

## **REVIEW AND ADJUSTMENT**

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### **INTRODUCTION**

#### **GENERAL INFORMATION**

Once an order has been entered, a periodic review can be performed to evaluate any changes in the circumstances for the custodial parent (CP), noncustodial parent (NCP), or child that might warrant an adjustment to the support order.

This chapter contains information on the following topics:

1. [Review and Adjustment policy;](#)
2. [Review and Adjustment procedures.](#)

### **REVIEW AND ADJUSTMENT POLICY**

#### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Review and adjustment requirements;](#)
2. [Exemptions to the mandatory review requirement;](#)
3. [Review and adjustment time frames;](#)
4. [Review selection criteria;](#)
5. [Pre-review notification requirements;](#)
6. [Review/assessment of the support order;](#)
7. [Barriers to review;](#)
8. [Notification of the completion of the review;](#)
9. [Adjustment of the support order.](#)

#### **REVIEW AND ADJUSTMENT REQUIREMENTS**

Federal Regulations at 45 CFR 303.8 govern the review and adjustment process for child support orders. Under this regulation Child Support Services (CSS) is required to:

- Provide notice to parents every three (3) years of their right to request a review and, if appropriate, adjustment of the support order;
- For TANF and Foster Care cases, review and, if appropriate, adjust support orders at least once every three (3) years;
- For NPA (Non-Public Assistance) and MAO (Medical Assistance Only) cases, review and, if appropriate, adjust support orders at three-year intervals only if requested by either parent; and
- Review a support order in less than three (3) years if requested by a parent and adjust the order if a substantial change in circumstances is shown by the requesting parent to have occurred after the date of the order.

In compliance with 45 CFR 303.8(d), the need to provide for the child's health needs in a child support order, through health insurance and other means, is a substantial change of circumstances warranting the modification of a child support order, regardless of whether an adjustment in the amount of child support is necessary.

- Within fifteen (15) business days after the responsible caseworker learns that a noncustodial parent (NCP - coded "AP") is being incarcerated for more than one hundred-eighty (180) calendar days, CSS agency must send notice to both parents, informing them of their right to request a review and, IF APPROPRIATE, adjust the order.

#### **EXEMPTIONS TO REVIEW REQUIREMENTS**

The following categories of CSS cases are exempt from the mandatory three-year review requirement:

1. Any case for which child support rights are assigned to the State, but a IV-A, IV-E, or Title XIX agency has made a finding of Good Cause that a review is not in the best interest of the child and cannot proceed without risk of harm to the child or custodial parent (CP), and neither party has requested a review.
2. Any cases for which support rights are not assigned to the State, if neither party requests a review.
3. Any case for which medical support rights are assigned to the State, child support is not assigned to the State, the child support order contains a provision for health insurance, and neither party requested a review.

#### **REVIEW AND ADJUSTMENT TIME FRAMES**

Federal Regulation 45 CFR 303.8(e) requires CSS agencies to have procedures for conducting 3-year reviews that include the following time frame requirements:

- Every three (3) years, CSS must notify both parents of their right to request a review;
- Every three (3) years, CSS must conduct a review for Public Assistance (PA) cases;
- Every three (3) years, CSS must conduct a review for Non-Public Assistance (NPA) cases, if requested by a parent;
- CSS must allow parents thirty (30) days to contest the results of a review after they have been notified of the review's completion;
- Within one hundred-eighty (180) days of receiving a request for review or locating a parent (whichever occurs later), CSS must conduct the review and adjust the order (or determine that the order should not be adjusted).

## **REVIEW SELECTION CRITERIA**

A review is appropriate if certain criteria are met.

### ***Three-Year Reviews -***

A open case is eligible for this review if:

1. It has been least three (3) years since the last review or modification of the support order was completed. To determine if a case meets this criteria, compare the date of the most recent order or review with the date of the request for review; and
2. The case has at least one (1) child who is younger than eighteen (18) years of age.

### ***Less Than Three-Year Reviews -***

CSS can conduct a review in less than three (3) years after the last order on the basis that a change in circumstances regarding a child or parent has occurred since the date of the order. These reviews are conducted at the request of a party.

