

**PROPOSED REGULATION OF THE
ADMINISTRATOR OF THE DIVISION OF
WELFARE AND SUPPORTIVE SERVICES OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R183-18

October 5, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-22, NRS 425.620.

A REGULATION relating to child support; establishing the child support guidelines that will be used to calculate child support in this State upon the effective date of this regulation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing federal law and regulations require each state to establish child support guidelines and to review such guidelines at least once every 4 years to ensure that the application of such guidelines results in appropriate awards of child support. (42 U.S.C. § 667(a); 45 C.F.R. § 302.56(e)) Existing federal regulations also establish minimum standards for such guidelines. (45 C.F.R. § 302.56(c)) Existing Nevada law establishes the general formula used to calculate child support and sets forth several other related provisions. (NRS 125B.070-125B.085, 125B.095) Existing Nevada law also requires: (1) the Committee to Review Child Support Guidelines to review the existing child support guidelines established in this State and provide any recommendations for revisions to the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services; and (2) the Administrator, after reviewing and considering such recommendations, to adopt regulations establishing the child support guidelines in this State. (NRS 425.620) The regulations adopted by the Administrator will replace the guidelines currently set forth in existing law.

This regulation establishes the child support guidelines that will be used to calculate child support in this State upon the effective date of this regulation. **Section 4** of this regulation defines “gross income” for the purposes of calculating child support. **Section 5** of this regulation defines an “obligee” as a person who is entitled to receive child support, and **section 6** of this regulation defines an “obligor” as a person who is required to pay child support. **Section 8** of this regulation requires any child support order to be based on an obligor’s earnings, income and other evidence of ability to pay.

Section 9 of this regulation authorizes the parties to a child support proceeding to stipulate to an amount of child support that does not comply with the child support guidelines established in this regulation and sets forth the requirements that such a stipulation must satisfy in order to be binding. **Section 9** also provides that a court may reject such a stipulation if it is a product of coercion or the amount of child support does not meet the needs of the child.

Section 11 of this regulation requires the monthly gross income of each obligor to be determined by stipulation of the parties or the court. **Section 12** of this regulation authorizes the court to impute income to an obligor who is underemployed or unemployed without good cause and requires the court to take into consideration the specific circumstances of the obligor.

Section 13 of this regulation requires the court to make an equitable division of the reasonable costs of child care, and **section 14** of this regulation requires every child support order that is issued or modified in this State to include a provision specifying that medical support is required to be provided for the child and any details relating to such a requirement.

Section 15 of this regulation establishes the schedule for determining the base child support obligation of an obligor based on the number of children who will receive support and the monthly gross income of the obligor. **Section 16** of this regulation requires child support to be established using a low-income schedule based on the federal poverty guidelines if the court determines that the total economic circumstances of an obligor limit his or her ability to pay the base child support obligation determined pursuant to **section 15**. **Section 16** also authorizes the court to establish an appropriate child support obligation if the monthly gross income of an obligor is below the lowest level set forth in the low-income schedule. **Section 17** of this regulation authorizes the court to adjust any child support obligation in accordance with the specific needs of the child and the economic circumstances of the parties.

Section 18 of this regulation provides that the incarceration or involuntary institutionalization of an obligor for a period of 180 consecutive days or more, or the release from such incarceration or involuntary institutionalization, constitutes a substantial change in circumstances that warrants the review and, if appropriate, adjustment of a child support order. **Section 18** also prohibits incarceration or involuntary institutionalization from being treated as voluntary unemployment.

Section 19 of this regulation establishes provisions relating to the automatic termination of a child support obligation if a child support order pertains to: (1) only one child; or (2) more than one child but allocates a specific amount of the total child support obligation to each child. **Section 19** provides that if a child support order pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child, a person who wishes to modify the order when a child reaches 18 years of age or, if the child is still in high school, graduates from high school or reaches 19 years of age, whichever comes first, the person must file a motion to modify the order or submit a stipulation between the parties to the court. **Section 20** of this regulation sets forth a notice that must be included in any child support order that pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child.

Section 21 of this regulation requires any modification or adjustment of a child support order to be based upon a change in circumstances unless otherwise authorized by law or regulation.

Section 1. Chapter 425 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Child support obligation” means the amount of child support that is required to be paid by an obligor.*

Sec. 4. 1. *“Gross income” includes, without limitation:*

(a) Salary and wages, including, without limitation, money earned from overtime pay if such overtime pay is substantial, consistent and can be accurately determined.

(b) Interest and investment income, not including the principal.

(c) Social security disability benefits and old-age insurance benefits under federal law.

