

## **SUPPORT ESTABLISHMENT**

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### **INTRODUCTION**

#### **GENERAL INFORMATION**

If paternity is at issue for any of the children in a CSS case, CSS caseworkers should follow the policies and procedures that are available in the [Paternity Chapter](#), rather than the policies and procedures that are available in this chapter. This chapter contains information on the following:

1. [An overview of the Establishment process](#) (with definitions of related concepts);
2. [Calculating child support obligations;](#)
3. [The methods and process for establishing child support obligation;](#)
4. [The establishment of medical support;](#)
5. [Court-related Establishment activities;](#)
6. [Basic information about court orders.](#)

### **ESTABLISHMENT OVERVIEW, DEFINITIONS, & CONCEPTS**

#### **GENERAL INFORMATION**

This topic contains information on the following:

1. [A definition of what a support order is;](#)
2. [The required information that support orders must contain;](#)
3. [Unity orders;](#)
4. [Prorated orders;](#)
5. [Changes that affect the disbursement of child support;](#)
6. [The effects of bankruptcy on the Establishment process;](#)
7. [Establishment policy concerning minor parents;](#)
8. [An overview of retroactive support;](#)
9. [The time frames for establishing an obligation;](#)
10. [Scheduling an appointment with the noncustodial parent \(NCP\).](#)

#### **DEFINITION OF SUPPORT ORDER**

A "support order" is a judgment, decree, or order (whether temporary, final, or subject to modification) that is issued by a court or an administrative agency. It establishes the legal obligation for support or maintenance of a child up to the age of majority under the law of the issuing state.

However, if the child reaches the age of majority under the law of the issuing state and a support order has never been established, the case should be closed. See "Case Closure" in the [Case Management Chapter](#).

CSS does not establish spousal support orders. However, spousal support can be collected in conjunction with the collection of child support for that responsible parent's child.

## **SUPPORT ORDER REQUIREMENTS**

### **GENERAL INFORMATION**

All civil or criminal child support orders that are established or modified must contain the following:

1. A provision requiring the noncustodial parent (NCP) to keep the CSS agency informed of his/her current residence and mailing address;
2. A provision requiring the NCP to keep the CSS agency informed of the name and address of any sources of disposable income and of the amount and effective date of any substantial change in his/her disposable income;
3. A provision to provide for implementation of immediate income withholding procedures as provided for in NCGS 110-136.4;
4. The address of the custodial parent (CP) or the address of the child(ren), if different from the address of the CP. This requirement DOES NOT apply, if:
  - An order exists that prohibits the disclosure of the address to the NCP;
  - The court determines that disclosure of the address is inappropriate due to verbal or physical threats that have been made by the NCP that constitute domestic violence under Chapter 50B of the NC General Statutes, or;
  - A child is in court-ordered placement under Chapter 7B of the NC General Statutes.

Prior to a court hearing or the preparation of a Voluntary Support Agreement and Order (VSA) or other consent order, determine if any domestic violence issues exist and request guidance from the CSS agency attorney on whether an address should be included in an order.

If a domestic violence protective order (DVPO) already exists, it is important to determine the provisions of that order. North Carolina General Statute 50B-7 specifies that any subsequent court order that is entered supersedes similar provisions in the DVPO, such as child support provisions. These protective orders are intended to provide temporary relief, and the parties can seek more permanent relief in other types of proceedings, such as Chapter 50 or 110. However, knowing the provisions of the DVPO avoids unintended consequences, confusion, or dangerous situations when evaluating establishment or enforcement actions.

5. A provision requiring that either the CP or NCP be ordered to provide health insurance for the child(ren) when it is available to the parent at a reasonable cost, as defined by NCGS 50-13.11 (a1). Health insurance for the benefit of the child is

considered reasonable in cost if the coverage is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income.

In addition, a provision to keep the CSS agency informed of any changes in the availability of health insurance, and to submit written notice of any change in the insurance coverage to the CSS agency and to the CP (per NCGS 50-13.11).

If the defendant is not present and has not appeared at a prior hearing for the case, signifying awareness of the action, CSS must file an affidavit with the court that indicates whether or not the defendant is in the military or that CSS does not know whether or not the defendant is in the military before a default order establishing support is entered. For more information, see the [Military Policy/Procedures Chapter](#).

#### ***REQUIREMENT FOR MONTHLY CHILD SUPPORT ORDERS***

All child support orders established must be on a monthly basis, due and payable on the first day of each month.

#### ***REQUIREMENTS FOR TEMPORARY SUPPORT ORDERS***

The court could enter a temporary support order to allow time to address any issues that could affect a support obligation. A temporary order can be entered as the initial support order or as a subsequent order. Temporary orders must contain:

- A statement that it is a temporary order; and
- A set review date for the court to reconsider outstanding issues.

#### **UNITY ORDERS**

"Unity orders" are child support orders for which the amount of child support is defined as a lump sum obligation. For example, an order for \$300 per month that does not assign a specific amount to any child would be considered a unity order.

#### ***ALLOCATION/ DISBURSEMENT OF CHILD SUPPORT FOR UNITY ORDERS***

If the unity order is CSS-initiated (originated by the CSS agency), CSS can redirect the support to the appropriate party if all of the children who are included in the order remain with one custodian. If the children are with multiple custodians, CSS needs to petition the court for modification of the order so that support can be properly allocated, distributed, and disbursed among the different custodians.

If a unity order with multiple children is not CSS-initiated and a child moves to the household of a new custodian or a change in a child's Public Assistance (PA) status requires a change of the recipient of child support payments, CSS petitions the court for a modification of the order to allocate specific amounts of support per child and to direct how money is to be disbursed based on the child's PA status. All the child support continues to go to the plaintiff who

is listed in the original until the order is modified. In these situations, it is imperative that court action be initiated as quickly as possible.

#### **PRORATED ORDERS**

"Prorated orders" are child support orders which specify that a portion of the total support obligation be allocated for each child listed in the order. For example, if the court orders the noncustodial parent (NCP) to pay \$300 per month for three (3) children, the court can specify that the \$300 be divided equally among the children. Whenever possible, it is recommended to include language in the order specifying that the obligation be equally divided among the children. This can reduce the amount of CSS agents' time and effort that is spent petitioning the court to modify child support orders whenever a child leaves the home.

#### ***ALLOCATION/ DISBURSEMENT OF CHILD SUPPORT FOR PRORATED ORDERS***

If the order is prorated and CSS-initiated, local CSS can redirect the support to the appropriate custodian without court intervention.

If the order is prorated and not CSS-initiated, local CSS must intervene in that order to redirect child support to the appropriate party.

#### **CHANGES AFFECTING CHILD SUPPORT DISBURSEMENT**

If a child receiving TANF becomes a SSI recipient or moves in with a new custodian, it is necessary to examine the existing support order to determine what course of action to pursue in order to disburse child support payments. Children receiving SSI are considered Non-Public Assistance (NPA) for the purposes of child support disbursement. When a child moves in with a custodian, the CSS case needs to be examined to determine that child's share of the obligation and how it is to be disbursed. The establishment of [prorated orders](#) facilitates the disbursement of child support when these situations occur.

#### **EFFECT OF A BANKRUPTCY PETITION ON CHILD SUPPORT**

The establishment of paternity or support by CSS is not bound by a bankruptcy court's automatic stay. (An automatic "stay" prohibits creditors from attempting to collect debts of the individual, unless approved by the bankruptcy plan.) Bankruptcy legislation (PL 109-8) allows that actions to establish paternity and actions to establish child support are exempt from such automatic stays.

For more information, see the "Bankruptcy" topic in the [Enforcement Chapter](#).

#### **MINOR PARENTS**

For CSS cases involving minor (under 18 years of age) putative fathers who are in school and have no resources or means to provide support, the issue of paternity can be resolved, provided the conditions stated in the [Paternity Chapter](#) of this manual have been met.

Establishment of a support obligation for any minor parent must be based on the verification of income and resources to provide support.

## **RETROACTIVE SUPPORT**

### ***RETROACTIVE SUPPORT OVERVIEW***

"Retroactive support" is a support amount established for a time period before the start date (or effective date) of a child support obligation. The start date is the date when the first payment is due. Support that is effective on or after the start date is considered to be "ongoing support". A retroactive support amount is owed to the State when custodial parents (CPs) assign their rights to support to the State when they receive Public Assistance (PA) for their children. A retroactive support amount is owed to the CP if CSS establishes a support amount based on the noncustodial parent's (NCP's) fair share of specific expenses that were incurred by that CP for the child(ren) prior to the start date of the support obligation.

Since June 30, 1975, acceptance of PA on behalf of a child creates a debt due and owing the state. Under the authority of NCGS 110-135, if child support was required to be paid for a period when PA was received, that support is owed to the State. CSS must address retroactive support owed to the State if PA was received for a child whenever an ongoing support obligation is being established.

If an ongoing obligation is not established, CSS does not pursue retroactive support owed to the State. (For example: The court establishes paternity but does not order ongoing support because the NCP is 17 years old and in school, or the CP and NCP reunite after the establishment process has begun and no ongoing support is established. In these situations, an obligation for retroactive support that is owed to the State should not be established.) If ongoing support is established at a later date and the statute of limitation has not been reached, CSS addresses the establishment of retroactive support owed to the State.

NOTE: Establishing retroactive support is not to be confused with establishing ongoing support with an effective date in the past (prior to the filing date of the complaint).

### ***RETROACTIVE SUPPORT OWED TO THE STATE-***

Retroactive support is owed to the State if Public Assistance (PA) was paid on behalf of the child during any period(s) prior to the start date of the support order. When custodial parents (CPs) receive PA, they assign their rights to support to the State. Because of the legal principles of "*res judicata*" and "*collateral estoppel*", CSS must address the issue of retroactive support owed to the State when establishing the initial child support obligation. If retroactive

support owed to the State is not included in the initial order, the opportunity to collect it is lost.

The CSS program is entitled to pursue retroactive support owed to the State for assistance paid after June 30, 1975 (NCGS 110-135). In accordance with 45 CFR 302.45, support must be based on the child support guidelines and must take into consideration the earnings and income of the parties in the CSS case.

Retroactive support owed to the State must be determined based on:

- The amount of PA paid on behalf of the child(ren); and
- The noncustodial parent's (NCP's) ability to pay support during the period when PA was paid on behalf of the child(ren) as determined under the child support guidelines that were in effect at the beginning of the time period for which retroactive support is sought.

**EXAMPLE :**

Prior to the establishment of the initial child support order, CSS receives verification from IV-A that the client received TANF for six (6) months.

- PA was paid in the amount of \$176.00 per month, totaling \$1056.00.
- Using the guidelines in effect at the beginning of this period and based on the NCP's income at that time, the NCP had the ability to pay \$50.00 per month.
- The NCP was employed during each month that the CP received TANF.

In accordance with NCGS 110-135, retroactive support owed to the State must be established within five (5) years of the receipt of the last grant of PA. If the child has received at least one (1) TANF payment within the past five (5) years, retroactive support owed to the State can be established from the child's birth date to the present time, even if there were breaks in the PA periods or changes in payee.

Although support can be established retroactively and owed to the State, the total amount of Unreimbursed Public Assistance (URPA) might not be recovered because support must be based on the NCP's ability to pay during the time when the PA was paid to the family. NCPs who were physically or mentally incapacitated would not be expected to pay support for any period of time when they did not have the ability to pay.

**EXAMPLE :**

Prior to the establishment of the initial child support order, CSS receives verification from IV-A that the CP received TANF for eight (8) months.