## **PRE-REVIEW NOTIFICATION REQUIREMENTS**

"Review" is defined as an objective evaluation of information necessary for the application of the State's guidelines for support to determine an appropriate support award or the availability of medical support. "Party" is defined as the custodial parent (CP), the noncustodial parent (NCP), or any person or entity having a standing in the case.

Once the CSS agency receives the request for review, it must assess the potential for review under the 3-year and change-in-circumstances criteria and advise the requestor of whether the review will continue or be concluded on the basis that no criteria to continue the review has been met.

If the review will continue, CSS must provide notice of a planned review to all parties thirty (30) days prior to beginning a review for both mandatory and requested reviews. During this time, the CSS agency receives information but cannot begin assessment of the collected information until thirty (30) calendar days after the date of the notice, unless all parties consent to waive the allowed period.

Once pre-review notifications have been issued, a request for review cannot be withdrawn by the requesting party. The assessment/review process must be completed and the parties informed of the results.

## **REVIEW/ASSESSMENT OF THE SUPPORT ORDER**

NCGS 50-13.4 provides that child support obligations are to be made with consideration given to the reasonable needs of the child for

health, education, and maintenance, as well as the ability of each parent to provide support. In the review, CSS must assess the modification potential of the support order. This assessment must include consideration of the ability of both parents to provide support and any significant change in circumstances that could impact the welfare of the child. CSS must pursue the availability of health insurance if the order includes no medical support provisions.

CSS determines whether adjustment of the support obligation might be appropriate by using the most current information available and giving consideration to any changes in circumstances in application of the North Carolina Child Support Guidelines.

In any review, CSS should evaluate the order for needs for modification in addition to the support amount. Although not a basis for the review of an order, other factors such as conversion of non-monthly obligations to monthly orders due on the first (1st) day of the month can be addressed in any proposed adjustment of an order following a review.

#### ***CHANGE IN CIRCUMSTANCES***

NCGS 50-13.7 allows a court to modify a support order at any time based on a change in circumstances that is presented by any party. When reviewing a support order, CSS must evaluate information to determine whether any change in circumstances exists that warrants modification of the order.

#### ***Change in Circumstances for Three-Year Reviews -***

NC Child Support Guidelines declare that if an order was entered at least three (3) years prior to the request for review, a fifteen percent (15%) difference, either upward or downward, between the previous court order and the amount resulting from a current application of the guidelines is a presumptive change in circumstances.

If the review of an order indicates a change of at least fifteen percent (15%), CSS should pursue a request for modification based on this change alone. No other justification or evidence of change in circumstances is necessary. If less than a fifteen percent (15%) difference exists in the amount of support, CSS should not pursue modification of the order based on the three-year criteria. A request for modification based on other changes in circumstances might be appropriate.

CSS also must review the terms of the current order regarding medical support. As an order is modified as appropriate, CSS must update the existing language defining health insurance as reasonable in cost if employment-related to specify reasonable in cost as no more than five percent (5%) of the parent's gross income. The order must be modified, even if the only change is the definition of "reasonable in cost" as defined by NCGS 50-13.11.

#### ***Change in Circumstances for Less Than Three-Year Reviews -***

CSS must conduct a review for both Public Assistance (PA) and Non-Public Assistance (NPA) cases if requested by either party due to a change in circumstances within less than three (3) years since the last review or modification. Eligibility for review requires only that the requestor cite a change in circumstances that occurred after the date of the last order or review of the obligation.

Documentation or verification of the change in circumstances and determination of whether the cited change is a qualified change in circumstances warranting adjustment of the order are addressed during the review.

