

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

LCB File No. R139-23

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

AUTHORITY: §§ 1-11, NRS 425.620.

A REGULATION relating to child support; prescribing the amounts included in a total child support obligation; clarifying certain terminology related to child support obligations; prescribing the manner of calculating a total child support obligation under certain circumstances; defining the term “public assistance” for certain purposes relating to the calculation of a child support obligation; revising the date on which certain child support obligations terminate; 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 Nevada law requires the Administrator of the Division of Welfare and Supportive Services of the Department of Health and Human Services to adopt regulations prescribing such guidelines in accordance with that federal law. (NRS 425.620) Existing law requires a court of this State to apply those guidelines when: (1) determining the required support in any case involving the support of children; or (2) changing the amount of the required support of children. (NRS 125B.080) Existing regulations provide for the calculation of a base child support obligation and the addition to that obligation of amounts for child care costs, medical support and certain other adjustments. (NAC 425.130-425.150) **Section 1** of this regulation requires a court to determine the total child support obligation by combining the base child support obligation with those other amounts. **Sections 3-5 and 9** of this regulation make various changes to distinguish between a total child support obligation and a base child support obligation. **Section 7** of this regulation requires a court to make certain findings when making an equitable division of the costs of child care between the parties to a child support proceeding, including a finding concerning whether either party has elected to forego or limit employment in order to care for the child. **Section 6** of this regulation clarifies that such an election does not limit the ability of the court to determine that the obligor is underemployed or unemployed without good cause and impute income to the obligor. **Section 8** of this regulation requires a court to make an equitable division of the medical support for a child between the parties to a child support proceeding.

Existing regulations: (1) require a court to determine the base child support obligation based on the gross monthly income of the obligor; and (2) use the gross income of a party as a factor in certain other determinations related to the calculation of the total child support obligation. (NAC 425.135-425.150) **Section 2** of this regulation makes certain clarifications concerning income that qualifies as part of the gross income of a party.

Existing regulations authorize the parties to a child support proceeding to stipulate to a child support obligation that does not comply with the guidelines for the support of one or more children. Existing regulations require such a stipulation to contain a certification by the obligee that he or she is not currently receiving public assistance and has not applied for public assistance. (NAC 425.110) **Section 4** of this regulation instead requires the obligee to certify that he or she is not receiving cash assistance through Temporary Assistance for Needy Families.

Where the parties have two or more children and each party has joint physical custody of at least one, but not all, of the children, existing regulations require a court to determine the total child support obligation of each party based on the number of children to whom each party owes a child support obligation. (NAC 425.115) **Section 5** additionally requires a court to calculate the total child support obligation of each party in that manner where each party has primary physical custody of at least one, but not all, of the children.

Existing regulations authorize a court to adjust a child support obligation based on certain factors, including any public assistance paid to support the child. (NAC 425.150) **Section 10** of this regulation defines “public assistance” for that purpose to have a definition prescribed in existing law which excludes the Children’s Health Insurance Program.

Existing regulations provide that a child support obligation for one child 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. (NAC 425.160) **Section 11** of this regulation provides that such a child support obligation terminates on the first day of the month immediately following the month during which those events occur.

Section 1. Chapter 425 of NAC is hereby amended by adding thereto a new section to read as follows:

Except as otherwise provided in NAC 425.110, a court shall determine the total child support obligation of an obligor as the sum of:

- 1. The base child support obligation as determined pursuant to NAC 425.140 or 425.145, as applicable;*
- 2. Any equitable division of the costs of child care as determined pursuant to NAC 425.130;*
- 3. Any equitable division of medical support determined pursuant to NAC 425.135; and*

4. Any adjustments made pursuant to NAC 425.150.

Sec. 2. NAC 425.025 is hereby amended to read as follows:

425.025 1. “Gross income” includes, without limitation:

- (a) ~~{Salary and}~~ *Monetary compensation incident to employment, including, without limitation, salary,* wages, ~~{including, without limitation,}~~ *commissions and* money earned from overtime pay *or bonuses* if such ~~{overtime pay}~~ *compensation* 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) Any periodic payment from a pension, retirement plan or annuity which is considered remuneration for employment.
- (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 NAC 425.125.

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) Alimony ~~+~~ *received*.

(n) *Income through self-employment that is calculated after deducting all legitimate business expenses but without deducting personal income taxes, contributions for retirement benefits, contributions to a pension or other personal expenses.*

(o) 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.

(g) Compensation for losses, including, without limitation, both general and special damages, from personal injury awards not intended to replace income.