(d) Income from a pension, annuity or retirement plan.

(e) Net proceeds resulting from workers’ compensation or other personal injury awards intended to replace income.

(f) Unemployment insurance.

(g) Income continuation benefits.

(h) Voluntary contributions to a deferred compensation plan, employee contributions to an employee benefit or profit-sharing plan, and voluntary employee contributions to any pension or retirement account, regardless of whether the account provides for tax deferral or avoidance.

(i) Military allowances and veterans' benefits.

(j) Compensation for lost wages.

(k) Undistributed income of a business entity in which a party has an ownership interest sufficient to individually exercise control over or access the earnings of the business, unless the income is included as an asset for the purposes of imputing income pursuant to section 12 of this regulation. As used in this paragraph:

(1) "Reasonable allowance for economic depreciation" means the amount of depreciation on assets computed using the straight-line method and useful lives as determined under federal income tax laws and regulations.

(2) "Undistributed income" means federal taxable income of a business entity plus depreciation claimed on the federal income tax return of the business less a reasonable allowance for economic depreciation.

(l) Child care subsidy payments if a party is a child care provider.

(m) Except as otherwise provided in subsection 2, all other income of a party, regardless of whether such income is taxable.

2. The term does not include:

(a) Child support received.

(b) Foster care or kinship care payments.

(c) Benefits received under the federal Supplemental Nutrition Assistance Program.

(d) Cash benefits paid by a county.

(e) Supplemental security income benefits and state supplemental payments.

(f) Except as otherwise provided in paragraph (l) of subsection 1, payments made for social services or any other public assistance benefits.

3. This section must not be construed to limit income withholding or the assignment of workers' compensation benefits for the collection of child support.

Sec. 5. "Obligee" means a person who is entitled to receive payments for the support of one or more children pursuant to an order.

Sec. 6. "Obligor" means a person who incurs a legal obligation to make payments for the support of one or more children pursuant to an order.

Sec. 7. "Order" has the meaning ascribed to "order for the support of a child" in NRS 125B.145.

Sec. 8. 1. Any order must be based on the obligor's earnings, income and other evidence of ability to pay.

2. It is presumed that the basic needs of a child are met by a child support obligation established pursuant to the guidelines set forth in sections 2 to 21, inclusive, of this regulation, however, this presumption may be rebutted by evidence proving that the needs of a particular child are not met or are exceeded by such a child support obligation.

3. If the court establishes a child support obligation that is greater or less than the child support obligation that would be established pursuant to the guidelines set forth in sections 2 to 21, inclusive, of this regulation, the court must:

(a) Set forth findings of fact as to the basis for the deviation from the guidelines; and
(b) Provide in the findings of fact the child support obligation that would have been established pursuant to the guidelines.

Sec. 9. 1. In lieu of having a child support obligation determined pursuant to the guidelines set forth in sections 2 to 21, inclusive, of this regulation, the parties may stipulate to

a child support obligation that does not comply with such guidelines. To be binding, such a stipulation must be in writing and:

- (a) Set forth the current monthly gross income of each party;*
- (b) Specify what the child support obligation would be under the guidelines;*
- (c) Provide notice to both parties that, if either party seeks a review of the stipulated child support obligation for any authorized reason, the court will calculate the child support obligation in accordance with the child support guidelines in effect at the time of the review;*
- (d) Contain a certification by the obligee that he or she is not currently receiving public assistance and has not applied for public assistance;*
- (e) Certify that the basic needs of the child are met or exceeded by the stipulated child support obligation; and*
- (f) Be approved and adopted as an order of the court.*

2. Notwithstanding the provisions of subsection 1, a court may reject a stipulation if the court determines that the stipulation is a product of coercion or the child support obligation does not meet the needs of the child.

Sec. 10. 1. *If the parties do not stipulate to a child support obligation pursuant to section 9 of this regulation, the court must determine the child support obligation in accordance with the guidelines set forth in sections 2 to 21, inclusive, of this regulation.*

2. If a party has primary physical custody of a child, he or she is deemed to be the obligee and the other party is deemed to be the obligor, and the child support obligation of the obligor must be determined.

3. If the parties have joint physical custody of a child, each party is deemed to be an obligor and the child support obligation of each party must be determined. After each party's

respective child support obligation is determined, the child support obligations must be offset so that the party with the higher child support obligation pays the other party the difference.

4. If the parties have two or more children and each party has joint physical custody of at least one, but not all, of the children, each party is deemed to be an obligor and the total child support obligation of each party must be determined based on the number of children to whom each party owes a child support obligation. After each party's respective child support obligation is determined, the child support obligations must be offset so that the party with the higher obligation pays the other party the difference.