***Qualified Change in Circumstances -***

The following situations qualify as a valid change in circumstances that would warrant pursuit of modification of a support obligation by the CSS agency:

- **A significant increase or decrease in the needs of a child** - The requesting party must show a comparison between the needs of the child at the time the prior order was entered and the current needs of the child, including the amount and reason for the changed needs. This information might be presented by an affidavit of expenses, copies of medical bills, or other documentation. The Financial Affidavit (DSS-4666) can be used for this purpose.
- **A significant involuntary decrease in a parent's income, even if the child's needs have not changed** - The requesting party must show a reduced ability to pay and that the decreased income was not due to the parent's bad faith or was not otherwise within the parent's control. For example, termination or reduction of employment due to a decrease in the employer's business would be a valid change in circumstances.
- **A voluntary decrease in a parent's income, and the child's needs have also decreased** - The requesting party must show a reduced ability to pay, that the decreased income was not due to the parent's bad faith, and that the child's needs have decreased. A valid change in circumstances might be that when a child starts school, a parent takes a part-time job and day care costs are eliminated.
- **A child for whom support is owed begins receiving Public Assistance (PA)** - The receipt of PA creates a debt to the State and makes the State an interested party with standing to request a modification of a support obligation. For example, if the parents had agreed to no child support or an amount less than that indicated by the NC Child Support Guidelines and the child later begins receiving TANF, a request by the State that a support obligation be set according to the NC Guidelines would be a valid change in circumstances.
- **A change in the physical custody of a child** - The move of one or more children for whom support is owed into or out of the home of the requesting party can constitute a significant change in circumstances. For example, if two children lived with the mother and one child goes to live with the father, this would be a valid change in circumstances.

- **The termination of a parent's obligation for one or more of the children who are included in the support order** - If a support order for multiple children is not prorated per child, when one child reaches age eighteen (18) or is otherwise no longer eligible for support, the support that is owed for the remaining children does not change automatically. A request to modify the amount of support for the remaining children would be a valid change in circumstances.
- **A request for a review based on a change in the provision of NCGS 50-13.11 alone or on other appropriate changes in the status of health insurance coverage** - Previous language defined "reasonable in cost" as employment-related; current language defines reasonable as no more than five percent (5%) of the parent's gross income. However, no requirement exists to proactively modify an order upon verifying that the cost of insurance is more than the five percent (5%) threshold if neither party requests the review.
- **A request for a review based on the NCP's involuntary unemployment due to incarceration in accordance with provision of 45CFR §303.8(b)(7)(ii)** - Within fifteen (15) business days of when the responsible caseworker learns that an NCP will be incarcerated for more than one hundred-eighty (180) calendar days, the IV-D agency must send notice to the parents informing them of their right to request a review and, IF APPROPRIATE, adjust the order

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

***Not Qualified Change in Circumstances -***

The following situations do not qualify as a valid change in circumstances for which the CSS agency should pursue a modification of the terms of a support obligation:

- **A significant voluntary decrease in a parent's income, standing alone** - Whether the voluntary decrease in income is due to willful intent to reduce a child support obligation or other reasons, it cannot be considered a substantial change in circumstances without evidence of a decrease in the needs of the child. For example, if a parent quits a job or chooses to work part-time when full-time employment is available and that parent requests a reduction in the support obligation but does not indicate any change in the needs of the child, this would not be a valid change in circumstances.
- **A significant increase in a parent's income, standing alone** - Even though a parent's ability to support might have increased, to qualify as a substantial change in circumstances, a showing of an increase in the needs of the child or that the existing support obligation was not adequate to meet the needs of the child also must exist.
- **The revision of the NC Guidelines since the existing order was entered** - The revised guidelines would be applied at the next appropriate modification of the terms of the order, based on either a change in circumstances relative to the needs of the child and/or

the parents' ability to provide support or the length of time that the existing order has been in place.

- **The child is older or the cost of living has increased** - Such general reasons are not sufficient. Specific facts regarding any increased needs of the child would be required. Changes in the cost of living are addressed during the required four-year review cycle of the NC Guidelines by the Conference of Chief District Court Judges. If basic obligation tables are revised, the new amounts would apply at the next appropriate modification of the order.
- **The voluntary filing of a Chapter 11 bankruptcy petition** - Chapter 11 bankruptcy petitions are most often filed by corporations, rather than individuals.
- **The voluntary assumption by a parent for support that is not required by law** - For example, a parent's voluntary support of an emancipated child or a stepchild, or an agreement to pay for high-cost college tuition are not to be considered as a change in circumstances.
- **A parent's financial responsibility for children other than the child in this action** - New financial responsibilities due to marriage or divorce (alimony) or the birth or adoption of another child cannot be the sole basis for modification of a support order. NC Guidelines provide consideration for other child support obligations that can be applied at a three-year review or a request for modification based on other appropriate changes in circumstances.