- PA was paid in the amount of \$275.00 per month, totaling \$2200.00.

- Using the guidelines in effect at the beginning of this period and based on the NCP's income at that time, the NCP had the ability to pay \$275.00 per month.
- The NCP was employed for four (4) months during which the CP received TANF. He was incarcerated and had no other source of income during the other (4) months.

Based on this information, retroactive support owed to the State can be established only for the four (4) months when the NCP was not incarcerated. The total retroactive support amount owed to the State can be established at \$1100.00 (\$275.00/month X 4 months).

When making a decision to pursue payment of retroactive support, it is also important to evaluate the NCP's current ability to provide support. It is not appropriate to reduce a parent's current support obligation in an attempt to increase the ability to pay retroactive support. If the court attempts to do so, the agency attorney should state the agency's objection since such action is contrary to federal regulations.

#### ***RETROACTIVE SUPPORT OWED TO THE CUSTODIAL PARENT (CP)***

##### **Retroactive Support Owed to the Custodial Parent (CP) Policy -**

Retroactive support owed to the CP (previously called "prior maintenance") is a support amount that is established to reimburse a CP for expenses incurred for the child(ren) prior to the establishment of a child support order. The issue can be addressed using a voluntary support agreement (VSA) through other legal proceedings.

The statute of limitations allows claims for retroactive support to extend no further than three (3) years prior to the date of filing of the support action. This should not be confused with the 10-year statute of limitations for recovering a judgment entered for the retroactive support claim.

If a CP requests that retroactive support be addressed, CSS must ensure that:

- This is the initial court order for support, and
- No prior separation agreement has established a child support obligation.

##### **Exceptions to the Establishment of Retroactive Support to the CP -**

If support has already been addressed in either a court order or separation agreement, CSS must not pursue the inclusion of retroactive support in the child support order.

- If arrearages have accrued under an existing child support order, CSS can provide services to enforce the collection of past due amounts as well as ongoing support. However, no action can be taken to establish any additional terms for retroactive support. If CSS is not a party to the existing order, the agency must take appropriate action to intervene in the order before redirecting a case from AOC or taking any action to enforce or modify the order.

- If the parents have executed a separation agreement that determined a child support obligation and that agreement has not been incorporated into a court order, CSS cannot establish a retroactive support order for collection of any unpaid amount under the agreement or request any modification of the agreement.
- The effective date of a new current support order can be retroactive to the date of filing of the support action. However, the collection of any past due support prior to the effective date of the order can be pursued only by the parents through a breach of contract action. CSS services are not available for this action.
- In the case of Carson vs. Carson, the NC Court of Appeals held that NC Child Support Guidelines do not supersede case law. When a support amount has been set in a valid unincorporated separation agreement, the court cannot award retroactive support in a different amount. The terms of the separation agreement apply until the court enters an order for ongoing support. Therefore, the provisions for retroactive child support in the NC Child Support Guidelines (AOC-A-162, Rev. 1/11) do not apply in cases with an existing unincorporated separation agreement that addresses child support.

#### **Determining the Amount of Retroactive Support -**

Under the NC Child Support Guidelines, the amount of retroactive support can be determined, based on either:

- The parent's fair share of actual expenditures for the child(ren)'s care during the stated period; or
- The incomes of the parents at the beginning of the retroactive period.

If retroactive support is based on actual expenses, an affidavit listing the reasonably necessary past expenditures made on behalf of the child during the relevant period must be completed by the CP. The Affidavit Of Income, Assets and Expenses (DSS-4666) can be used for this purpose. This affidavit should be signed, notarized and all appropriate supporting documentation (bills, receipts, etc.) should be attached.

The Guidelines do not require a specific approach to determining a parent's fair share of the expenses. An amount can be calculated to be the same percentage of the total expenses as the parent's share of the combined incomes of both parents or another amount as determined by the court

If retroactive support is determined in accordance with the Guidelines that were in effect at the beginning of the retroactive period for which support is being sought, calculations must be made in accordance with information in the version of AOC-A-162 that was in effect at that time. Calculation of support obligations with prior versions of AOC-A-162 must be made manually using worksheets that were in effect at that time.

#### **TIME FRAMES FOR ESTABLISHING AN OBLIGATION**



### ***SUPPORT ESTABLISHMENT TIME FRAME***

Federal regulations at 45 CFR 303.4 require that within ninety (90) days of locating a noncustodial parent (NCP), the local CSS agency must:

- Establish an order for support (and paternity, if necessary); or
- Complete service of process to establish support; or
- Document unsuccessful attempts to serve process to establish support.

To comply with this requirement, a state must meet this requirement for ninety percent (90%) of all its open cases.

### ***EXPEDITED PROCESS TIME FRAMES***

Additionally, federal regulations at 45CFR303.101(b)(2)(i) require the CSS program to process establishment cases, either administratively or judicially, within the following prescribed time frames. From the date of service of process, support must be established:

- For seventy-five percent (75%) of the cases within six (6) months (180 days); and
- For ninety percent (90%) of the cases within twelve (12) months (365 days).

### **SCHEDULING AN APPOINTMENT WITH THE NONCUSTODIAL PARENT**

Once the noncustodial parent (NCP) has been located, the first step in establishing a support order is to contact him/her. CSS caseworkers can schedule an interview with the NCP immediately, or they can request that the NCP call the office first.

## **OBLIGATION CALCULATION**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Obligation guideline policy;](#)
2. [The various factors that are considered when determining obligation amounts;](#)
3. [Verification of an obligor's past and present income;](#)
4. [Primary Custody;](#)
5. [Joint/Shared Custody;](#)
6. [Split Custody;](#)
7. [Third Party Custody/Two Noncustodial Parents\);](#)

### **OBLIGATION GUIDELINE POLICY**

NCGS 50-13.4(c1) requires the Conference of Chief District Judges to prescribe uniform statewide presumptive guidelines for determining

child support obligations. Use this link to see the complete text of the [NC Child Support Guidelines \(AOC-A-162\)](#).

Adherence to these guidelines is mandatory unless a basis exists for deviating from the guidelines for cases where the application of the guidelines would be inequitable to one of the parties or to the child. The guidelines do not apply to stepparents or agencies that are secondarily liable for child support.

If a valid, unincorporated separation agreement already exists that determines the child support obligation and a child support action is subsequently brought against the parent, the court must base the parent's support obligation on the amount of support provided under the separation agreement rather than the guidelines, unless the court determines that the amount under the separation agreement is unreasonable.

When establishing a support order based upon the provisions of the separation agreement, CSS does not establish an order for repayment of any unpaid support prior to the effective date of the new order. For more information, see "[Retroactive Support Owed to the Custodial Parent](#)".

*NOTE: Multiple web sites exist that allow users to calculate child support obligations using the guidelines. Because of the type of programming used, the calculations from these web sites and the ACTS system used by CSS can differ slightly from each other.*

Local CSS must record all factors that are taken into consideration when determining the amount of support. This requirement is vital, because it explains the basis for the support amount at that time and is necessary for the evaluation of any changes in circumstances at any subsequent review or modification of the court order.

When seeking to establish a child support obligation through voluntary means or when making recommendations to the court regarding an equitable amount for support, the following factors should be considered:

1. The needs of the child(ren);
2. The relative ability of each parent to provide for the support of the child(ren); and
3. Whether both parents are absent from the home, since the local CSS agency must pursue each parent for child support in those situations.

Local CSS caseworkers need to calculate child support obligations for a variety of situations. Often, caseworkers calculate an obligation during an interview with a noncustodial parent (NCP) or an alleged father who has just admitted paternity. Caseworkers can generate an Obligation Calculation Worksheet to be included with a Voluntary Support Agreement that they are mailing to an NCP. Also, caseworkers can generate an Obligation Calculation Worksheet in preparation for a court hearing to establish a child support order. For all of these situations, the method for calculating the obligation is the same.

Worksheets must be filed with any order for support to ensure proper application of the guidelines. Local CSS agencies can choose to attach an affidavit of income and expenses along with the appropriate worksheet to establish the needs of the children. This information can prove vital when seeking modification to an existing order. In addition, local CSS must document in the case record how the support amount was initially derived.

#### **UPDATING SUPPORT GUIDELINES**

The Conference of Chief District Court Judges is charged with the responsibility to review the guidelines at least once every four (4) years to determine whether the application of these guidelines results in appropriate child support amounts. The Conference could modify the guidelines accordingly. The most recent revision became effective on March 1, 2019, and applies to cases heard and decided on or after that date.

#### **DETERMINING OBLIGATION AMOUNTS**

A basic child support obligation is determined from the schedule of Basic Child Support Obligations. This amount is derived from the combined income of both parents and the number of children to be counted. The number of children refers only to those children for whom support is being sought in this action, not a total of all children presently being supported by the parents.

If the parents' combined gross income amount falls between the amounts shown on the schedule, the basic child support obligation should be interpolated. "Interpolation" is the estimation of a value between known values.

The schedule is updated using economic research that represents estimates of total expenditures on child rearing costs to age eighteen (18), takes certain expenses into consideration, and makes particular assumptions as follows:

1. Reflects child rearing costs, minus child care, health insurance, and health care costs in excess of \$250 per year;
2. Does not factor in costs for visitation.

For ease of application, the schedule is based upon net income converted to gross annual income by incorporating State and federal tax rates and Federal Insurance Contribution Act (FICA). Gross income is income before deductions for federal or State income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions or other withholdings from the parent's income.

Since these considerations are factored into the schedule, no manual calculations are needed. However, being aware of this information can assist CSS caseworkers in adequately responding to inquiries from custodial parents (CPs) and noncustodial parents (NCPs).

### ***INCOME SHARES MODEL***

Effective July 1, 1990, the income shares model was adopted as presumptive guidelines in North Carolina. The income shares model is predicated on the concept that the child involved should receive the same proportion of parental income that he/she would have received if the parents lived together.

Using the Income Shares Guidelines involves five (5) steps:

1. Determining the custody status of the child(ren);
2. Calculating the combined income of both parents;
3. Determining the adjustments or expenses paid by each parent;
4. Determining the joint parental child support obligation based on the income of both parents and the number of children; and
5. Allocating child support between the parents by prorating the obligation based on the physical custody of the children.

### ***SELF-SUPPORT RESERVE***

The guidelines include a self-support reserve based on the 2018 federal poverty level for a one-person household. If an NCP has an adjusted gross income of \$1108.00 or less per month, the guidelines require, absent a deviation, the establishment of a minimum support order of \$50.00 per month for cases that use Worksheet A (Primary Custody).

If the NCP pays support for more than one family, the support order amount is \$50.00 per month for each family. The self-support reserve is not applied when using Worksheet B (Joint/Shared Custody) or Worksheet C (Split Custody).

To prevent disproportionate increases in child support obligations and protect the self-support reserve, certain income levels require that only the NCP's income be considered in determining the obligation amount. These levels are represented within the shaded area of the Schedule of Basic Support Obligations.

When the NCP's income falls within these levels, child care, health insurance premiums, and extraordinary expenses are not used to calculate the child support obligation. However, payment of these costs by either parent can be a basis for deviation.

### ***INCOME***

#### **Gross Income -**

"Income" is defined as gross income of each parent from any source and includes (but is not limited to) income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, unemployment insurance compensation, disability pay, insurance benefits, gifts, prizes, and alimony or maintenance received from persons other than parties involved in this action.

For purposes of determining a child support obligation, the Obligation Calculation worksheets must include the incomes of both parents.

