



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

8.50.125 FEES, PAYMENTS, AND DISTRIBUTIONS

III. PROGRAM AFFECTED

CHILD SUPPORT ENFORCEMENT DIVISION (CSED)

IV. ACTION

FINAL RULES

V. BACKGROUND SUMMARY

New Mexico Human Services Register Vol. XLV, No. 4, dated March 4, 2022, issued the proposed 8.50.125 Fees, Payments, and Distributions.

A public hearing was held on May 5, 2022 to receive public comments on this proposed rule. There was one attendee who submitted oral comments who also submitted written comments co-signed by various organizations.

Submitted Oral Comments:

The oral comment received urges the HSD to immediately change its regulations to allow 100% of the child support collections passed through to families be disregarded for TANF eligibility purposes. The commenter further indicated that all child support collections be turned over to families who are currently receiving and who formerly received assistance before reimbursing the state for assistance received. In addition, the commenter indicated that its organization has not been receiving notices of regulation changes electronically and requested they be emailed to them.

ORAL COMMENT #1:

The commenter requested that the New Mexico HSD change 8.102.520.9 NMAC to disregard all child support collections passed through to families for TANF eligibility purposes. The commenter further indicated that 8.102.520.9(J) NMAC refers to the NM Works regulation that allows for up to \$50 disregard and up to \$100 pass through is exempt income for TANF purposes. The commenter suggests that New Mexico has the authority to disregard all of the money for the families currently receiving TANF. In addition, the commenter adds that the NM Works Act allows for a child support pass through of a minimum of \$100 for 1 child and \$200 for 2 or more children and the entire amount of child support distributed to the families should be disregarded in order for it to have its true effect. If not changed, recipients will receive a lower cash grant than they already receive.

NM HSD-CSED Response:

The cited regulation was not a proposed regulatory change. CSED did not make any changes to this regulation in response to this comment. Section 457(a)(6)(B) of the Social Security Act allows States to not pay the Federal share of the excepted portion of any amount collected on behalf of the family as long as the excepted portion is distributed to the family and disregarded as income for TANF purposes. The excepted portion “means that portion of the amount collected on behalf of a family during a month that does not exceed \$100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than \$200 per month. NM has already established such rules that are currently in place and CSED is currently in the process of implementing the full aforementioned excepted portion amounts for those families currently receiving assistance, instead of the \$100 current assistance pass through that was originally implemented due to budgetary constraints. Although CSED may lose program revenue with this change, it does prevent additional costly budgetary constraints CSED would endure if it were to pass through all support collections to families currently receiving assistance and the requirement to pay the federal share of those amounts exceeding the excepted portion. With the inception of the DRA option, the IRS collections will now be subject to being distributed to current support first for both current and former assistance cases which is also now subject to the pass through of the excepted portion which it was not before that could increase money distributed to families.

ORAL COMMENT #2:

The commenter urges the CSED to apply the same distribution rules for all families who are currently receiving and who have formerly received assistance. The introductory paragraph of the proposed rule states that the offset will be retained up to the amount necessary to reimburse the State for assistance paid to the family by the State but below that introductory paragraph it changes distribution for former TANF recipients to allow the offset to be distributed to the families first which is contradictory.

NM HSD-CSED Response:

With the adoption of these proposed regulations, the CSED will adopt the distribution rules under the DRA. While the DRA allows for some flexibility in determining how much support is paid directly to Current-Assistance and Former-Assistance families, the distribution order for Current-Assistance cases does not have an option to pay unassigned arrears (i.e. family arrears) first before assigned arrears which is possible under Former-Assistance cases. The Department is moving forward with the option to pass-through the federal and state share of child support collections to the families on Former-Assistance cases and will update the proposed rule (8.50.125.12 NMAC) to indicate the families first option. In addition, IRS collections will now be applied to current support first for both current and former assistance cases under this option.

ORAL COMMENT #3:

The commenter indicated that its organization has not been receiving notices of regulation changes electronically and requested they be emailed to them to the email address provided.

NM HSD-CSED Response:

Although CSED was in compliance with NMSA Section 14-4-2E by mailing a copy of the notice to the organization's last known address, CSED has added the organization's email address to the interested parties list and will email future notices of proposed regulation changes.