#### ***STANDARD FOR PURSUIT OF ADJUSTMENT***

At the completion of the review, CSS must make a determination of whether it will pursue an adjustment of the obligation.

For a 3-year review, CSS pursues an adjustment of the order if:

- NC Guidelines indicate a support amount that is at least fifteen percent (15%) more or less than the existing obligation. CSS must modify the order, even if the only change is the definition of "reasonable in cost" as defined by NCGS 50-13.1. CSS considers no other factors in making this assessment.

For a review completed in less than three (3) years, CSS pursues an adjustment of the order if:

- At least one (1) qualified change in circumstances is presented, and
- NC Guidelines indicate a substantial change in the support amount, which is defined as a change of at least fifteen percent (15%) more or less than the existing obligation.

## **BARRIERS TO REVIEW**

If the local CSS agency discovers potential barriers to the review or modification of an order, such as the noncustodial parent's (NCP's) hospitalization, temporary disability, layoff, unemployment or similar problems, the review can be postponed. Local CSS must determine whether to conduct or postpone the review. If the review is to be postponed, document the particular reasons that require the review to be delayed and notify the custodial parent (CP) and NCP.

It might be appropriate to complete the review and request that the court enter a temporary order, rather than postpone the review or modification until the circumstances have changed.

## **NOTIFICATION OF REVIEW COMPLETION**

Once the review is completed, all parties involved must be advised of the results of the review and allowed thirty (30) calendar days to provide additional information that could affect the outcome of the review or to challenge the CSS agency's decision. CSS cannot initiate any action to adjust the order until the end of the thirty (30) days.

If either party provides additional information, CSS must reevaluate the case and notify the parties of the results. No requirement exists to allow an additional thirty (30) days before pursuing the adjustment of an order. However, reevaluation and notice to all parties must be completed in a timely manner.

The parties also have the right to file a motion with the court to review the case for possible adjustment of the support obligation, if they disagree with the CSS agency's decision. CSS should advise both parties that if such a motion is filed, the CSS agency must be served notice of the hearing. The agency attorney and case manager or other agency representative should attend the hearing. However, CSS cannot advise or assist any party in this action.

## **ADJUSTMENT OF THE SUPPORT ORDER**

If the review indicates that the support obligation should be adjusted, the CSS agency must initiate appropriate action to modify the order, in accordance with NC Child Support Guidelines. For information on determining whether an adjustment is warranted, see "[Standard for Pursuit of Adjustment](#)".

When possible, obtaining the agreement of the parties for voluntary adjustment of the obligation is recommended. However, if a voluntary modification cannot be accomplished, the CSS agency must initiate a court action. If modification is indicated but neither party states a desire to pursue an adjustment of the obligation, CSS must initiate court action to modify the order.

If a review indicates that an order should be modified, but all of the parties are in agreement that an adjustment is not desired, CSS is not required to pursue modification. Documentation of this decision must



be placed in the case record and should include the following information:

- The support obligation amount as determined by the NC Guidelines, including a copy of the guidelines worksheet;
- A statement of reason(s) that no adjustment is desired;
- The signatures of each party on the statement.

If the defendant is not present and has not appeared at a prior hearing or signed a consent order 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 paternity is entered. For more information, see the [Military Policy/Procedures Chapter](#).

When taking court action to modify an order, the local CSS agency does not represent either the custodial parent (CP) or the noncustodial parent (NCP) in the action. The CSS attorney presents the information and evidence from the review to the court for consideration of adjudication of the support obligation.

## **REVIEW AND ADJUSTMENT PROCEDURES**

### **GENERAL INFORMATION**

This topic contains information on the following subjects:

1. [Three-year review initiation procedures for Public Assistance \(PA\) cases;](#)
2. [Three-year review initiation procedures for Non-Public Assistance \(NPA\) cases;](#)
3. [Less than three-year review initiation procedures;](#)
4. [Review processing;](#)
5. [Review and adjustment of support orders for medical support;](#)
6. [Requirements for review and adjustment of intergovernmental cases.](#)

### **THREE-YEAR REVIEW INITIATION PROCEDURES FOR PUBLIC ASSISTANCE (PA) CASES**

Support orders for Public Assistance (PA) cases must be reviewed at a minimum of every three (3) years.