When establishing or modifying a child support order, the amount of the obligor's gross income can be verified by a written statement signed by the obligor's employer or the employer's designee or an Employer Verification Letter/Employer Letter (DSS-4685). Either is admissible evidence in court.

Per NCGS 50-13.4(b), a non-parent custodian does not have a legal primary duty to support. If a non-parent custodian seeks child support from one or both of the child's parents, the income of both of the child's parents must be included on the child support worksheet. In this situation, the self-support reserve is not applied.

Non-recurring income or one-time payments such as lottery winnings can be averaged out and included in the calculation, but must be distinguished from the ongoing income. The court can:

1. Prorate the income over a specified period of time; or
2. Require an obligor to pay as child support a percentage of the non-recurring income that is equivalent to the percentage of the recurring income paid for child support.

Social Security Administration (SSA) and Veterans Administration (VA) benefits received on behalf of a child as a result of the disability or retirement of either parent are included as income attributed to the parent on whose earnings record the benefits are paid. These benefits are deducted from that parent's child support obligation only if the benefits are actually paid to the other parent.

Specifically excluded as sources of income are:

- Adoption Assistance benefits that are received to meet the needs of an adopted child;
- Benefits received from Public Assistance (PA) programs, such as Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), and Food and Nutrition benefits;
- Child support received for a child not included in this action;
- Employer contributions toward future Social Security and Medicare payments;
- Employer payments to a third party for a parent's insurance or retirement benefits that are not deducted from the parent's income.

#### **Income from Self-Employment -**

Gross income from self-employment or ownership of a business is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation.

Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or other business expenses are inappropriate for the purposes of calculating support. In most cases, this amount differs from a determination of

business income for tax purposes. CSS caseworkers must verify the income by using the gross income from the NCP's most recent tax return or from other resources.

Employment-related, in-kind income received by a parent such as a company car, free housing, or reimbursed meals can be included as gross income if this type of income reduces personal living expenses. CSS does not make a determination as to the value of any in-kind income. Such determinations are left to the discretion of the court.

#### **Potential Income -**

Child support can be calculated based on potential income only if the court finds that the parent's voluntary unemployment or underemployment is the result of a parent's bad faith or deliberate suppression of income to avoid or minimize his/her child support obligation.

Potential income cannot be imputed when:

1. The parent has been determined to be physically or mentally incapacitated;
2. The parent is the primary caretaker for a child under three (3) years of age for whom support is being established;
3. Not enough information is available to make a determination of a parent's bad faith.

Federal Regulations at 45 CFR § 302.5(c)(3) require that CSS Guidelines specify that incarceration may not be treated as voluntary unemployment in establishing or modifying a child support order.

When it is appropriate to impute potential income to parent, the imputed amount must be based on the parent's assets, residence, employment potential and probable earnings level, based on the parent's recent work history and occupational qualifications and on the prevailing job opportunities in the community, and on other relevant background factors relating to the parent's actual earning potential. If the parent has no recent work history or vocational training, any imputed amount of potential income should not be less than the minimum hourly wage for a 35-hour work week.

For those cases in which potential income can be a consideration, caseworkers must review the individual case based on the above-referenced criteria and make a determination of whether to factor in the potential income or ask the court to rule on the issue.

If the child support obligation is based on potential or imputed income, the court order or Voluntary Support Agreement (VSA) must include:

- Findings that the unemployment or underemployment is the result of bad faith or deliberate suppression of income; and
- The basis for the determined amount of the obligation.

#### ***EXISTING CHILD SUPPORT OBLIGATIONS***

An existing support obligation is one that is in effect at the time a child support order in the pending action is entered or modified, regardless of whether the child(ren) for whom support is being paid was born before or after the child(ren) for whom support is being determined.

Current child support payments (excluding payments toward arrearages) actually made by a parent under any existing court order, separation agreement, or voluntary support arrangement are deducted from the parent's gross income. The court can consider a voluntary support arrangement as an existing child support obligation when the supporting parent has consistently paid child support for a reasonable and extended period of time. It is recommended that consideration of existing obligations be given if the supporting party has consistently made payments for a period of at least six (6) months.

The parent must provide documentation of such payments (on current support only) in order to receive the deduction. This adjustment only applies to either parent's natural or adopted children who are not involved in the present action.

The fact that a parent pays child support for two (2) or more families under two (2) or more child support orders, separation agreements, or voluntary support agreements can be considered as a factor warranting deviation from the child support guidelines. The guidelines include a recommendation to set all actions to establish, review, or modify a court order for a parent with multiple obligations for hearing at the same court session. This can allow the court to receive evidence on all obligations and make rulings on each of them at one time, thereby offering more equitable consideration of a parent's ability to support and more efficient use of the court's time.

When establishing or modifying any order for a parent with multiple obligations, CSS should consider whether the parent's other court orders are eligible for review and, if possible, schedule hearings for all of them at the court session. If this is not possible, advise the court of the parent's additional obligations for consideration in any determination of deviation from the guidelines.

#### ***RESPONSIBILITY FOR OTHER CHILDREN***

If either parent has natural or adopted minor children in the household who are not a party to the present action, the parent's financial responsibility for those children is deducted from the parent's gross income. This deduction is appropriate when a child support order is entered or modified, but it cannot be the sole basis for modifying an existing order.

The financial responsibility for natural or adopted children who currently reside with the parent is equal to the basic child support obligation for these children based on the parent's income.

#### ***ALIMONY***

A parent's existing order to pay alimony must not be considered as a deduction from gross income. The court can consider the payment of alimony as a reason for deviation from the guidelines.

## **HEALTH INSURANCE**

The amount that is or will be paid by a parent or a parent's spouse for health insurance (medical OR medical and dental) for the child(ren) for whom support is established is added to the basic child support obligation. The amount included in the calculation is the amount of the health insurance premium attributable to the child(ren) covered by the present action. If this amount is not available or cannot be verified, the total cost of the premium is divided by the total number of persons who are covered by the policy and then multiplied by the number of children who are covered by the policy and are subject to the present order.

If the coverage is provided through an employer of the parent or stepparent, only the employee's portion of the cost should be considered.

For any case, including one with a parent whose income falls within the shaded area of the child support guidelines schedule, the court may order that uninsured medical or dental expenses in excess of \$250 per child or other uninsured health care costs incurred by a parent be paid by either parent or both parents in such proportion as the court deems appropriate. Those expenses include:

1. Uninsured medical or dental expenses in excess of \$250.00 per year.
2. Other uninsured health care costs, including reasonable and necessary costs related to:
  - A. Orthodontia;
  - B. Dental care;
  - C. Asthma treatments;
  - D. Physical therapy;
  - E. Treatment of chronic health problems;
  - F. Counseling or psychiatric therapy for diagnosed mental disorders.

The court must order either parent to obtain and maintain medical health insurance coverage for a child, if it is actually and currently available to the parent at a reasonable cost. Health care coverage includes the fee for service, health maintenance organization, preferred provider organization, and other kinds of private insurance and public health care coverage, such as Medicaid, under which medical services can be provided to the dependent child.

If health insurance is not actually and currently available to a parent at a reasonable cost at the time when the court orders child support, the court must enter an order requiring the parent to obtain and maintain health insurance for a child if and when the parent has access to reasonable-priced health insurance. The court could require one or both parties to maintain dental insurance.



For orders that are entered on or after August 18, 2015, health insurance is reasonable in cost if the coverage for the child is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income. To determine whether available coverage meets this criteria, take the following steps:

1. Confirm the parent's gross income. Add all income, including all wages and any other types of income.
2. Confirm the cost to the parent for the insurance.
  - A. If the parent is adding the child to existing coverage, use the actual amount it would cost the parent to include the child in the coverage. If there is no cost, the amount is zero (\$0.00).
  - B. If the parent obtains new coverage for himself/herself and the child, obtain the cost for self-only coverage and for the parent/child. Subtract the self-only amount from the parent/child amount to determine the cost of the child's coverage.
  - C. If the parent obtains child-only coverage for the child, use the actual cost of that coverage.
3. Determine the amount that is five percent (5%) of the parent's gross income.
  - A. If the cost of the insurance that is determined in Step # 2 is not more than this amount, coverage is considered reasonable in cost.
  - B. If the cost of the insurance that is determined in Step # 2 is more than this amount, coverage is not considered reasonable in cost.

#### ***BASIC CHILD SUPPORT OBLIGATION***

A basic child support obligation is determined based on the NC Child Support Guidelines. This amount is derived from the combined income of both parents and the number of children for whom support is being sought. Amounts of child support are calculated to a combined income level of \$30,000 per month.

For cases with a higher combined monthly adjusted gross income, the child support should be determined on a case-by-case basis by the court. The schedule of basic child support can assist the court in determining a minimal level of child support.

#### ***CHILD CARE COSTS (DAY CARE COSTS)***

Reasonable child care costs that are or will be paid by a parent due to employment or job search are added to the basic obligation and prorated between the parents, based on their income. Reasonable child care costs can be determined by considering the prevailing local rates and any unique individual circumstances. Other reasonable costs, such as costs incurred while a custodial parent attends school, can be a basis for a deviation.

If the gross monthly income of the parent paying the costs falls below the following levels, one hundred percent (100%) of the child care costs are added.

1 child	=	\$1,850
2 children	=	\$2,500
3 children	=	\$2,800
4 children	=	\$3,100
5 children	=	\$3,400
6 children	=	\$3,700

If the income of the parent exceeds these levels, seventy-five percent (75%) of the child care costs are included since the parent would be entitled to income tax credit for child care expenses.

***EXTRAORDINARY EXPENSES***

Adjustments to the recommended child support order can be made to include the following child-related extraordinary expenses:

1. Special or private elementary or secondary schools to meet a particular educational need of the child;
2. Transportation expenses for the child to travel between the homes of the parents.

Only the expenses for the child in question are to be considered for inclusion. Extraordinary expenses are added to the recommended child support order apportioned in the same manner as the basic child support obligation.

***DEVIATION FROM OBLIGATION GUIDELINES***

The court can modify a support obligation either upward or downward from the amount that results from the application of the guidelines if it determines that the application of the guidelines would be inequitable to one of the parties or to the child. For a Non-Public Assistance (NPA) case, a Voluntary Support Agreement (VSA) can be entered in an amount of support that varies from the guidelines only if both the CP and NCP are aware of the guidelines amount and agree to the variation. Voluntary deviation from the guidelines in a PA case is not recommended, since public funds are involved. It is best that the court hears these cases.

Whether all parties agree to an amount which deviates from application of the guidelines or the court orders an amount other than that determined by the guidelines, the order must include written findings that:

1. State the amount of the presumptive child support obligation that is determined by the guidelines;
2. Determine the reasonable needs of the child and relative ability of each parent to provide support;
3. Support the court's conclusion that the presumptive amount of child support that is determined under the guidelines is

inadequate or excessive or that application of the guidelines is otherwise inappropriate; and

4. State the basis on which the court determined the amount of the child support ordered.

When preparing a VSA for an amount of child support that varies from the guidelines, local CSS must:

- Ensure that all required findings of fact are stated in the VSA;
- Obtain the signatures of all parties on the VSA; and
- Attach the appropriate worksheet that states the amount resulting from application of the guidelines.

At a court hearing where an amount of support is determined that deviates from the guidelines, CSS must provide the court with:

- The worksheet stating the recommended amount of support; and
- Any other appropriate information that makes the necessary findings of fact for such deviation.

#### ***DISABILITY/RETIREMENT PAYMENTS***

SSA and VA benefits that are received for the benefit of a child as a result of disability or retirement are included as income attributed to the parent on whose earnings record the benefits are paid, but are deducted from that parent's child support obligation if the benefits are paid to the other parent.

