

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

**LCB FILE NO. R139-23I**

**The following document is the initial draft regulation proposed  
by the agency submitted on 12/15/2023**

## GENERAL PROVISIONS

**NAC 425.005 Definitions.** ([NRS 425.620](#)) As used in this chapter, unless the context otherwise requires, the words and terms defined in [NAC 425.015](#) to [425.040](#), inclusive, have the meanings ascribed to them in those sections.

**NAC 425.015 “Child support obligation” defined.** ([NRS 425.620](#)) “Child support obligation” means the amount of child support that is required to be paid by an obligor.

**NAC 425.025 “Gross income” defined.** ([NRS 425.620](#))

1. “Gross income” includes, without limitation:

(a) **Monetary compensation incident to employment, ~~Salary and wages,~~** including, without limitation, **salary, wages, commissions, and** money earned from **~~overtime pay~~ bonuses or overtime** if such **~~overtime pay compensation~~**<sup>1</sup> is substantial, consistent, and can be accurately determined.

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

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

(d) Any periodic payment from a pension, retirement plan, or annuity which is considered remuneration for employment.

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

(f) Unemployment insurance.

(g) Income continuation benefits.

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

(i) Military allowances and veterans’ benefits.

(j) Compensation for lost wages.

(k) Undistributed income of a business entity in which a party has an ownership interest sufficient to individually exercise control over or access **to** the earnings of the business, unless the income is included as an asset for the purposes of imputing income pursuant to [NAC 425.125](#). As used in this paragraph:

(~~1~~) “Undistributed income” means federal taxable income of a business entity plus depreciation claimed on the federal income tax return of the business less a reasonable allowance for economic depreciation.

(~~2~~) **“Reasonable allowance for economic depreciation” means the amount of depreciation on assets computed using the straight-line method and useful lives as determined under federal income tax laws and regulations.**<sup>2</sup>

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

(m) Alimony **received.**<sup>3</sup>

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<sup>1</sup> Voted and approved February 18, 2022.

<sup>2</sup> Voted and approved February 18, 2022

<sup>3</sup> Voted and approved with the comma’s in section (a) and (d) and the word “to” in section (k) on January 7, 2022

**(n) Self-employed income that is calculated after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses.** <sup>4</sup>

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

2. The term does not include:

(a) Child support received.

(b) Foster care or kinship care payments.

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

(d) Cash benefits paid by a county.

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

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

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

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

**NAC 425.035 “Obligee” defined.** ([NRS 425.620](#)) “Obligee” means a person who is entitled to receive payments for the support of one or more children pursuant to an order.

**NAC 425.037 “Obligor” defined.** ([NRS 425.620](#)) “Obligor” means a person who incurs a legal obligation to provide support for one or more children pursuant to an order. If the parties have joint physical custody of at least one child, each party is an obligor.

**NAC 425.040 “Order” defined.** ([NRS 425.620](#)) “Order” has the meaning ascribed to “order for the support of a child” in [NRS 125B.145](#).

## GUIDELINES FOR SUPPORT OF CHILDREN

**NAC 425.100 Order must be based upon obligor’s earnings, income and other ability to pay; basic needs of child presumed met if child support obligation based upon guidelines; adjustment ~~deviation~~ from guidelines.** ([NRS 425.620](#))

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

2. It is presumed that the basic needs of a child are met by a **total** child support obligation established pursuant to **NAC 425.XXX ~~the guidelines set forth in this chapter~~**<sup>5</sup>, however, this presumption may be rebutted by evidence proving that the needs of a particular child are not met or are exceeded by such a child support obligation.

3. If the court establishes a child support obligation that is greater or less than the **total** child support obligation that would be established pursuant to **NAC 425.XXX ~~the guidelines set forth in this chapter~~**, the court must:

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<sup>4</sup> Voted and Approved on November 19, 2021

<sup>5</sup> Yellow Highlighted throughout document Voted and Approved on December 9, 2022

(a) Set forth findings of fact as to the basis for the **adjustment deviation** from **NAC 425.XXX the guidelines**; and

(b) Provide in the findings of fact the **total** child support obligation that would have been established pursuant to **NAC 425.XXX the guidelines**.

**NAC 425.110 Stipulation to child support obligation ~~that does not comply with guidelines~~; Requirements; authority of court to reject. ([NRS 425.620](#))**

~~1. In lieu of having a child support obligation determined pursuant to the guidelines set forth in this chapter,~~ The parties may stipulate to a child support obligation that does not comply with **such guidelines the guidelines set forth in this chapter**. To be binding, such a stipulation must be in writing and:

(a) Set forth the current monthly gross income of each party;

(b) Specify what the **total** child support obligation would be under **NAC 425.XXX the guidelines**;

(c) Provide notice to both parties that, if either party seeks a review of the stipulated child support obligation for any authorized reason, the court will calculate the child support obligation in accordance with **NAC 425.XXX the child support guidelines in effect at the time of the review**;

(d) Contain a certification by the obligee that he or she is not currently receiving **Temporary Assistance for Needy Families Cash Assistance public assistance and has not applied for public assistance**;

(e) Certify that the basic needs of the child are met or exceeded by the stipulated child support obligation; and

(f) Be approved and adopted as an order of the court.