Submitted Written Comments:**WRITTEN COMMENT #1:**

The commenter requested that CSED change the prioritization of disbursement from retained tax refunds to turn over funds to custodial families before reimbursing the state for assistance paid.

The commenter indicated that income tax refunds intercepted by the state should follow the same prioritization policy as other collections (found at 8.50.125.11 NMAC) and should go to current support obligations owed to custodial families first, not the state. The proposed changes for tax refund intercepts appear to reorder the priority for former assistance cases only, but this is contradicted by the introductory paragraph at 8.50.125.12 NMAC, which states that the offset will be "retained by the state to the extent support arrearages have 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 [emphasis added]." 8.50.125.12 NMAC. This does not make sense. The Department should remove contradictory language and apply a consistent prioritization to pay current support obligations and arrearages owed to custodial families before paying the state.

The commenter further suggests that there is a negligible budget impact for a consistent approach and policy. It is an easier administrative burden to treat all families the same and distribute the tax refund intercept to current TANF families as well as families who formerly received the benefit. The TANF cash benefit is so low (\$447/month for a family of three) that this extra income can mean the difference between preventing eviction or not, helping families buy over

the counter medicine for their kids, and pay for other essentials. As you know tax credits are one of the most effective ways to alleviate poverty and bring opportunity to young children. Research shows that even a modest increase in household income has dramatic increases in opportunity for young children over their lifetime. The impacts are the greatest when children are younger than 5 years old. Most children who receive TANF are 5 years old and under.

NM HSD-CSED Response:

With the adoption of these proposed regulations, the CSED will adopt the distribution rules under the DRA. While the DRA allows for some flexibility in determining how much support is paid directly to Current-Assistance and Former-Assistance families, the distribution order for Current-Assistance cases does not have an option to pay unassigned arrears (i.e. family arrears) first before assigned arrears which is possible under Former-Assistance cases. The Department is moving forward with the option to pass-through the federal and state share of child support collections to the families on Former-Assistance cases and will update the proposed rule (8.50.125.12 NMAC) to indicate the families first option. In addition, IRS collections will now be applied to current support first for both current and former assistance cases under this option.

WRITTEN COMMENT #2:

The commenter requested that HSD immediately change regulations so that New Mexico disregards 100% of the child support funds collected on behalf of families that participate in the New Mexico's Temporary Assistance for Needy Family program, known as NM Works / TANF. This is critical to ensuring that the Department's important plan to allow for 100% pass through of child support paid to custodial families actually benefits those who participate in NM Works. The commenter further indicates that NM Must Change 8.102.520.9 NMAC To Disregard All Child Support Income. Section 8.50.125.11 NMAC refers to New Mexico Works Regulations at 8.102.520.9 NMAC for the maximum amount of child support income disregarded from a NM Works benefit determination. That section states that, "up to [emphasis added] \$50.00 child support disregard and up to \$100.00 child support pass-through distributed to the benefit group" by the CSED will be considered in determining families' cash grants.

The commenter also states that NM HSD has the authority under state law to disregard all of the child support collected on behalf of a family that participates in NM Works. The New Mexico Works Act states that "the following income sources are exempt from the gross income test, the net income test and the cash payment calculation... (10) child support passed through to the participant by the child support enforcement division of the department in the following amounts... (b) no later than January 1, 2009, a minimum [emphasis added] of one hundred dollars (\$100) for one child and two hundred dollars (\$200) for two or more children..." New Mexico Works Act NM Stat § 27-2B-7(B)(b). This means that the maximum, i.e., all of the child support funds can be disregarded.

If New Mexico does not make this change to disregard all child support paid to custodial families who receive TANF, the planned increase in pass through will disqualify families from the program, negating the entire reform. We urge you to immediately propose regulations to disregard all child support received from the TANF benefit calculation, as permitted by state law.