Before including a dependent benefit in the calculation of a support obligation, verify that the benefit is actually being received by the custodian of the child. Include this amount in the monthly gross income of the parent.

Once a basic child support obligation is calculated, the SSA or VA dependent benefit is deducted from the parent's child support obligation that is shown on the worksheet.

If this deduction reduces the child support obligation to an amount greater than \$0.00, any order for child support should include written findings, stating the guidelines obligation amount and the amount of SSA or VA benefits received for the child.

#### **INCOME VERIFICATION**

Gross income must be verified by documentation of both current and past income. Verification can include pay stubs, employer statements, or Division of Employment Security (DES) inquiry.

When establishing or modifying a child support order, the amount of the obligor's gross income can be verified by a written statement signed by the obligor's employer or the employer's designee or an Employer Verification Letter/Employer Letter (DSS-4685). Either is admissible evidence in court.

The most recent tax return is requested if the parent is self-employed or if further documentation is needed. If the custodial parent (CP) does not cooperate in the verification or disclosure of income, caseworkers follow the procedures for noncooperation.

#### **PRIMARY CUSTODY**

"Primary" custody indicates that physical custody of the child(ren) is with one parent (or a third party) for at least two hundred forty-three (243) nights during the year.

In a primary custody CSS case, the total child support obligation is divided between the parents in proportion to their income. Although a monetary obligation is computed for each parent, only the noncustodial parent's (NCP's) share is payable as child support. The custodial parent's (CP's) share is presumed to be spent directly on the child.

#### **JOINT OR SHARED PHYSICAL CUSTODY**

"Joint" or "shared" custody indicates that:

1. Parents share custody of all the children for whom support is being determined (not extended visitation); or
2. One parent has primary physical custody of one or more of the children, and the parents share custody of another child.

The self-support reserve is NOT applied in these situations.

Parents share physical custody when the child lives with each parent at least one-third of the time-- at least one hundred twenty-three (123) overnights during the year. An adjustment is made in the formula to represent the additional cost of maintaining two separate households for the child(ren) in the present action. If physical custody reaches the one-third threshold, this adjustment should be applied without regard to the legal custody of the child.

The child support obligation is set by first determining the percentage of time each child spends with each parent and offsetting the obligation; the parent owing more child support pays the difference between the two amounts. Therefore, it is possible that a custodial parent (CP) who is involved in a true joint custody situation might owe child support to the noncustodial parent (NCP) for the case.

For a Non-Public Assistance case, the CP could elect to have the case closed. The other parent then could seek CSS services to pursue support. If this situation occurs for a Public Assistance (PA) case, the CSS case manager, not the CP, would be responsible for making any determination to close the case.

#### **SPLIT CUSTODY**

"Split" custody indicates that more than one child involved in the action and each parent has physical custody of at least one of the children.

The fact that each parent incurs direct expenses for rearing the child(ren) in his/her own household is taken into consideration. The obligation is prorated by calculating the basic child support obligation and multiplying by a percentage reflecting the number of children with each parent; this figure is then multiplied by each parent's percentage share of the income.

The parent who owes the resulting larger amount should pay the difference between the two amounts. It could be determined that the noncustodial parent (NCP) should not be required to pay child support. The custodial parent (CP) should be advised of this result, and the CP could elect to have the case closed.

### **THIRD PARTY CUSTODY/TWO NONCUSTODIAL PARENTS**

"Third Party" custody indicates that physical custody of the child(ren) is with a third party rather than with either parent. Both legal parents can be pursued for support of the child(ren). Separate CSS cases are established with one parent as the noncustodial parent (NCP) for each case. If support obligations are established for both parents, it is preferable that they have separate court orders with separate docket numbers.

When unable to obtain current wage information for parent, CSS caseworkers can consider imputing income for that parent, if they have reason to believe that the parent is willfully failing to take financial responsibility for a child. If no information exists to suggest this, no imputed income should be assigned to this parent. A support obligation for the other parent would be determined using only the income and expenses of that parent.

If a child has only one legally responsible parent, that parent's support obligation is based only on his/her income. (EX: If the mother is being pursued for support but paternity has not been established, her support obligation is based only on her income and expenses for the child.)

## **METHODS/PROCESS FOR ESTABLISHING A SUPPORT OBLIGATION**

### **GENERAL INFORMATION**

All legal support obligations established must be on a monthly basis and due the first day of each month. The Social Security numbers of the dependent children's parents are placed in the record of proceedings. Various procedures are available for the establishment of the legal obligation of a parent to support dependent children. Factors exist that CSS must consider to determine which method to use to establish the child support obligation.

This topic contains information on the following subjects:

1. [Legal considerations related to child support obligations;](#)
2. [Using an Administrative Subpoena to obtain information relevant to an Establishment proceeding;](#)
3. [Using a Voluntary Support Agreement to establish an obligation;](#)
4. [Using an Application, Summons, and Order To Show Cause for a special support proceeding based on an Affidavit Of Parentage;](#)
5. [Using a Civil Complaint For Support to bring a civil support action;](#)
6. [Bringing an action for Criminal Abandonment and Nonsupport;](#)
7. [Including a provision for support when a juvenile court order places a child in the custody of county DSS;](#)
8. [Requesting the modification of a divorce order or existing support order to include a provision for support;](#)

## **LEGAL CONSIDERATIONS RELATED TO ESTABLISHMENT**

CSS must assess cases to determine if certain legal issues exist that can affect how the child support order will be obtained.

### ***PATERNITY***

If at issue, paternity must be established before the legal support obligation, since no obligation for support can exist without a basis in law (such as, paternity or maternity) for such an obligation. However, the procedures for establishing paternity and a support obligation can be joined.

### ***VENUE***

The proper venue, or physical location where a lawsuit should be brought, must be considered. A court action for custody and support can be filed in the county where a child resides or is physically present or in a county where a parent resides. NCGS 50.13.5(f) addresses the issue of venue.

### ***EXISTING ACTION VS. NEW ACTION***

If an action for annulment, divorce, or alimony without divorce has been filed previously, any claim for child support (or custody) must be brought within that action, until a final judgment has been made for that case. See NCGS 50-13.5(f). In those scenarios, CSS must file a motion to intervene to add itself as a party to the existing case. Additional action by CSS will depend on what has already happened in the existing case. Thus, it will be necessary to review the existing court file with the CSS agency attorney to determine the next appropriate steps.

### ***REVERSAL OF PARENTAL ROLES***

If one of the parties is under order to pay child support to the other party and later physical custody of the child(ren) changes to the other party, CSS must determine what action needs to be filed when the new custodial parent (CP) of the child(ren) applies for and receives CSS services. An action can be filed under a new complaint, or a subsequent action can be filed in the same court file under the same

docket number. Workers should discuss the situation with the CSS attorney to determine the appropriate action to file.

The CSS attorney can advise the worker to file an action in the same court file. If CSS initially established the original support order, then CSS was the plaintiff in the action and the noncustodial parent (NCP) was the defendant. When custody changes, CSS must file a motion to join the previous CSS CP as a party to the action. This action should be filed prior to (or at the same time as) the action to establish support on behalf of the new CP.

Sometimes when CSS has intervened in an existing order, the roles of the parties are reversed. The NCP becomes the custodian of the child(ren) and applies for and receives CSS services. This situation can be handled legally in several ways. CSS could file a motion in the same court file to dismiss the agency's prior role as an Intervenor Plaintiff or Defendant and request to join the former NCP as a party to the action, as an Intervenor Plaintiff or Defendant. CSS could decide to file a new action in the form of a complaint.

#### **ADDRESSES IN COURT ORDERS**

NCGS 110-136.3(a) requires that the address of the CP (or the child, if different) must be included in all new and modified child support orders, unless a court order prohibits the release of the address to the NCP or a court determines that notice to the NCP is inappropriate due to verbal or physical threats by the NCP that constitute domestic violence under Chapter 50B of the NC General Statutes. Additionally, the address of a child in court-ordered placement is confidential and can be disclosed by a child welfare agency as allowed by Chapter 7B of the NC General Statutes.

To determine whether an address should be included in a court order, CSS caseworkers must:

- Discuss this requirement with the CP. Have the CP complete the Custodian Address Memorandum document and provide any other information regarding domestic violence. If a Memorandum was completed previously, it might be advisable to obtain updated information from the CP prior to entry of a new or modification order.
- Advise the CSS agency attorney of any information that is obtained regarding domestic violence. The attorney should present any concerns, possibly including testimony from the CP or others, to the court for a determination of whether any address must be included in the order.

The CSS agency attorney should draft or review the order prior to approval of the order by the judge.

To determine the appropriate legal actions in these situations, caseworkers should always consult the CSS agency attorney for direction.

#### **ADMINISTRATIVE SUBPOENA**

When a noncustodial parent (NCP) does not cooperate with the CSS agency in providing information relevant to a support and/or paternity establishment proceeding, an Intrastate Administrative Subpoena (DSS-4709) can be used to attempt to obtain the necessary information.

The requested information should be specifically identified in the subpoena. The subpoena is signed by the CSS supervisor and can be delivered to the NCP by Rule 45e of the Rules of Civil Procedure, which allows for service by sheriff or registered or certified mail (return receipt requested). A minimum of five (5) business days should be allowed for receipt.

#### **VOLUNTARY SUPPORT AGREEMENT (VSA)**

A Voluntary Support Agreement And Order (VSA) is the most expeditious method of establishing a legal obligation for the responsible parent to support his/her children, when parents are in agreement with all terms of the order. If all parties agree to an obligation that deviates from the NC Child Support Guidelines, the VSA must include findings of fact to explain and support the deviation.

After CSS prepares the Guidelines worksheet and VSA, both parents should be allowed to review the documents to ensure that they understand and agree with the terms of the order before the VSA is approved by the judge. It is always recommended that both the CP and NCP sign the VSA as acknowledgment of their knowledge of and agreement with the order. If the parties are not in agreement with all terms of the order, court action is needed to obtain a support order.

A VSA becomes a legally binding order when it is approved by a district court judge and filed with the court. The CSS Attorney is responsible for reviewing the VSA prior to its being approved by the judge, unless the CSS Attorney has delegated this authority in writing to the CSS Supervisor.

When approved by the district court judge, the VSA has the same effect, both retroactively and prospectively, as a support order that is entered by that court following a full court proceeding on the issue of child support. For example, the VSA has the same force and effect as a divorce decree that includes an order for child support or a civil proceeding to establish support. A voluntary agreement to support that is not executed properly and filed with the court does not create a legal support obligation. A VSA alone is not sufficient to establish paternity. Paternity must be presumed or established voluntarily or judicially before a support obligation can be established. For more information, see [Paternity Chapter](#).

Before preparing the VSA, CSS must advise the CP of the requirement to include the CP's or child(ren)'s address in the order.

If the CP objects to inclusion of the address, CSS should:

- Not complete a VSA;
- Schedule the case for court and obtain the available evidence of domestic violence;



- Advise the CSS agency attorney of the circumstances.

If the CP has no objections to the inclusion of the address or to any other terms of the order, CSS caseworkers should prepare the VSA with the address included for the CP and NCP to sign.

If the CP has no objections but obtaining the CP's signature within a reasonable period of time is not possible, CSS should:

- Ensure that a signed copy of the Custodian Address Memorandum documenting the CP's decision is present in the case record.
- Prepare the VSA with the address included for the NCP to sign.

