ (6) witness fee: actual cost;
- ~~(8)~~ (7) service of process: actual cost;
- ~~(9)~~ (8) expert witness fee: actual cost;
- ~~(10)~~ (9) court costs: as assessed;
- ~~(11)~~ (10) establishment of support obligation and paternity (if necessary): \$250;
- ~~(12)~~ (11) modification: \$150;
- ~~(13)~~ (12) enforcement: \$250;
- ~~(14)~~ (13) tax intercept related: as determined by federal regulations;
- ~~(15)~~ (14) IRS tax intercept service: \$25;
- ~~(16)~~ (15) TRD tax intercept service: \$20;
- (16) administrative offset: applicable federal fee.

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: See 8.50.107.12 NMAC in addition to the fee schedule listed above.

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 [~~(100%)~~] of any future distribution to the custodial party until paid in full.

[8.50.125.10 NMAC - Rp, 12/30/2010; A, 7/1/2019]

8.50.125.11 DISTRIBUTION OF COLLECTIONS (EXCEPT FOR FEDERAL INCOME TAX REFUND OFFSETS): Specific terms used in this section are derived from 42 USC 657 and 45 CFR 300 through 303.

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 judgment);
- (3) current support arrears;
- (4) past due support arrears;
- (5) in each of the categories above, the payment is prioritized in the following order: child support, medical support, spousal support; any payment that is insufficient to meet the entire obligation will be applied in the order stated above.

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 Paragraphs (1) and (2) of this section, 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. Pass through payment: At the discretion of the New Mexico legislature, the IV-D agency may disburse a maximum amount determined on a monthly basis (refer to disregard for child support payments in 8.102.520.9 NMAC for maximum amount), to the IV-A service recipient from collections on current support. Under no circumstances is a current or former IV-A recipient entitled to receive said amount as part of the arrearages owed to him or her. The disbursement to the custodial party, up to the maximum amount, shall only be made if the recipient is currently receiving TANF and the IV-D agency collects a payment from the non-custodial party. If the non-custodial party pays less than the maximum amount allowed to pass through, the custodial party shall only receive the amount of the payment collected. Neither the IV-D agency nor the IV-A agency will pay the difference to the custodial party between the maximum pass through amount and the amount paid by the non-custodial party. If the custodial party has more than one IV-D case, he or she will only receive the lower of the amount of the maximum disregard or the current monthly collection received on all cases. A pass through payment is in addition to, not in lieu of, the monthly TANF payment.

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 that 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 that 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 Paragraphs (1) and (2) of this section 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 Paragraphs (1), (2) and (3) of this section 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)]~~ four, 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 (less any applicable fees) to the family.

I. ~~[No collections]~~ Collected funds will be [sent to third parties, attorneys, or agents, except in cases where there is a court order directing the support payment(s) to a person or entity other than the custodial party.] distributed to the resident parent, legal guardian, caretaker relative having custody of or responsibility for the child or children, judicially-appointed conservator with a legal and fiduciary duty to the custodial parent and the child, or alternate caretaker designated in a record by the custodial parent. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary time period.

J. When the non-custodial parent has multiple cases with the IV-D agency, payments received from the non-custodial parent through wage withholding shall be distributed among all active cases on a pro-rata basis determined by the total amount of all monthly support obligations. Payments received through administrative enforcement mechanisms shall be distributed among multiple cases on a pro-rata split based on the total amount of arrearages owed at the time of the referral for administrative enforcement, except for reinstatement of license(s). Payments received for the reinstatement of licenses will be applied to the specific case(s) rather than split among multiple cases. Any other direct payments made by the non-custodial parent will be divided among all active cases involving the non-custodial parent.

[8.50.125.12 NMAC - Rp, 12/30/2010; A, 7/1/2019]