NM HSD-CSED Response:

The cited regulation was not a proposed regulatory change. CSED did not make any changes to this regulation in response to this comment. Section 457(a)(6)(B) of the Social Security Act allows States to not pay the Federal share of the excepted portion of any amount collected on behalf of the family as long as the excepted portion is distributed to the family and disregarded as income for TANF purposes. The excepted portion “means that portion of the amount collected on behalf of a family during a month that does not exceed \$100 per month, or in the case of a family that includes 2 or more children, that does not exceed an amount established by the State that is not more than \$200 per month. NM has already established such rules that are currently in place and CSED is currently in the process of implementing the full aforementioned excepted portion amounts for those families currently receiving assistance, instead of the \$100 that was originally implemented due to budgetary constraints. Although CSED may lose program revenue with this change, it does prevent additional costly budgetary constraints CSED would endure if it were to pass through all support collections to families currently receiving assistance and the requirement to pay the federal share of those amounts exceeding the excepted portion. With the inception of the DRA option, the IRS collections will now be subject to being distributed to current support first for both current and former assistance cases which is also now subject to the pass through of the excepted portion which it was not before that could increase money distributed to families.

WRITTEN COMMENT #3:

The Department is not timely providing notice of rulemaking electronically, via email. New Mexico State Rules Act § 14-4-2(E). Please send notice of regulatory changes concerning Temporary Assistance for Needy Families and/or Child Support Enforcement to the email address provided.

NM HSD-CSED Response:

Although CSED was in compliance with NMSA Section 14-4-2E by mailing a copy of the notice to the organization’s last known address, CSED has added the organization’s email address to the interested parties list and will email future notices of proposed regulation changes.

Concise Explanatory Statement:

- The rule is being repealed in 8.50.125 Fees, Payments, and Distributions, effective 12/30/2010 and replaced with a new rule with the same part number 8.50.125 Fees, Payments, and Distributions, effective 9/1/2022. A repeal and replace is necessary instead of an amendment as the rule has been substantially rewritten and restructured.
- Changes in the rule are to update language including updating statute citation format, sending debit card fee schedule to applicants, changing payment distribution effective January 23, 2023, separating out a paragraph for Current Assistance Pass Through Payments, and using gender neutral language.

VI. RULES

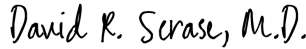
The replaced rule will be contained in 8.50.125 Fees, Payments, and Distributions. This final register and rule is available on the HSD website at <http://www.hsd.state.nm.us/LookingForInformation/Default.aspx>. If you do not have internet access, a copy of the final register and rules may be requested by contacting the Child Support Enforcement Division at (505) 629-5182.

VII. EFFECTIVE DATE

September 1, 2022

VIII. PUBLICATIONS

Publication of final regulations approved on 7/14/2022 by:

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DR. DAVID SCRASE, SECRETARY
HUMAN SERVICES DEPARTMENT

The New Mexico Human Services Department based on its 5/5/2022 public hearing has decided to repeal 8.50.125 NMAC - Fees, Payments, and Distributions, filed 12/13/2010 and replace with 8.50.125 NMAC - Fees, Payments, and Distributions, adopted 7/13/2022 and effective 9/1/2022.

TITLE 8 SOCIAL SERVICES
CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM
PART 125 FEES, PAYMENTS, AND DISTRIBUTIONS

8.50.125.1 ISSUING AGENCY: New Mexico Human Services Department - Child Support Enforcement Division.
[8.50.125.1 NMAC - Rp, 8.50.125.1 NMAC, 9/1/2022]

8.50.125.2 SCOPE: To the general public. For use by the Title IV-D agency and recipients of IV-D services.
[8.50.125.2 NMAC - Rp, 8.50.125.2 NMAC, 9/1/2022]

8.50.125.3 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.).
[8.50.125.3 NMAC - Rp, 8.50.125.3 NMAC, 9/1/2022]

8.50.125.4 DURATION: Permanent.
[8.50.125.4 NMAC - Rp, 8.50.125.4 NMAC, 9/1/2022]

8.50.125.5 EFFECTIVE DATE: September 1, 2022, unless a later date is cited at the end of a section.
[8.50.125.5 NMAC - Rp, 8.50.125.5 NMAC, 9/1/2022]

8.50.125.6 OBJECTIVE: To provide regulations in accordance with federal and state law and regulations.
[8.50.125.6 NMAC - Rp, 8.50.125.6 NMAC, 9/1/2022]

8.50.125.7 DEFINITIONS: [RESERVED]
[See 8.50.100.7 NMAC]

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 party or the custodial 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. As a condition of receiving IV-D services and cooperating with the IV-D agency, recipients must submit to the IV-D agency child support received directly from the non-custodial party. If the recipient of title XIX (medicaid) services elects to receive medical support services only, the recipient of title XIX (medicaid) services may keep child support payments received directly from the payor.