To establish the legal obligation by voluntary agreement, CSS must:

- Ensure that all terms of the order and all required information are properly included in the order. For more information, see Support Order Requirements.
- Generate the Voluntary Support Agreement And Order (DSS-4517) document.
- Provide both the CP and NCP with a copy of the proposed order and Child Support Guidelines worksheet used to determine the support obligation.
- If both parties are in agreement with all terms of the order, obtain the parents' signatures on the VSA, witnessed by a Notary Public. If both parties are not in agreement, court action is required to obtain a support order.
- Obtain the court's approval by having a judge sign the order.
- File the VSA with the court and provide copies to the CP and NCP.

**APPLICATION, SUMMONS, AND ORDER TO SHOW CAUSE (SPECIAL SUPPORT PROCEEDING BASED ON AN AFFIDAVIT OF PARENTAGE) - NCGS 110-132(B)**

A separate procedure for establishing the legal obligation to support dependent child(ren) is available for CSS cases in which both parents have signed an Affidavit Of Parentage (DSS-4697 DHHS-1660, or AOC-CV-604), but the father is unwilling or unavailable to execute a Voluntary Support Agreement

After an Affidavit Of Parentage has been executed and filed with the court, any interested party can petition the district court for a hearing on the issue of support of the dependent child(ren). Based on an Affidavit Of Parentage, the court can issue a support order requiring the responsible parent to make periodic support payments.

To establish the legal obligation of support by this method:

1. If the Affidavit Of Parentage is not yet filed with the court, attach the Application, Summons And Order To Show Cause (DSS-4532) and file the documents simultaneously with the Clerk of Court. When these documents are filed with the Clerk of Superior Court, a docket number is assigned.
2. The district court then issues the Summons And Order To Show Cause directing the responsible parent who has completed the

Affidavit Of Parentage to appear in district court at a specified day and time and to show cause why the court should not enter an order requiring the responsible parent to support the dependent child(ren); and

3. CSS notifies the custodial parent (CP) of the hearing. CSS must ensure that the CP is advised of the requirement to include the CP's or child(ren)'s address in a support order and that the CP has completed the Custodian Address Memorandum document. They must advise the CSS agency attorney of any concerns regarding domestic violence.
4. The district court judge holds a hearing on the issue of support and could cause a support order to be entered. This order could include a provision for reimbursement of accrued maintenance. The admission of paternity made in the Affidavit Of Parentage must not be reconsidered at this hearing.

When using this method to establish a support order, an NCP can be ordered by the court to participate in job search or work activities if the NCP is not incapacitated.

#### **COMPLAINT FOR SUPPORT (CIVIL ACTION TO ESTABLISH SUPPORT) - NCGS 50-13.4 ()**

A civil proceeding can be brought by any custodial parent (CP), organization, or guardian of a dependent child for the purpose of establishing a legal support obligation. NCGS 50-13.5 provides for the procedure to be followed in bringing a civil support action. This type of action requires a full civil proceeding including notice to all parties, a court hearing, the gathering and presentation of evidence, and other attendant legal procedures.

If an Affidavit Of Parentage has been executed by the parents of a child born out of wedlock, no further action for establishment of paternity is appropriate, since the executed Affidavit has the same legal effect as a judgment of paternity. CSS should file a certified copy of the Affidavit with the support action. CSS caseworkers notify the CP of the hearing and ensure that the CP is advised of the requirement to include the CP's or child(ren)'s address in a support order and that the CP has completed the Custodian Address Memorandum document. They must advise the CSS agency attorney of any concerns regarding domestic violence.

When using this method to establish a support order, the court could order a noncustodial parent (NCP) to participate in job search or work activities if that NCP is not incapacitated.

#### **CRIMINAL ACTION FOR ABANDONMENT AND NONSUPPORT**

Under Chapter 49, Article 1, of the NC General Statutes, a criminal action can be initiated against a responsible parent who fails to provide support for his/her children. Any decision to pursue such a criminal action must be made in consultation with the CSS agency attorney and CSS supervisor.

In a criminal action, the CSS agency has the burden of proving beyond a reasonable doubt that the defendant neglected or refused to adequately support the child. Care should be taken to ensure that a demand for support of the child is made upon the defendant before the criminal process is begun. The defendant should be given adequate time to respond to the demand before CSS applies for a warrant.

If the court finds the defendant guilty, then the court is required to enter an order for support. NCGS 110-136.3 (a) requires that the address of the custodial parent (CP) or child(ren) be included in a criminal support order, unless issues regarding domestic violence involving the noncustodial parent (NCP) prohibit inclusion. Prior to the hearing, CSS must ensure that the CP is advised of the requirement to include the CP's or child(ren)'s address in a support order and that the CP has completed the Custodian Address Memorandum. They must advise the District Attorney of any concerns regarding domestic violence.

When support is established through criminal proceedings, the District Attorney acts on behalf of the State and the person who is bringing the action.

It should be noted that when an individual is incarcerated for nonpayment of the ordered support, no arrearages accrue unless the NCP is on work release or has other resources with which to make support payments.

#### **CHILDREN IN CUSTODY OF THE COUNTY DEPARTMENT OF SOCIAL SERVICES**

An order by the juvenile court placing a child in the custody of the County Department of Social Services (DSS) under the provisions of NCGS 7B-904(d) should contain a provision for the support of the child (if the parents are available for support.) NCGS 7B-904(d) states:

"Whenever legal custody of a juvenile is vested in someone other than the juvenile's parent, after due notice to the parent and after a hearing, the court may order that the parent pay a reasonable sum will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in NCGS 50-13.4(c). If the court places the juvenile in the custody of a county DSS and if the court finds that the parent is unable to pay the cost of support required by the juvenile, the cost shall be paid by the county DSS in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof."

If a child has been placed in the custody of a county Department of Social Services (DSS) pursuant to this statute and provisions for support were not included in the order or are not sufficient, the county DSS should prepare and file a motion for review of the case.

The motion for review should set out that a provision for support was not entered, citing the statutes requiring such a provision. If the motion for review is a request for modification of the current support

order, the basis for modification should be stated in the motion. If a child support order does not include a provision for medical support, the reason should be clearly documented.

If a referral is made to CSS for the pursuit of child support, CSS must contact DSS to confirm what services are being provided for the child(ren), and CSS must determine whether the confidentiality provisions of Chapter 7B of the NC General Statutes protect addresses or other information from being released.

#### **MODIFICATION OF DIVORCE OR EXISTING SUPPORT ORDERS**

According to NCGS 50-13.7: "An order of a court of this State for custody or support, or both of a minor child may be modified or vacated at any time upon motion in the cause, and a showing of changed circumstances by either party or anyone interested."

Often divorce judgments do not provide for support of the children of the marriage or do not provide for adequate support payments commensurate with the parents' ability to pay, or they set child support at zero dollars (\$0.00). In some cases, the divorce improperly states that no children were born and often Social Security numbers are not provided for the plaintiff and the defendant. In such cases, the court can be petitioned to modify the divorce order.

To request modification to a divorce or other existing support order, CSS must motion the court to intervene in the matter on behalf of the party requesting CSS services. The granting of this motion causes CSS to become an Intervenor party to the action for child support. The CSS attorney represents the agency in this action.

If a divorce order exists but it is silent as to the issue of child support, CSS can proceed with a new action for establishment of child support.

If an action for divorce has been filed but no order has been entered, the action for child support must be joined with the action for divorce, per NCGS 50.13.5(f).

#### **OBTAINING A N.C. BIRTH CERTIFICATE (TO INCLUDE WITH A PETITION)**

If the custodial parent (CP) does not provide a copy of the child's birth certificate and the child was born in North Carolina, CSS caseworkers can obtain a copy from the Register of Deeds in the child's county of birth or from NC Vital Records

### **MEDICAL SUPPORT ESTABLISHMENT**

#### **GENERAL INFORMATION**

This topic contains information on the following:

1. [General medical support establishment policies;](#)
2. [The impact of the Affordable Care Act \(ACA\) on medical services;](#)

3. [Provision of medical support services;](#)
4. [Documentation and verification of medical insurance coverage;](#)
5. [Twelve Month Transitional Medicaid \(TMA\);](#)
6. [Medical Assistance Only \(MAO\) cases;](#)
7. [Requirements for medical support establishment;](#)
8. [North Carolina Health Choice Insurance Program;](#)
9. [Qualified Medical Child Support Orders \(QMCSO\);](#)
10. [Past paid medical expenses;](#)
11. [Other medical support options.](#)

#### **MEDICAL SUPPORT ESTABLISHMENT POLICY**

Federal regulations 45 CFR 303.30 and 303.31 require CSS to seek medical support as a part of all child support orders and, when appropriate, to exchange this medical insurance coverage information with the Division of Medical Assistance (DMA). Medical support includes fees for service, health maintenance organizations, preferred provider organizations, and other types of private health insurance and public health care coverage under which medical services could be provided to the dependent child(ren). The availability of medical insurance coverage services must be explained to Non-Public Assistance (NPA) CPs at the time of application.

Federal regulation 45 CFR 303.32 requires CSS agencies to use the National Medical Support Notice (NMSN) to enforce medical support when the court orders noncustodial parents (NCPs) to provide employment-related health care coverage for their dependent child(ren). The NMSN is used to notify employers of NCPs' medical obligations. For information about this Notice, see the [Enforcement Chapter](#).

NCPs who are active duty or retired military personnel OR reservists who have been called to active duty can enroll their legal dependent child(ren) in the Defense Enrollment Eligibility Reporting System (DEERS). Enrollment in DEERS automatically makes the child(ren) eligible for TRICARE/CHAMPUS health care benefits. Caseworkers can verify whether or not a child is enrolled in DEERS by contacting the military member/NCP or CP or by reviewing the Defense Manpower Data Center (DMDC) medical insurance reports that are available in X/PTR.

#### **IMPACT OF THE AFFORDABLE CARE ACT (ACA) ON MEDICAL SERVICES**

The Affordable Care Act (ACA) is a federal mandate requiring that every citizen, with few exceptions, obtain health insurance through an employer, the government (such as Medicaid, Health Choice, or Indian Health Service (IHS)), or private insurance (such as a Health Insurance Marketplace). The parent who can claim the child as a federal dependent for tax purposes is responsible for demonstrating that the child has coverage.

Enforcement of this requirement by federal law is overseen by the IRS and is driven by tax household relationships. The expectation is that whoever claims a child as a tax deduction will be responsible for providing health insurance for that child(ren), or either pay a penalty or obtain an exemption from this requirement. However, the ACA's individual mandate penalty, which was to be collected by the IRS

on federal tax returns, was reduced to \$0.00 after the end of 2018. In most states, people who have been uninsured since 2019 are not assessed a penalty. The individual mandate itself still exists.

When individuals or families apply for coverage through the Health Insurance Marketplace, the Marketplace assesses their eligibility for Medicaid or Health Choice first. If they are eligible for either of those programs, the Marketplace stops looking at their eligibility for the Marketplace and shares the application information with NC Medicaid.

Under ACA, Medicaid eligibility is determined based on the Medicaid household's modified adjusted gross income (MAGI), comparing this adjusted income to the federal poverty level guidelines to determine any premium tax credits or cost sharing reductions. MAGI is actually a federal tax term: It is comprised of the tax household's Adjusted Gross Income (line 37 on IRS form 1040), plus foreign income, tax exempt interest, and non-taxable Social Security benefits. NC Medicaid agencies determine Medicaid eligibility the same way.