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

**NAC 425.115 Determination of child support obligation in accordance with guidelines if no stipulation; adjustment of obligation based upon type of custody held by parent. ([NRS 425.620](#))**

~~1. If the parties do not stipulate to a child support obligation pursuant to [NAC 425.110](#), the court must determine the child support obligation in accordance with the guidelines set forth in this chapter.~~

~~2~~1. If a party has primary physical custody of a child, he or she is deemed to be the obligee and the other party is deemed to be the obligor, and the **total** child support obligation of the obligor must be determined **pursuant to NAC 425.XXX**.

~~3~~3. If the parties have joint physical custody of a child, **each party is an obligor and the total** child support obligation of each party **as an obligor**<sup>6</sup> must be determined **pursuant to NAC 425.XXX** After each party's respective child support obligation is determined, the child support

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<sup>6</sup> Voted and approved February 18, 2022.

obligation must be offset so that the party with the higher **total** child support obligation pays the other party **half of**<sup>7</sup> the difference.

43. If the parties have two or more children and (a) each party has joint physical custody of at least one, but not all, of the children, or (b) **each party has primary physical custody of one or more, but not all, of the children**<sup>8</sup>, the total child support obligation of each party must be determined based on the number of children **for ~~to~~**<sup>9</sup> whom each party owes a child support obligation. After each party's respective **total** child support obligation is determined **pursuant to NAC 425.XXX**, the child support obligations must be offset so that the party with the higher child support obligation pays the other party **half of**<sup>10</sup> the difference, **subject to adjustment pursuant to NAC 4425.150**<sup>11</sup>.

**NAC 425.120 Determination of monthly gross income of each obligor; provision of financial information or other records to court. ([NRS 425.620](#))**

1. The monthly gross income of each obligor must be determined by:
  - (a) Stipulation of the parties; or
  - (b) The court, after considering all financial or other information relevant to the earning capacity of the obligor.
2. In determining the monthly gross income of each obligor, the court may direct either party to furnish financial information or other records, including, without limitation, any income tax returns.

**NAC 425.125 Court authorized to impute income to obligor who is underemployed or unemployed without good cause; consideration of circumstances of obligor. ([NRS 425.620](#))**

1. If after taking evidence, the court determines that an obligor is underemployed or unemployed without good cause, the court may impute income to the obligor.
2. If the court imputes income, the court must take into consideration, to the extent known, the specific circumstances of the obligor, including, without limitation:
  - (a) The obligor's:
    - (1) Assets;
    - (2) Residence;
    - (3) Employment and earnings history;
    - (4) Job skills;
    - (5) Educational attainment;
    - (6) Literacy;
    - (7) Age;
    - (8) Health;
    - (9) Criminal record and other employment barriers; and
    - (10) Record of seeking work;

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<sup>7</sup> Voted and approved December 9, 2022.

<sup>8</sup> Voted and approved May 20, 2022.

<sup>9</sup> Voted and approved February 18, 2022.

<sup>10</sup> Voted and approved December 9, 2022.

<sup>11</sup> Voted and approved December 9, 2022.

- (b) The local job market;
- (c) The availability of employers willing to hire the obligor;
- (d) The prevailing earnings level in the local community; and
- (e) Any other relevant background factors in the case.

~~**NAC 425.130 Consideration of costs of child care paid by either or both parties. (NRS 425.620) The court must consider the reasonable costs of child care paid by either or both parties and make an equitable division thereof.**~~

**NAC 425.135 Order must include provision that medical support is required to be provided to child. (NRS 425.620)**

1. Every order issued or modified in this State must include a provision specifying:
  - (a) That medical support is required to be provided for the child; and
  - (b) Any details relating to that requirement.
2. As used in this section, “medical support” includes, without limitation, the payment of a premium for accessible medical, vision or dental coverage under a plan of insurance, including, without limitation, a public plan such as Medicaid or a reduced-fee plan such as the Children’s Health Insurance Program, that is reasonable in cost. For the purpose of this subsection:
  - (a) Coverage under a plan of insurance is “accessible” if the plan:
    - (1) Is not limited to coverage within a geographical area; or
    - (2) Is limited to coverage within a geographical area and the child resides within that geographical area.
  - (b) The payment of a premium for coverage under a plan of insurance is “reasonable in cost” if:
    - (1) The cost:
      - (I) To each party who is responsible for providing medical support is not more than 5 percent of the monthly gross income of the party; or
      - (II) Of adding a dependent child to any existing coverage for health care or the difference between individual and family coverage, whichever is less, is not more than 5 percent of the monthly gross income of the party; and
    - (2) The court assesses the plan of insurance, including the copayments, deductible and maximum out-of-pocket costs, and determines that the plan is reasonable in cost.