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. 3. NAC 425.100 is hereby amended to read as follows:

425.100 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 *total* child support obligation established pursuant to ~~{the guidelines set forth in this chapter,}~~ *section 1 of this regulation and the sections referenced therein*, 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 *total* child support obligation that would be established pursuant to ~~{the guidelines set forth in this chapter,}~~ *section 1 of this regulation and the sections referenced therein*, the court must:

(a) Set forth findings of fact as to the basis for the ~~{deviation}~~ *adjustment* from the ~~{guidelines,}~~ *total child support obligation*; and

(b) Provide in the findings of fact the *total* child support obligation that would have been established pursuant to ~~{the guidelines,}~~ *section 1 of this regulation and the sections referenced therein*.

Sec. 4. NAC 425.110 is hereby amended to read as follows:

425.110 1. In lieu of having a child support obligation determined pursuant to the guidelines set forth in this chapter, 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 *total* child support obligation would be under ~~the guidelines;~~ *section 1 of this regulation and the sections referenced therein;*
 - (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 *total* child support obligation in accordance with ~~the child support guidelines in effect at the time of the review;~~ *section 1 of this regulation and the sections referenced therein;*
 - (d) Contain a certification by the obligee that he or she is not currently receiving ~~public assistance and has not applied for public assistance;~~ *cash assistance through Temporary Assistance for Needy Families;*
 - (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.

3. As used in this section, “Temporary Assistance for Needy Families” means the program established to provide temporary assistance for needy families pursuant to Title IV of the Social Security Act, 42 U.S.C. §§ 601 et seq., and other provisions of that act relating to temporary assistance for needy families.

Sec. 5. NAC 425.115 is hereby amended to read as follows:

425.115 1. If the parties do not stipulate to a child support obligation pursuant to NAC 425.110, the court must determine the *total* child support obligation in accordance with ~~the~~

~~guidelines set forth in this chapter.]~~ *section 1 of this regulation and the sections referenced therein.*

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 *total* child support obligation of the obligor must be determined ~~H~~ *pursuant to section 1 of this regulation and the sections referenced therein.*

3. If the parties have joint physical custody of a child, the *total* child support obligation of each party must be determined ~~H~~ *pursuant to section 1 of this regulation and the sections referenced therein.* After each party's respective *total* child support obligation is determined, the *total* 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 *or primary physical custody* of at least one, but not all, of the children, 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 *total* 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.

Sec. 6. NAC 425.125 is hereby amended to read as follows:

425.125 1. If after taking evidence, the court determines that an obligor *, including, without limitation, an obligor who foregoes or limits employment to care for the child,* 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. 7. NAC 425.130 is hereby amended to read as follows:

425.130 ~~The~~ *1. After determining the base child support obligation of an obligor pursuant to NAC 425.140 or 425.145, as applicable, the court must consider the reasonable costs of child care paid by either or both parties and make an equitable division thereof.*

2. Every order issued or modified in this State must include, to the extent applicable:

(a) The amount of the costs of child care required to be paid by the obligor; and

(b) Written findings concerning:

(1) The costs of child care proposed by either or both parties;

- (2) The cost of reasonable alternatives to the child care proposed by either or both parties;*
- (3) The ability of both parties to pay for child care;*
- (4) Whether either party has elected to forego or limit employment in order to care for the child;*
- (5) Whether child care will allow a party to obtain training or education relating to a job, career or profession; and*
- (6) Any other relevant factor.*

Sec. 8. NAC 425.135 is hereby amended to read as follows:

425.135 1. *After determining the base child support obligation of an obligor pursuant to NAC 425.140 or 425.145, as applicable, the court must consider the reasonable medical support paid by either or both parties and make an equitable division thereof.*

2. 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.

~~12.1~~ 3. 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. 9. NAC 425.145 is hereby amended to read as follows:

425.145 1. If the court determines that the total economic circumstances of an obligor limit his or her ability to pay a *base* child support obligation in the amount determined pursuant to NAC 425.140, the *base* 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 *base* 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. 10. NAC 425.150 is hereby amended to read as follows:

425.150 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 , *as defined in NRS 422A.065*, paid to support the child;
- (e) The cost of transportation of the child to and from visitation;
- (f) The relative income of both households, so long as the adjustment does not exceed the total obligation of the other party;
- (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. 11. NAC 425.160 is hereby amended to read as follows:

425.160 1. Except as otherwise provided by law, if an order pertains to only one child, the child support obligation terminates *on the first day of the month immediately following the*

month when the child reaches 18 years of age or, if the child is still in high school, *the first day of the month immediately following the month* 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.