Sec. 11. 1. *The monthly gross income of each obligor must be determined by:*

(a) Stipulation of the parties; or

(b) The court, after considering all financial or other information relevant to the earning capacity of the obligor.

2. In determining the monthly gross income of each obligor, the court may direct either party to furnish financial information or other records, including, without limitation, any income tax returns.

Sec. 12. 1. *If after taking evidence, the court determines that an obligor is underemployed or unemployed without good cause, the court may impute income to the obligor.*

2. If the court imputes income, the court must take into consideration, to the extent known, the specific circumstances of the obligor, including, without limitation:

(a) The obligor's:

(1) Assets;

(2) Residence;

- (3) Employment and earnings history;*
 - (4) Job skills;*
 - (5) Educational attainment;*
 - (6) Literacy;*
 - (7) Age;*
 - (8) Health;*
 - (9) Criminal record and other employment barriers; and*
 - (10) Record of seeking work;*
- (b) The local job market;*
 - (c) The availability of employers willing to hire the obligor;*
 - (d) The prevailing earnings level in the local community; and*
 - (e) Any other relevant background factors in the case.*

Sec. 13. *The court must consider the reasonable costs of child care paid by either or both parties and make an equitable division thereof.*

Sec. 14. 1. *Every order issued or modified in this State must include a provision specifying:*

- (a) That medical support is required to be provided for the child; and*
- (b) Any details relating to that requirement.*

2. *As used in this section, “medical support” includes, without limitation, the payment of a premium for accessible medical, vision or dental coverage under a plan of insurance, including, without limitation, a public plan such as Medicaid or a reduced-fee plan such as the Children’s Health Insurance Program, that is reasonable in cost. For the purpose of this subsection:*

(a) Coverage under a plan of insurance is “accessible” if the plan:

(1) Is not limited to coverage within a geographical area; or

(2) Is limited to coverage within a geographical area and the child resides within that geographical area.

(b) The payment of a premium for coverage under a plan of insurance is “reasonable in cost” if:

(1) The cost:

(I) To each party who is responsible for providing medical support is not more than 5 percent of the monthly gross income of the party; or

(II) Of adding a dependent child to any existing coverage for health care or the difference between individual and family coverage, whichever is less, is not more than 5 percent of the monthly gross income of the party; and

(2) The court assesses the plan of insurance, including the copayments, deductible and maximum out-of-pocket costs, and determines that the plan is reasonable in cost.

Sec. 15. *Except as otherwise provided in section 16 of this regulation, the base child support obligation of an obligor must be determined according to the following schedule:*

1. For one child, the sum of:

(a) For the first \$6,000 of an obligor’s monthly gross income, 16 percent of such income;

(b) For any portion of an obligor’s monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 8 percent of such a portion; and

(c) For any portion of an obligor’s monthly gross income that is greater than \$10,000, 4 percent of such a portion.

2. For two children, the sum of:

- (a) For the first \$6,000 of an obligor's monthly gross income, 22 percent of such income;*
- (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 11 percent of such a portion; and*
- (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, 6 percent of such a portion.*

3. For three children, the sum of:

- (a) For the first \$6,000 of an obligor's monthly gross income, 26 percent of such income;*
- (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 13 percent of such a portion; and*
- (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, 6 percent of such a portion.*

4. For four children, the sum of:

- (a) For the first \$6,000 of an obligor's monthly gross income, 28 percent of such income;*
- (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 14 percent of such a portion; and*
- (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, 7 percent of such a portion.*

5. For each additional child, the sum of:

- (a) For the first \$6,000 of an obligor's monthly gross income, an additional 2 percent of such income;*
- (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, an additional 1 percent of such a portion; and*

(c) For any portion of an obligor's monthly gross income that is greater than \$10,000, an additional 0.5 percent of such a portion.

Sec. 16. 1. *If the court determines that the total economic circumstances of an obligor limit his or her ability to pay a child support obligation in the amount determined pursuant to section 15 of this regulation, the child support obligation must be established by using a low-income schedule which is based on the current federal poverty guidelines, as determined by the Secretary of Health and Human Services, and which is published annually in the Federal Register.*

2. If the monthly gross income of an obligor is below the lowest level set forth in the low-income schedule, the court may establish an appropriate child support obligation based on the total economic circumstances of the obligor, balancing his or her need for self-support with the obligation to support his or her child.

3. The low-income schedule must be published by the Administrative Office of the Courts on or before March 31 of each year.