CSS agencies need not change their approach to order establishment and enforcement of health coverage because of the ACA. Agencies need to be aware of the requirements to the extent that parties might wish to align the parent obligated to provide health insurance coverage in the child support order with the parent who claims the child for tax purposes. The decision is made by the parties, not the CSS agency.

For specific cost information for insurance provided through the Health Insurance Marketplace, the CSS agency must request information through the parent(s) of the child. This insurance is considered private insurance, and the use of the National Medical Support Notice (NMSN) cannot be used for the establishment and enforcement of an order to provide coverage for children.

## **PROVISION OF MEDICAL SUPPORT SERVICES**

### ***TANF CASES***

CSS agencies must seek health insurance coverage for financial child support orders that are established for a custodial parent (CP) in a TANF case. The CP is required to cooperate with the CSS agency in establishing, modifying, or enforcing a medical support obligation. This service must be explained to TANF CP and thoroughly documented in the case record.

### ***MEDICAID (MAO) CASES***

Medical support services are also provided for any CP in an MAO case, unless the CP and child have satisfactory coverage available. Medicaid CPs can elect to have CSS establish and/or enforce medical support services only, or they can choose the full range of CSS services.

### ***NPA CASES***

Medical support coverage services are provided for any CP in an NPA case, unless the CP and child have satisfactory coverage available other than Medicaid. All NPA CPs must be advised that medical support services are provided, and the services must be explained to them.

NPA CPs cannot choose to receive only medical support services. CPs must be provided the full range of child support services to be eligible for services from the CSS program. This includes the redirection and enforcement of an existing child support order. CSS must advise NPA CPs who refuse to cooperate with the establishment and enforcement of medical insurance that this can be grounds to terminate services if neither party in the CSS case has adequate coverage for the child. CSS must provide new applicants, as well as existing CPs, with this information when establishing a new support order or during the review and adjustment process.

#### **DOCUMENTATION AND VERIFICATION OF HEALTH INSURANCE**

Local CSS caseworkers must discuss the availability of dependent health insurance coverage with both the custodial parent (CP) and the noncustodial parent (NCP) and fully document the results of this discussion on the Application Checklist. Employers and insurance providers are required to provide medical, hospital, and dental insurance information concerning a minor child's coverage upon written request. When requesting information from an employer, caseworkers should cite NCGS 50-13.11, which requires the release of this information to the agency.

Following the entry or modification of any order to require the NCP to obtain health insurance, caseworkers must verify that the coverage was actually obtained. The necessary dependent health insurance information must be obtained from either the NCP, employer, or health insurance carrier and forwarded to the appropriate parties. If the CP is providing health coverage, caseworkers must verify this coverage and document the information in ACTS. Following the entry or modification of any order to require the NCP to obtain health insurance, caseworkers must verify that the coverage was actually obtained. The necessary dependent health insurance information must be obtained from either the NCP, employer, or health insurance carrier and forwarded to the appropriate parties.

Caseworkers must send the National Medical Support Notice (DSS-4733) to the employer within five (5) business days of the entry of an initial order that includes a provision for employment-based medical insurance coverage, within two (2) business days of an NCP being added to the New Hire directory, or as soon as the caseworker becomes aware that the NCP has changed employment.

If no response is received from the employer and/or plan administrator within forty (40) days, CSS should contact the employer and/or plan administrator to resolve the problem. Civil legal action can be taken against the employer or health plan administrator if dependent coverage is available but the NCP's child is not enrolled.

If an NCP claims to be paying support in more than one county, CSS must verify whether credit was given for the insurance cost. Credit

is not to be given in more than one case, unless there is an additional cost to add a child to the health plan.

Local CSS agencies can disclose the Social Security numbers (SSNs) of the children to an NCP or an NCP's insurance company for dependent medical insurance enrollment purposes. The agency must first ascertain that the request is indeed for the purpose of obtaining health insurance for the child(ren). In order to remain in compliance with the Privacy Act (PL 93-579), when CSS workers request SSN information from applicants or recipients of CSS services, they must advise applicants/ recipients that providing SSNs is necessary in order to receive full CSS services. CSS must also inform applicants/recipients about how the SSNs will be used.

The uses of SSNs include:

- Custodial parent's (CP's) SSN - Used for case file identification, enforcement of intrastate and interstate cases.
- NCP's SSN - Used for location purposes, case file identification, submittal of cases for federal and state tax refund intercept, and enforcement actions.
- Child's SSN - Health insurance coverage, case file identification, and enforcement of intrastate and interstate actions.

CSS must give an applicant or recipient for CSS services this information regarding disclosure of SSNs as a part of the application and information dissemination process. Workers must document that this information has been provided. If an NCP requests an SSN for dependent medical insurance enrollment and the CP has not been informed of this disclosure procedure, CSS must contact the CP before releasing the SSN to the NCP.

If the NCP contacts the CSS agency either by telephone or by mail to request the child(ren)'s SSN(s), the number can be provided if the agency ascertains that the request is indeed for the purpose of obtaining health insurance for the child(ren). The same is true if the agency is contacted by an employer that requests the SSN for an employee's child for the same purpose.

Caseworkers must verify that coverage was actually obtained after it was ordered. The necessary dependent health insurance information must be obtained from either the NCP, employer, or health insurance carrier and then entered in ACTS.

When medical coverage is obtained, the Division of Medical Assistance (DMA) is notified through the NC FAST interface, and caseworkers generate the Insurance Claim Information Notice (DSS-4500) to inform the CP.

Dependent medical insurance coverage information is transmitted to DMA, if the policy holder's MPI # is associated with at least one (1) CSS case that contains an ACTS Referral ID/EIS Case #, regardless of case type. When a case type changes from "NPA" to "AFDC (TANF/WFFA) or "MAO" (Medical Assistance Only), ACTS notifies the responsible caseworker to verify whether the dependent insurance information is



current and whether this insurance information needs to be sent to Medicaid.

In addition, dependent insurance information must be sent to all CPs (clients), regardless of case type. Local CSS provides the CP with information concerning the medical insurance policy by sending the Insurance Claim Information Notice (DSS-4500).

However, CSS is not involved with interpreting the policy or filing claims. Caseworkers must advise all NPA CPs that medical support are provided and explain the services to them. In order to provide the most effective service, the full range of CSS services must be provided to the NPA CP, including medical support services and including the redirection and enforcement of an existing child support order.

### **TWELVE MONTH TRANSITIONAL MEDICAID (TMA)**

A family can receive Twelve Month Transitional Medicaid (TMA) when the earned income of a CP causes that family to be ineligible for TANF or some other Medicaid Assistance category. In order to receive TMA, the assistance unit must have an eligible child who is receiving Medicaid; eligibility can last up to twelve (12) consecutive months.

TMA begins in the first month that the family becomes ineligible for TANF or other Medicaid category. The case is coded in NC FAST as aid program/category "A-AF", payment type "5". The NC FAST/ACTS interface notifies local CSS when TMA is established, changed, or terminated. Medicaid regulations govern this type of assistance, and the case is considered to be a Medicaid case.

The CP can be the only individual in the case who receives TMA; the child(ren) can receive Medicaid under another aid category, such as MIC or SSI Medicaid. It is important to note that the CP is not required to cooperate with CSS while receiving TMA. If the CP is not cooperative, no individual exists to be sanctioned. These cases are not considered Child-Only Medicaid cases and, therefore, cannot be closed if the CP fails to cooperate.

### **MEDICAL ASSISTANCE ONLY (MAO) CASES**

#### ***REFERRALS***

Per federal regulations, county departments of social services (DSS) refer all Medical Assistance Only (MAO) cases when the reason for deprivation is based on the continued absence of either one or both parents, including children under eighteen (18) years of age living independently. County DSS is not required to refer Child-Only Medicaid cases when the custodial parent (CP) of the child does not receive any Medicaid or WFFA, unless the CP requests services. Cases should not be referred from Medicaid if the child has health insurance or has a court order for medical support already in place. Cases are also not to be referred if a finding or a pending action for Good Cause exists.

*NOTE: If it is determined that an inappropriate referral has been made after the CSS case has been opened, the CSS agency must notify the CP that child support services are available but that the case will be terminated unless the CP does desire CSS services.*

These referrals include any category of medical assistance as long as the above criteria are met. However, recipients of Medicaid for Pregnant Women (M-PW) are not required to cooperate with CSS either for the unborn child or for children receiving under other categories of medical assistance. Federal regulations do not require referral of these cases to CSS until the end of the CP's 60-day post partum period. At that time the CP is no longer eligible for M-PW benefits and is required to cooperate with CSS in establishing and enforcing medical support. However, the case can be referred prior to this time if the CP desires CSS services.

A CP whose child is eligible for autonewborn benefits under Medicaid for infants and Children (MIC) also is not required to cooperate with CSS for that child up to sixty (60) days after the child's birth. The referral is made to CSS at the end of this 60-day period unless the CP desires CSS services prior to this time.

However, this child can receive autonewborn benefits for one (1) year; if the CP is not also receiving medical benefits, it is important to note that no individual exists to sanction if the CP is not cooperative. All other MIC-recipient cases are appropriate for referral to CSS no later than the disposition date of an application for medical assistance.

Since no TANF money payment exists, the referral is completed by a Medicaid caseworker, who indicates that this is an MAO case. This caseworker must also indicate on the referral whether there is a high potential for obtaining medical support, such as the availability of employment-related insurance or the extensive medical needs of the child.

#### ***SSI/MEDICAID RECIPIENTS***

Effective January 1, 1995, children who are eligible for SSI benefits are automatically eligible for Medicaid. SSI/Medicaid determinations and redeterminations are administered by Social Security. For these cases, there is no application process with DSS and a referral to CSS when child support services are needed. In these situations, the CP has been advised to contact the local CSS office to apply for services.

Medicaid can make a referral to CSS when the CP makes a request for CSS services to the Medicaid worker and agrees to cooperate with CSS.

A referral must be made to CSS when a child receives SSI and the CP also receives Medicaid in any aid program/category except MPW. The CP's cooperation with CSS is required to establish medical support.

When applying directly with CSS, the CP is responsible for providing verification regarding SSI/Medicaid eligibility. Verification can include the letter from DMA and/or the current Medicaid card. The CP should present the usual identification to complete the CSS

application process. These cases are to be treated in the same manner as any other MAO case, and no application fee is charged.

If the child in an existing CSS case becomes an SSI/MAO recipient, the CP can elect to receive medical assistance only services. No continuation of services notice is sent to the CP in this situation.

If other children in the household are included in a TANF check, a separate case must be established for the SSI recipient child. Often support for an SSI recipient child and non-recipient child are included in one court order. In this circumstance, each child's share of the support must be included in the appropriate case. Depending on whether the order was CSS-initiated and if it is a [unity order](#) or a [prorated order](#), additional steps could be required.

#### ***CUSTODIAL PARENT (CP) RESPONSIBILITY TO COOPERATE – MAO CASES***

In order for Medicaid eligibility to be established, the CP is required to cooperate with the local CSS agency in the following ways:

1. Identifying and locating the parent of any child for whom assistance is requested;
2. Establishing the paternity of any child born out of wedlock for whom assistance is requested;
3. Providing medical support coverage information and cooperating with CSS in obtaining medical support coverage from the noncustodial parent (NCP), if applicable, for any child for whom assistance is requested; and
4. Assigning to the Division of Medical Assistance (DMA) any medical support payments due the parent who remains in the home and/or any child for whom assistance is requested.

A Work First CP who does not cooperate with CSS without good cause is ineligible for Medicaid for one (1) month or until compliance, whichever is later (unless the CP is pregnant). If an MAO CP refuses to cooperate with CSS, the local caseworker must notify the Medicaid unit of the CP's noncooperation. The procedures for processing a noncooperation claim in a Medicaid case is the same as those applied in a TANF case.