B. All support payments disbursed 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 authorized 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, they will automatically be enrolled in the IV-D authorized pre-paid debit card program and will be sent a fee schedule. 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, 8.50.125.8 NMAC, 9/1/2022]

8.50.125.9 STATE DISBURSEMENT UNIT: The state IV-D agency has established and operates a state disbursement unit (SDU) for the collection and disbursement of payments in all IV-D cases pursuant to 42 USC 654(a).

[8.50.125.9 NMAC - Rp, 8.50.125.9 NMAC, 9/1/2022]

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 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) filing fee: actual cost;
- (6) witness fee: actual cost;
- (7) service of process: actual cost;
- (8) expert witness fee: actual cost;
- (9) court costs: as assessed;
- (10) establishment of support obligation and paternity (if necessary): \$250;
- (11) modification: \$150;
- (12) enforcement: \$250;
- (13) tax intercept related: as determined by federal regulations;
- (14) IRS tax intercept service: \$25;
- (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 of any future distribution to the custodial party until paid in full.

[8.50.125.10 NMAC - Rp, 8.50.125.10 NMAC, 9/1/2022]

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) monthly payment ordered for current ongoing support;
- (2) monthly payment ordered for judgment on arrears;
- (3) current support delinquency;
- (4) past due support delinquency;
- (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 amount collected that is applied to assigned support;

(2) retain the state share of the amount collected that is applied to assigned support; and
(3) reduce the cumulative amount of unreimbursed assistance by the total amount collected that is applied to assigned support and disbursed under Paragraphs (1) and (2) of Subsection, C of 8.50.125.11 NMAC and distribute collections exceeding the cumulative amount of unreimbursed assistance to the family in excess of Paragraphs (1) and (2) of Subsection, C of 8.50.125.11 NMAC to satisfy never assigned support, unassigned support and conditionally assigned support.

D. The order in which collections are applied to satisfy assigned and unassigned arrearages in current assistance cases differ by state.

(1) For collections made prior to January 23, 2023, the state of New Mexico has selected the following option:

(a) collections will be first applied to current support;
(b) additional collections will be applied to temporarily assigned arrearages or conditionally assigned arrearages;
(c) additional collections will be applied to permanently assigned arrearages and
(d) additional collections will be applied to never assigned arrearages, unassigned pre-assistance arrearages and unassigned during assistance arrearages.

(2) For collections made effective on or after January 23, 2023, the state of New Mexico has selected the following option:

(a) collections will be first applied to current support;
(b) additional collections will be first applied to permanently assigned arrearages;
(c) additional collections will be applied to temporarily assigned arrearages or conditionally assigned arrearages; and
(d) additional collections will be applied to never assigned arrearages, unassigned Pre-assistance arrearages and unassigned during assistance arrearages.

E. Former assistance cases:

(1) For collections made prior to October 1, 1998, the state shall:

(a) first, distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;
(b) 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.

(2) For collections made on or after October 1, 1998, or earlier at state option, the state shall:
(a) distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;

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

(c) distribute any amount above amounts distributed in Subparagraphs (a) and (b) of this section to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages in any order and pay that amount to the family;

(d) distribute any amount above amounts distributed in Subparagraphs (a), (b) and (c) of this section to satisfy permanently-assigned arrearages; the state must pay the federal government the federal share of the amount collected that is applied to assigned support; 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 and federal share of collections applied to arrearages that accrued while the family was receiving assistance after October 1, 1996;

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

(3) For collections made effective on or after January 23, 2023 (other than through federal Income tax refund offset), the state shall:

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

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

(c) distribute any amount above amounts distributed in Subparagraphs (a) and (b) of Paragraph (3) of Subsection E of 8.50.125.11 NMAC to satisfy unassigned pre-assistance arrearages and pay that amount to the family;

(d) distribute any amount above amounts distributed in Subparagraphs (a), (b) and (c) of Paragraph (3) of Subsection E of 8.50.125.11 NMAC to satisfy unassigned during assistance arrearages and pay those amounts to the family;