Sec. 17. 1. *Any child support obligation may be adjusted by the court in accordance with the specific needs of the child and the economic circumstances of the parties based upon the following factors and specific findings of fact:*

- (a) Any special educational needs of the child;*
- (b) The legal responsibility of the parties for the support of others;*
- (c) The value of services contributed by either party;*
- (d) Any public assistance paid to support the child;*
- (e) The cost of transportation of the child to and from visitation;*
- (f) The relative income of both households;*

(g) Any other necessary expenses for the benefit of the child; and

(h) The obligor's ability to pay.

2. The court may include benefits received by a child pursuant to 42 U.S.C. § 402(d) based on a parent's entitlement to federal disability or old-age insurance benefits pursuant to 42 U.S.C. §§ 401 to 433, inclusive, in the parent's gross income and adjust an obligor's child support obligation by subtracting the amount of the child's benefit. In no case may this adjustment require an obligee to reimburse an obligor for any portion of the child's benefit.

Sec. 18. *1. If an obligor is incarcerated or involuntarily institutionalized for a period of 180 consecutive days or more, or is released from such incarceration or involuntary institutionalization, such an occurrence is considered to be a substantial change in circumstances that warrants the review and, if appropriate, the adjustment of an order based on the obligor's ability to pay. A party or the enforcing authority may petition the court to request a hearing for review.*

2. Incarceration or involuntary institutionalization must not be treated as voluntary unemployment and income must not be imputed to an obligor who is incarcerated or involuntarily institutionalized.

3. The court may verify that an obligor has the means to pay more or less than the child support obligation established in the order during the period that he or she is incarcerated or involuntarily institutionalized.

4. If a child support obligation is reduced during the period that an obligor is incarcerated or involuntarily institutionalized, beginning on the first day of the month following the release of the obligor, the child support obligation must be set by using the lowest monthly income in the low-income schedule established pursuant to section 16 of this

regulation or, if a higher child support obligation was ordered by the court during the period of incarceration or involuntary institutionalization, to the higher of the two. This subsection must not be construed to preclude an obligor from seeking a modification of an order based on a change in circumstances or another authorized reason.

5. This section must not be construed to prohibit a party or the enforcing authority from petitioning the court for a determination of a child support obligation or any arrearage.

6. As used in this section, “incarcerated or involuntarily institutionalized” includes, without limitation:

(a) Imprisonment in a federal or state prison or a county jail; and

(b) Involuntary commitment to a facility for the detention of children or a mental health facility.

Sec. 19. *1. Except as otherwise provided by law, if an order pertains to only one child, the child support obligation terminates when the child reaches 18 years of age or, if the child is still in high school, when the child graduates from high school or reaches 19 years of age, whichever comes first.*

2. Except as otherwise provided by law, if an order pertains to more than one child and allocates a specific amount of the total child support obligation to each child, the child support obligation for a particular child is terminated beginning on the first day of the month following the date on which the child reaches 18 years of age or, if the child is still in high school, the first day of the month following the date on which the child graduates from high school or reaches 19 years of age, whichever comes first.

3. If an order pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child:

(a) If a party wishes to modify the order when a child reaches 18 years of age or, if the child is still in high school, graduates from high school or reaches 19 years of age, whichever comes first, the party must file a motion to modify the order with the court or submit a stipulation between the parties to the court.

(b) If a motion to modify the order is filed with the court, any modification of the child support obligation:

(1) Must be in compliance with the child support guidelines in existence at the time of the modification for the remaining children to whom the order pertains; and

(2) Unless the parties agree otherwise in a stipulation, will be effective as of the date the motion to modify the order was filed with the court.

Sec. 20. *Any order that pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child must include the following notice:*

NOTICE: If you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order with or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation is not submitted, the child support obligation established in this order will continue until such time as all children who are the subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

Sec. 21. *1. Except as otherwise authorized by law or sections 2 to 21, inclusive, of this regulation, after a court has established a child support obligation, any subsequent modification or adjustment of the child support obligation must be based upon a change in circumstances.*

2. The receipt of public assistance by a child or an obligee constitutes a change in circumstances that will allow the review and, if appropriate, modification of the child support obligation in accordance with the child support guidelines in effect at the time of the review.

3. The adoption of or any revision to sections 2 to 21, inclusive, of this regulation must not, in and of itself, be considered a change in circumstances sufficient to justify the modification of any existing order or money judgment.

Sec. 22. *1. The provisions of section 18 of this regulation apply to any order for the support of a child that is issued or modified in this State on or after the effective date of this regulation.*

2. As used in this section, “order for the support of a child” has the meaning ascribed to it in NRS 125B.145.