When the CP is declared ineligible for Medicaid, the Medicaid case (regardless of the aid category) is considered a Child-Only Medicaid case. Child-Only Medicaid cases can be closed when the caretaker of the child fails to cooperate with CSS; however, some exceptions exist. See "Child-Only Medicaid Cases" in the [Public Assistance Cases Chapter](#).

If the local CSS agency discovers that an MAO recipient has received and retained medical support payments assigned to the State, this information must be reported to the local Medicaid worker.

CSS caseworkers and supervisors must generate the Case Closure Intent Notice (DSS-4617) with the closure reason code indicating that the CP is not cooperating, as notification of case closure to the caretaker that child support services will terminate in sixty (60) days.

### **CASE CLOSURE DUE TO CP NONCOOPERATION - CHILD-ONLY MAO CASES**

Once it has been determined that the case is an inappropriate referral, supervisors can close the case immediately.

### **CSS RESPONSIBILITY TO PROVIDE SERVICES - MAO CASES**

The CSS agency must provide medical support services to an MAO CP. At the CP's request, the CSS agency must also provide any appropriate child support services (such as establishment and enforcement of a child support order). These services are provided at no cost to the MAO CP. Child support amounts collected in these cases are routed in the same manner as Non-Public Assistance cases. However, if an MAO CP does not desire the establishment or enforcement of a support order, these services are not provided.

### **TERMINATION OF MAO CASES**

Through the NC FAST/ACTS interface, local DSS notifies local CSS when Medicaid coverage terminates. When notification of this termination is received, the Medicaid CP is notified automatically that services will continue to be provided without the application fee, unless instructed otherwise by the CP. However, if any AFDC/TANF arrearages, medical arrearages, or overpayments due to the State exist, the responsibility for enforcement must remain with CSS until these amounts are paid in full.

If the CP does not want continued CSS services, no arrearages are owed to the State, and a financial order has been established, the case is redirected to the Clerk of Court. If the noncustodial parent (NCP) is no longer under order to provide medical insurance for the child(ren), the local CSS agency that is enforcing the medical obligation must send a Medical Support Termination Notice To Employer (DSS-4733) within ten (10) business days.

### **MEDICAL SUPPORT ESTABLISHMENT REQUIREMENTS**

Local CSS agencies must seek health insurance coverage for children in TANF, MAO, and NPA cases. For MAO cases, local CSS can secure an order just for health insurance if the custodial parent (CP) does not wish to accept financial child support services.

NCGS 50-13.11 (a1) provides that a court shall order a responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost, as well as provision that the responsible party maintain health insurance when it becomes available at a reasonable cost.

NC Child Support Guidelines require that the court must order either parent to obtain and maintain medical health insurance (public or private) for a child if it is currently available at a reasonable cost. The Guidelines include Medicaid and other public health care coverage as reasonable in cost. If it is not currently available to either party, the court assesses the facts and may issue an order that

insurance be obtained if and when reasonably priced coverage becomes available to a parent.

Per NCGS 50-13.11 (a), HEALTH INSURANCE IS DEFINED AS REASONABLE IN COST for orders that are entered on or after August 18, 2015, if the coverage is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income. In applying this standard, the cost of:

1. Adding the child to the parent's existing coverage;
2. Child-only coverage; or
3. If new coverage must be obtained, the difference between the cost of self-only and family coverage.

Dependent medical insurance that is available to the noncustodial parent (NCP) as a result of current membership in unions or fraternal organizations or dependent coverage that is currently provided to the NCP due to retirement or disability meets this definition of being reasonable in cost. This definition does not include separate dental insurance policies that are available through an employer, although the court can require one or both parents to provide dental insurance.

When obtaining new or modified support orders, CSS must petition the court to include a provision for employment-related health insurance if it is or becomes available for dependents at a reasonable cost to the NCP.

If the court enters an order that contains a provision for health insurance coverage when it becomes available at a later date and the coverage is through an employer of the NCP, the CSS agency is then in a position to transfer the notice of the obligation to provide dependent insurance to subsequent employers.

Any time the court does not grant the petition that the NCP provide medical insurance for the child(ren), caseworkers document in the case record that the coverage was not ordered and include this finding in the court order. When coverage subsequently becomes available to the NCP, an order to provide medical insurance must be sought.

The provision of medical insurance coverage must be addressed in support orders even if the CP or NCP already has insurance coverage for the child(ren) at the time the order is negotiated. All efforts to obtain medical support and any information that is received MUST be thoroughly documented in ACTS.

Military member/NCPs can voluntarily enroll their child(ren) in TRICARE/ CHAMPUS. The NCP must take a copy of the child(ren)'s birth certificate or Affidavit Of Parentage and a copy of the support order (if one is established) to the customer service unit of the personnel center on the base and complete a DOD Form 1172 (Application for Uniformed Services Identification Card/DEERS Enrollment).

When the court orders military NCPs to provide health insurance for a dependent child or children, CSS caseworkers can determine the child(ren)'s enrollment status through the quarterly DMDC (Defense

Manpower Data Center) reports or by contacting the CP or NCP for verification of enrollment. Caseworkers DO NOT send the National Medical Support Notice to the DMDC Support Office. DMDC cannot enroll the child(ren) in TRICARE/CHAMPUS.

Local CSS agencies must identify cases and petition the court for modification of existing orders that do not contain a provision for medical insurance coverage. Local CSS must petition the court for modification under NCGS 50-13.7 when the facts are sufficient to warrant the modification.

The current amount of any insurance premiums that are paid by a parent or stepparent should be used in the computation of any modification of a support obligation. (Health insurance must be sought even if potential exists for a reduction in the NCP's ability to pay support.)

Seeking health insurance is not required if the CP and child(ren) have adequate medical insurance other than Medicaid. In those situations where the CP has adequate dependent medical insurance, this must be stated in the order and the CP is required to continue to provide the coverage. The CP also must inform CSS of any changes or lapses in coverage.

The CP must be instructed to notify the agency if coverage is no longer available. The CSS agency must then petition the court to address medical coverage for the child and, if ordered, modify the existing order to require the NCP to cover the child. If the existing order already contains a provision that the NCP secure medical insurance when it is available, it is appropriate to enforce this requirement.

*NOTE: All complaints and orders addressing medical insurance must contain findings as to the availability of insurance coverage for the child(ren) to either the CP or NCP and state who is providing the insurance at the time the order is entered.*

Once a court order has been established for medical insurance, the signature of either the CP or NCP is valid authorization for the insurer to process the insurance claim on behalf of the child(ren) who are covered by the order.

NCGS 58-51-120 requires that when a court order requires a parent to provide health insurance for a child and that parent is eligible for family health benefit plan coverage, the insured parent, the child's other parent, or the Department of Health and Human Services (DHHS) must be allowed to enroll that child in the family coverage plan. A child cannot be disenrolled without evidence that the court order is no longer in effect, that the child has other comparable coverage, or that the employer has eliminated the benefit plan.

When an NCP is no longer under order to provide medical insurance for the child(ren) and the insurance is employment-related, the local CSS agency enforcing the medical obligation must send a Medical Support Termination Notice To Employer (DSS-4733) within ten (10) business days to the NCP's employer(s).

Employers must withhold any employee share of the premiums for coverage from the employee's wages. For a child enrolled under an NCP's health plan, the insurer must provide the CP with the information that is necessary to obtain benefits and must allow the CP or health care provider to submit claims for services. Payments on claims are to be made directly to the NCP, CP, provider, or DHHS (whichever is appropriate).

#### ***NON-EMPLOYMENT-RELATED/OTHER GROUP INSURANCE***

If the NCP is under order to provide medical insurance and dependent health insurance is not available through an employer, CSS must question the NCP about the availability of other group insurance. Group health insurance includes insurance that is available to the NCP as a result of current membership in unions or fraternal organizations or coverage currently provided to the NCP due to retirement or disability. If dependent coverage is available through the NCP's group health insurance, the CSS agency must request that the NCP voluntarily agree to provide this coverage for the child(ren).

If the NCP voluntarily enrolls the child(ren) for the health insurance, a provision for the NCP to provide medical insurance for the child(ren) must be included in the child support order. If the NCP refuses to provide this coverage for the child(ren), the CSS agency must petition the court to determine whether the child(ren) should be added to the NCP's existing coverage. The CSS agency cannot require the NCP to seek and purchase a private insurance policy.

If insurance for the child(ren) is available through both an employer and through other group insurance and the child is not enrolled in either plan, the NCP is allowed to choose the coverage that meets the five percent (5%) criteria for reasonable in cost. However, the coverage still must adequately cover the child(ren) in the order.

If the NCP already covers the child under a non-employment related policy at the time the order is entered, it is appropriate to allow the NCP to continue this coverage. When the child support order is established, a provision for the NCP to provide medical insurance for the child(ren) must be included in the order.

If the CP has adequate insurance for the child(ren) at the time the order is entered, caseworkers should indicate this fact in ACTS. Medicaid, Health Choice, and other public medical coverage are included in the definition of adequate insurance.

### **NC HEALTH CHOICE INSURANCE PROGRAM**

#### ***GENERAL INFORMATION***

Title XXI of the Social Security Act created a health insurance coverage plan for uninsured children with family incomes up to two hundred percent (200%) of the federal poverty level. In North Carolina, NCGS 108A-70 established this program, effective October 1, 1998, as "NC Health Choice". It is administered by the Division of Medical Assistance (DMA).

To be eligible for Health Choice, children must not qualify for Medicaid and have no medical insurance coverage available. If a child's noncustodial parent (NCP) is required under a separation agreement or a court order to provide or maintain medical insurance but fails to comply, Health Choice considers the child to be uninsured for the purpose of determining eligibility for Health Choice coverage.

Families must re-enroll in Health Choice yearly. If the family's income at re-enrollment is greater than two hundred percent (200%) but equal to or less than two hundred twenty-five percent (225%) of the federal poverty level, the family has the option to pay the full monthly premium that is charged to remain on Health Choice, Optional Extended Coverage, for one (1) year.

#### ***NC HEALTH CHOICE INSURANCE PROCESS***

When an individual applies for NC Health Choice, the Income Maintenance caseworker determines whether or not the applicant is required to seek assistance from CSS. If the Health Choice applicant informs the Income Maintenance caseworker at the time of the application that a CSS case already exists, the Income Maintenance caseworker verifies this information by reviewing the inquiry screens in ACTS.

When no medical support order exists OR the NCP is in compliance with an existing medical support order, DMA does not require the Health Choice applicant to apply for child support services. If the Health Choice applicant indicates that the NCP is not complying with an existing medical support order, DMA requires the applicant to apply for CSS services in order to receive the 12-month Health Choice coverage, which is renewable each year.

Health Choice cases are not considered Medicaid cases, and they are NOT automatically referred from NC FAST to ACTS.

When an individual applies for medical assistance at DSS, the Income Maintenance caseworker enters the application information into the NC FAST system. If the child is eligible for Medicaid, CSS receives an automated referral. However, if the child is not approved for Medicaid but is approved for Health Choice, CSS does NOT receive a referral.

After approval, the NC Health Choice status can be verified in the NC FAST system. After the Health Choice application is approved, no other requirements exist for the recipient. (DSS makes no sanctions against these CPs, and CSS does not refer these NPA CPs for noncooperation if the recipient terminates the case.)