(e) distribute any amount above amounts distributed in Subparagraphs (a), (b), (c) and (d) of Paragraph (3) of Subsection E of 8.50.125.11 NMAC to satisfy conditionally-assigned arrearages and pay that amount to the family; the state must pay the federal government the federal share of the amount collected that is applied to assigned support; 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 and federal share of collections applied to conditionally assigned arrearages; and

(f) distribute any amount above amounts distributed in Subparagraphs (a), (b), (c), (d) and (e) of Paragraph (3) of Subsection E of 8.50.125.11 NMAC to satisfy permanently-assigned arrearages and reduce the cumulative amount of unreimbursed assistance by the total amount distributed under Subparagraph (e) and (f) of this Paragraph; the state must pay the federal government the federal share of the amount collected that is applied to assigned support;; 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 and federal share of collections applied to permanently assigned arrearages;

F. Never-assistance cases: All support collections in never-assistance cases must be paid (less any applicable fees) to the family.

G. Collected funds will be 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.

H. 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.

[8.50.125.11 NMAC - Rp, 8.50.125.11 NMAC, 9/1/2022]

8.50.125.12 DISTRIBUTION OF COLLECTIONS THROUGH FEDERAL INCOME TAX REFUND

OFFSET: Any amount of support collected through federal income tax refund offset may be retained by the state to the extent support arrearages have 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. The order in which collections are applied to satisfy assigned and unassigned arrearages in current assistance cases differ by state.

(1) For collections made prior to January 23, 2023 the state of New Mexico has selected the following option:

(a) collections will first be applied to temporarily assigned arrearages or conditionally assigned arrearages;

(b) additional collections will be applied to permanently assigned arrearages; and

(c) additional collections will be applied to never assigned arrearages, unassigned pre-assistance arrearages and unassigned during assistance arrearages.

(2) For collections made on or after January 23, 2023, the state of New Mexico has selected the following option:

- (a) collections will be first applied to current support (pass through described in Section 8.50.125.13 NMAC may apply here);
- (b) additional collections will be first applied to permanently assigned arrearages;
- (c) additional collections will be applied to temporarily assigned arrearages or conditionally assigned arrearages; and
- (d) additional collections will be applied to never assigned arrearages, unassigned pre-assistance arrearages and unassigned during assistance arrearages.

B. Former assistance cases: For support collections made through federal income tax refund offsets in former assistance cases, 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 subsection to satisfy unassigned pre-assistance arrearages and pay that amount to the family;

(4) distribute any amount above amounts distributed in Paragraphs (1), (2) and (3) of this subsection to satisfy unassigned during assistance arrearages and pay those amounts to the family;

(5) distribute any amount above amounts distributed in Paragraphs (1), (2), (3) and (4) of this subsection to satisfy conditionally-assigned arrearages and pay that amount to the family; the state must pay the federal government the federal share of the amount collected that is applied to assigned support; 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 and federal share of collections applied to conditionally assigned arrearages; and

(6) distribute any amount above amounts distributed in Paragraphs (1), (2), (3), (4) and (5) of this subsection to satisfy permanently-assigned arrearages and reduce the cumulative amount of unreimbursed assistance by the total amount distributed under Paragraph (5) and (6) of Subsection B of 8.50.125.12 NMAC; the state must pay the federal government the federal share of the amount collected that is applied to assigned support; 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 and federal share of collections applied to permanently assigned arrearages and conditionally assigned arrearages.

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 - Rp, 8.50.125.12 NMAC, 9/1/2022]

8.50.125.13 CURRENT ASSISTANCE PASS THROUGH PAYMENTS: At the discretion of the New Mexico legislature, the IV-D agency may disburse an amount based on budget availability (refer to NMSA § 27-2B-7 and disregard for child support payments in 8.102.520.9 NMAC for allowable 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 them. 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, they 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.

[8.50.125.13 NMAC - N, 9/1/2022]

8.50.125.14 DISTRIBUTION OF COLLECTIONS IN TITLE IV-E FOSTER CARE CASES: Amounts collected as support in Title IV-E foster care cases will be distributed in accordance with 45 CFR 302.52.