#### ***SELECTION CRITERIA***

1. The case cannot be in the Locate Processing Status;
2. The case must be workable;
3. The case must have a current support obligation;
4. The case must have a North Carolina court order;

5. The case must have at least one (1) child participant less than eighteen (18) years of age.

If the PA case does not meet all of the review criteria, it is currently unreviewable.

### **THREE-YEAR REVIEW INITIATION PROCEDURES FOR NON-PUBLIC ASSISTANCE (NPA) CASES**

A Notice Of Right To Request Review (DSS-4721) is sent to both parties in NPA (Non-Public Assistance) cases and MAO (Medical Assistance Only) cases requesting full CSS services thirty-five (35) months after the most recent "Order Date". The notice advises that the case is approaching three (3) years review eligibility.

CSS only conducts three-year reviews for NPA cases if either party requests a review.

### **LESS THAN THREE-YEAR REVIEW INITIATION PROCEDURES**

Both the Notice Of Right To Request Review (DSS-4721) that is sent to the parties in Non-Public Assistance (NPA) cases and the Notice Of Impending Review (DSS-4490) that is sent to the parties in Public Assistance (PA) cases inform the parties of their right to request a review at other than a three-year interval if a change in circumstances exists.

### **REVIEW PROCESSING**

Thirty (30) days after the Notice Of Impending Review (DSS-4490) is sent, the responsible CSS worker receives notice to begin the evaluation process. To complete the review:

1. Workers review and evaluate all available information relating to the parents' incomes and expenditures for the child and the needs of the child. Parents are expected to provide information to substantiate any need for modification.
2. If the order is less than three (3) years old, workers review all of the information that has been received regarding any changes in circumstances. If no valid change in circumstances has been indicated, workers can conclude the review on the basis that the support order does not qualify for adjustment.
3. If health insurance is being added to an obligation or any change in the actual premium cost has occurred, workers apply the appropriate credit to the computation of the support obligation.
4. Workers complete the appropriate obligation calculation worksheet(s).
5. Workers determine whether the review results indicate that adjustment of the order is appropriate.
6. Workers notify the CP and NCP of the results of the review. They send the Notice of Review Results/Challenge Procedure (DSS-4568)

to both the CP and NCP and include a copy of the completed NC Guidelines Worksheet with the notices.

**NO MODIFICATION**

If no modification is indicated and neither party has provided additional information for consideration or protested the review results within the 30-day period OR if both parties are in agreement that they do not want the order modified, the review is concluded. CSS does not pursue an adjustment of the order.

**COURT ORDERED MODIFICATION**

If adjustment of the obligation is appropriate and the parties do not voluntarily amend the order, CSS must file a motion to modify the order with the court.

The court might deny the motion, approve the motion and modify the order, or enter a temporary order to allow additional time for the resolution of any outstanding issues.

**REVIEW AND MODIFICATION OF SUPPORT ORDERS FOR MEDICAL SUPPORT**

Federal regulations require that a child's health needs must be provided for in a child support order. The availability of medical insurance is defined in the North Carolina Child Support Guidelines as a substantial change of circumstances warranting the modification of the support order, regardless of whether an adjustment in the financial amount of child support is necessary.

During the review and adjustment process, CSS also must review the terms of the current order regarding medical support. As an order is modified, CSS must update (if needed) the language in the order to specify that health insurance is defined as reasonable in cost when it is not more than five percent (5%) of the parent's gross income. The order language must be modified at that time, even if the only change to medical support is the definition of "reasonable in cost" as defined by NCGS 50-13.11.

**REQUIREMENTS FOR REVIEW AND ADJUSTMENT OF INTERGOVERNMENTAL CASES**

See the [Intergovernmental Chapter](#) for information about the review and adjustment process for intergovernmental CSS cases.

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