#### ***CSS POLICY (NC HEALTH CHOICE)***

The NC Health Choice applicant is required to seek CSS services if:

1. A parent is absent from the home;
2. A separation agreement or a court order exists, requiring that parent to provide medical insurance coverage; and
3. That parent is NOT in compliance with the separation agreement or court order.



CSS initiates the case when the Health Choice applicant applies for CSS services. The applicant is subject to the child support application fee, since these cases are Non-Public Assistance (NPA) cases.

After the case is created, CSS is required to pursue enforcement of the court order.

Health Choice applicants who apply for CSS services are required to provide the Income Maintenance caseworker with a receipt from CSS as proof that they paid the application fee for CSS services before the end of the 45-day Health Choice processing period.

If the applicant cannot obtain an appointment with CSS within the 45-day period, CSS must give the applicant documentation of the scheduled appointment date to present to the Income Maintenance caseworker. A signed copy of the client's appointment letter is appropriate documentation, or some other written form of verification could be used.

When Health Choice recipients apply for CSS services, CSS must provide these individuals with the full range of child support services. These services include the enforcement of any medical support order and the redirection and enforcement of any existing child support order. CSS provides the full range of services for as long as the Health Choice recipient requests them.

CSS must determine if:

1. A separation agreement or court order exists that requires the NCP to provide medical insurance for the child(ren);
2. The NCP is in compliance with that separation agreement or court order;
3. Medical insurance is currently available.

If a Health Choice recipient closes his/her CSS case and plans to re-enroll in Health Choice after the 12-month coverage period, the recipient must re-apply for CSS services before DSS can approve the Health Choice re-enrollment.

#### **QUALIFIED MEDICAL CHILD SUPPORT ORDERS**

Most private sector employer group health plans are self-insured and governed by federal law, known as ERISA (Employee Retirement Income Security Act of 1974), rather than state law. To compel compliance of an ERISA-covered employer to provide health insurance, the standardized federal National Medical Support Notice (DSS-4733) was developed for all states to use in enforcing medical support obligations. In order for this Notice to meet the ERISA requirements for a "qualified medical child support order," it must contain the names and addresses of the obligor and dependents, the type of coverage available to dependents, and the name and address of the plan administrator. The Notice must be approved by the plan administrator to be considered a qualified medical child support order.

If dependent insurance coverage is available and the noncustodial parent (NCP) fails to add the child(ren), local CSS must notify the new employer to add the child(ren) and to deduct the cost of the insurance premium from the NCP's wages. Civil legal action can be taken against the employer or health plan administrator if coverage is available but the NCP's child is not enrolled.

*NOTE: Sometimes continued insurance benefits are available for up to eighteen (18) months after the termination of employment through COBRA for either an ERISA or Non-ERISA plan.*

The CSS Attorney should be consulted before suspending any part of an insurance provision.

It is important to note that if CSS requests an employer to enroll a child(ren) and to deduct the cost of the premium from the NCP's wages, it is the NCP's responsibility to make any request for review of the child support order to the local CSS agency. The local CSS agency must assess the case and determine whether a modification is appropriate.

#### **PAST PAID MEDICAL EXPENSES**

While it is appropriate to review past paid medical expenses to determine a reasonable amount to allow for extraordinary medical expenses on the guidelines worksheet, CSS does not have the authority to recoup past paid medical assistance for the Division of Medical Assistance (DMA).

#### **OTHER MEDICAL SUPPORT OPTIONS**

Medical support judgments designating a specific dollar amount for medical purposes are enforceable by CSS. However, the establishment of such obligations, or the establishment and enforcement of medical support of unspecified dollar amounts (such as orders providing for one half of the unreimbursed medical expenses) is not a required CSS function. Each case should be assessed to determine what provisions of the order can be monitored by the agency, and the assessment should be explained to the client and documented in the case record.

When the court order specifies a dollar amount for reimbursement of medical expenses (such as periodic monthly payments or lump-sum judgments), CSS is required to distribute this medical support. Caseworkers must ensure that court orders stipulate that such payments are directed to the Department of Health and Human Services (DHHS) for collection and distribution of the medical support to the proper party, either the Division of Medical Assistance (DMA) or the custodial parent (CP).

*NOTE: This applies to dollar amounts for ongoing expenses or for a past due balance. It is not required if no dollar amounts are specified.*

DMA retains any medical support for a specified dollar amount that is assigned to DMA for the duration of the CP's eligibility for medical

assistance. Any retained amount in excess of the amount of medical assistance that is expended is reimbursed to the CP upon termination of medical assistance eligibility.

CSS agencies must ensure that all current and new cases containing orders for medical support specifying a dollar amount be directed to DHHS for distribution. If an order requires the NCP to reimburse the CP for health insurance premiums or medical expenses paid by the CP but does not state a specific cash amount, CSS is not required to enforce such a provision in the order.

## **COURT-RELATED ESTABLISHMENT ACTIVITIES**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Service of process for establishment activities;](#)
2. [Scheduling a court hearing to establish support;](#)
3. [Dismissals without prejudice;](#)
4. [Payment of filing fees;](#)
5. [Entering a disposition for an Establishment court hearing;](#)
6. [Notification to begin the collection of an obligation;](#)
7. [The court-required job search/work activities option;](#)
8. [Appeals of support orders.](#)

### **SERVICE OF PROCESS FOR ESTABLISHMENT**

When judicial action is used to obtain a support obligation, service of process is required to provide notice of the action to the parties. North Carolina Rules of Civil Procedure prescribe the appropriate service methods and use of each method.

Service of process can be accomplished by certified mail or personal service by the Sheriff's Department, depending on the local office's preference.

When caseworkers learn whether or not the service of process was successful, they must document this information in ACTS. If an attempt to serve a noncustodial parent (NCP) at a home address has failed and his/her employer is recorded, documents are immediately issued for service at the employer's address. Similarly, if an attempt to serve the documents at the employer's address has failed and a current mailing or residential address is recorded, documents are immediately issued for service at the mailing/residential address.

If the service is unsuccessful due to evasion or because the NCP is "unavailable", new documents are generated as appropriate and reissued. If the return of service indicated a date when the NCP will become "available", caseworkers enter a reminder in ACTS for that date so that the necessary service of process documents can be issued at that time. Otherwise, the new documents are issued immediately.

### **SERVICE OF PROCESS TIMEFRAME FOR ESTABLISHMENT**

A Civil Summons (DSS-4668) must be issued within five (5) days of the filing of a complaint. By Rule 4 of Rules of Civil Procedure, this summons must be served within sixty (60) days of the date when it was issued. If the Summons is not served within the allotted time, the action is discontinued. However, it can be continued by the issuance of an Alias Or Pluries Summons (DSS-4669) within ninety (90) days of the issuance date of the initial summons. CSS should make every attempt to serve the Alias Or Pluries Summons within (60) days of its issuance.

Once a NCP's home address or employer has been recorded, federal regulations require that a summons be served (or an order entered) within ninety (90) calendar days.

#### **SCHEDULING A COURT HEARING TO ESTABLISH SUPPORT**

After CSS caseworkers have submitted the necessary documents to the Clerk of Court, the Clerk informs them when their hearings are to take place. Once a hearing date/time is set, caseworkers document this information in ACTS.

#### **DISMISSALS WITHOUT PREJUDICE**

If the court dismisses a petition for a support order without prejudice, local CSS must, at the time of dismissal, examine the reasons for the dismissal and determine when in the future it would be appropriate to seek an order and seek it at that time.

#### **PAYMENT OF FILING FEES**

When the local CSS agency establishes an order for support, the order must be properly filed with the Clerk of Superior Court and the appropriate filing fee paid. In any action filed by the CSS agency, the agency is the party in interest, not the custodial parent (CP). Therefore, it is not appropriate to request that the Clerk of Court waive the advance payment of the filing fee upon presentation of a Pauper's Affidavit completed by the CP.

When a voluntary support agreement is filed, the responsible parent making the support payment should pay the \$6.00 filing fee at the time the agreement is filed.

Effective July 1, 2008, local CSS agencies are responsible for paying the fees in civil actions (other than the filing of a voluntary support agreement) at the time of the filing of the action. As a matter of convenience, the Clerk of Court can agree to bill local CSS agencies on a monthly basis for actions filed during the month.

Fees and costs for Non-Public Assistance cases are handled pursuant to Non-Public Assistance case procedures. Therefore, local CSS agencies cannot charge the Non-Public Assistance CP any costs other than the application fee. Any costs for filing fees or related court costs are the responsibility of the CSS agency.

## **ENTERING AN ESTABLISHMENT COURT HEARING DISPOSITION**

It is essential that caseworkers enter the result of a court hearing in ACTS. Recording the outcome of a hearing maintains an accurate historical record of the CSS case.

## **NOTIFICATION TO BEGIN COLLECTION OF OBLIGATION**

When a legal support obligation has been established, CSS caseworkers must immediately enter all provisions of the order into ACTS. Once this information is entered, the system can receipt and apply payments to the case.

*NOTE: The order date in ACTS should be the date when the judge signs the order. If a payment could become due before the order is signed by a judge, caseworkers can use information from the Child Support Interim Order (AOC-CV-626AS) to record the terms of the order in ACTS. This form can be obtained from the local Clerk of Court.*

The form is designed to record the terms of the child support order in open court and is signed by the judge in open court. All parties present can then receive copies of the order. A final order with the appropriate findings of fact must still be prepared and submitted to the judge for a signature as soon as possible.

## **JOB SEARCH/WORK ACTIVITIES**

In accordance with NCGS 50-13.4 and 110-132, the court can require a noncustodial parent (NCP) to conduct a job search or participate in work activities when establishing a child support order, as long as the NCP is not incapacitated. "Work Activities" are defined as on-the-job training, job search and job readiness assistance, community service programs, private or public sector employment, etc. This option can be useful in Establishment cases where the NCP is unemployed or underemployed. Caseworkers should remind the CSS attorney of this option when preparing the child support case for court. Job search or work activities can also be ordered in Enforcement cases.

## **APPEALS OF SUPPORT ORDERS**

Caseworkers enter support orders in ACTS in accordance with normal procedures even if the order is appealed by the noncustodial parent (NCP). All charging, billing, and enforcement takes place while the appeal is pending. If the appeals court grants a stay of the order, ACTS notifies caseworkers to check on the result of the appeal and suppress billing and tax intercept. When the stay is lifted, caseworkers reverse the suppression of billing and tax intercept.

## **COURT ORDER BASICS**

## **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Data that is required when entering court orders in ACTS;](#)
2. [Court docket numbers;](#)
3. [Extensions \(financial provisions\) of a court order.](#)

## **REQUIRED DATA FOR COURT ORDERS IN ACTS**

CSS caseworkers must record court order data in ACTS to allow the system to process the case properly and to maintain the case history. This includes the docket number; the order and start dates; the location of the court hearing; the order type; a variety of indicators related to proration, health insurance/medical support, and any deviation from the current support obligation that is calculated using the guideline worksheets; and the financial provisions of the order.

## **DOCKET NUMBERS**

Each support order is identified by a unique docket number. The Clerk of Court assigns a docket number to the order when a support action is initially filed. This order and any future modifications to it are always identified by the assigned docket number. It facilitates the generation of legal documents, as well as the early receipting of payments.

## **EXTENSIONS (FINANCIAL PROVISIONS) OF AN ORDER**

Caseworkers must enter the financial provisions of the order by creating an "extension". When an extension to the order is entered, ACTS creates a corresponding subaccount to track the movement of funds through the system. Each extension must specify the type of support and the type of financial obligation within that support type.

END

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