[8.50.125.14 NMAC - Rp, 8.50.125.13 NMAC, 9/1/2022]

8.50.125.15 ASSIGNED MEDICAL SUPPORT COLLECTIONS: Any amounts collected by the IV-D agency that represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the state will be forwarded to the medicaid agency for distribution. When a family ceases receiving assistance under the state's Title XIX (medicaid) plan, the assignment of medical support rights under section 1912 of the act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV-D agency will attempt to collect any unpaid specific dollar amounts designated in the support order for medical support purposes. Under this requirement, any medical support collection made by the IV-D agency will be forwarded to the medicaid agency for distribution.
[8.50.125.15 NMAC - Rp, 8.50.125.14 NMAC, 9/1/2022]

8.50.125.16 CHILD LEVEL ACCOUNTING: 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 or receiving assistance. Therefore, in current or former assistance cases, the IV-D agency 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.
[8.50.125.16 NMAC - Rp, 8.50.125.15 NMAC, 9/1/2022]

8.50.125.17 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 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.
[8.50.125.17 NMAC - Rp, 8.50.125.16 NMAC, 9/1/2022]

8.50.125.18 CHILD SUPPORT COLLECTED FOR MEDICAID REFERRALS: A medicaid only recipient, for whom an assignment of support rights is in effect, must receive medical support services but may choose to receive full services. If the recipient elects to receive full services, the recipient is required to turn over all child support received, to be distributed in accordance with federal and state regulations. If the recipient elects to receive only medical support services, the recipient may keep child support payments received directly from the payor.
[8.50.125.18 NMAC - Rp, 8.50.125.17 NMAC, 9/1/2022]

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

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. Full services cases include all services listed below as specific services may not be selected. Applicants not receiving any type of public assistance may also request full services that 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 only cases: A custodial party currently receiving full services from the IV-D agency or opening a new case with the IV-D agency may elect to receive payment processing only services so long as they are 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 only services are charged an annual fee as stated in section 10, above. In order to receive payment processing only 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

that contains an income withholding provision or a copy of an income 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, sending, or terminating the income 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 only services if no payments are received for a period of two months.

[8.50.125.19 NMAC - Rp, 8.50.125.18 NMAC, 9/1/2022]

8.50.125.20 ISSUANCE OF REPLACEMENT WARRANTS: If a custodial party or non-custodial parent claims that a warrant issued to him or her has not been received, a replacement warrant shall be issued only if the original warrant has not been redeemed or at the discretion of the IV-D agency. If the IV-D agency determines that a replacement warrant will be issued, any warrants that were fraudulently redeemed shall be reported by the intended recipient to the proper authorities as a pre-condition for the issuance of a replacement warrant. An unredeemed warrant is subject to the undistributed collections process, see 8.50.132 NMAC. The IV-D agency will replace a warrant that it can confirm was not redeemed and has not escheated to the IV-D agency through the undistributed collections process. If the IV-D agency is unable to confirm that a warrant has been redeemed due to the length of time that has passed since the warrant was issued, the IV-D agency will deny the request for a replacement warrant.

[8.50.125.20 NMAC - Rp, 8.50.125.19 NMAC, 9/1/2022]

History of 8.50.125 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.
- ISD CSEB 521.0000, Non-AFDC Fees and Costs, 6/23/1980.
- ISD CSEB 521.0000, Non-AFDC Fees and Costs, 1/20/1981.
- ISD CSEB 592.0000, Collection, 6/23/1980.
- ISD CSEB 593.0000, Distribution, 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 effective 5/31/2001.
- 8.50.125 NMAC, Fees, Payments, and Distributions, filed 5/14/2001 - Repealed effective 12/30/2010.
- 8.50.125 NMAC, Fees, Payments, and Distributions, filed 12/13/2010 - Repealed effective 9/1/2022.

Other: 8.50.125 NMAC, Fees, Payments, and Distributions, filed 5/14/2001 Replaced by 8.50.125 NMAC, Fees, Payments, and Distributions effective 12/30/2010.

8.50.125 NMAC, Fees, Payments, and Distributions, filed 12/13/2010 Replaced by 8.50.125 NMAC, Fees, Payments, and Distributions effective 9/1/2022.