**NAC 425.140 Schedule for determining base child support obligation based on number of children and monthly gross income of obligor. (NRS 425.620)** Except as otherwise provided in [NAC 425.145](#), the base child support obligation of an obligor must be determined according to the following schedule:

1. For one child, the sum of:
  - (a) For the first \$6,000 of an obligor’s monthly gross income, 16 percent of such income;
  - (b) For any portion of an obligor’s monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 8 percent of such a portion; and
  - (c) For any portion of an obligor’s monthly gross income that is greater than \$10,000, 4 percent of such a portion.
2. For two children, the sum of:

- (a) For the first \$6,000 of an obligor's monthly gross income, 22 percent of such income;
  - (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 11 percent of such a portion; and
  - (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, 6 percent of such a portion.
3. For three children, the sum of:
- (a) For the first \$6,000 of an obligor's monthly gross income, 26 percent of such income;
  - (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 13 percent of such a portion; and
  - (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, 6 percent of such a portion.
4. For four children, the sum of:
- (a) For the first \$6,000 of an obligor's monthly gross income, 28 percent of such income;
  - (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, 14 percent of such a portion; and
  - (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, 7 percent of such a portion.
5. For each additional child, the sum of:
- (a) For the first \$6,000 of an obligor's monthly gross income, an additional 2 percent of such income;
  - (b) For any portion of an obligor's monthly gross income that is greater than \$6,000 and equal to or less than \$10,000, an additional 1 percent of such a portion; and
  - (c) For any portion of an obligor's monthly gross income that is greater than \$10,000, an additional 0.5 percent of such a portion.

**The court must then consider the reasonable costs of childcare paid by either or both parties and make an equitable division thereof. When considering the reasonable costs of childcare paid by either or both parties pursuant to NAC 425.130, the court shall set forth its specific findings, concerning, if applicable:**

- i. The cost of childcare proposed;**
- ii. The cost of reasonable alternatives to the proposed childcare;**
- iii. The ability of the parties to pay for child care;**
- iv. Whether either party has elected to remain home with the child rather than earning an income, subject to the provisions of NAC 425.125;**
- v. Whether childcare will allow a party to obtain training or education relating to a job, career or profession; and**
- vi. Any other factor the court deems relevant to the consideration.<sup>12</sup>**

**NAC 425.145 Establishment of child support obligation using low-income schedule if economic circumstances of obligor limit ability to pay; publication of schedule by Administrative Office of the Courts. ([NRS 425.620](#))**

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<sup>12</sup> Voted and approved on January 7, 2022 to add the language (subject to potential future edits before finalization of this document and remove the additional "if applicable".

1. If the court determines that the total economic circumstances of an obligor limit his or her ability to pay a child support obligation in the amount determined pursuant to [NAC 425.140](#), the **base** child support obligation must be established by using a low-income schedule which is based on the current federal poverty guidelines, as determined by the Secretary of Health and Human Services, and which is published annually in the Federal Register.

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

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

**NAC 425.150 Adjustment of child support obligation in accordance with specific needs of child and economic circumstances of parties. ([NRS 425.620](#))**

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

- (a) Any special educational needs of the child;
- (b) The legal responsibility of the parties for the support of others;
- (c) The value of services contributed by either party;
- (d) Any public assistance **as defined in NRS 422A.065** paid to support the child;
- (e) The cost of transportation of the child to and from visitation;
- (f) The relative income of both households, so long as the adjustment does not exceed the total obligation of the other party;
- (g) Any other necessary expenses for the benefit of the child; and
- (h) The obligor's inability to pay.<sup>13</sup>

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

**NAC 425.155 Review and adjustment of order if obligor incarcerated or involuntarily institutionalized for 180 consecutive days or more. ([NRS 425.620](#))**

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

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

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<sup>13</sup> Voted and approved February 18, 2022.



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

4. If a child support obligation is reduced during the period that an obligor is incarcerated or involuntarily institutionalized, beginning on the first day of the month following the release of the obligor, the child support obligation must be set by using the lowest monthly income in the low-income schedule established pursuant to [NAC 425.145](#) or, if a higher child support obligation was ordered by the court during the period of incarceration or involuntary institutionalization, to the higher of the two. This subsection must not be construed to preclude an obligor from seeking a modification of an order based on a change in circumstances or another authorized reason.

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

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

- (a) Imprisonment in a federal or state prison or a county jail; and
- (b) Involuntary commitment to a facility for the detention of children or a mental health facility.

#### **REVISER’S NOTE.**

The regulation of the Division of Welfare and Supportive Services filed with the Secretary of State on October 30, 2019 (LCB File No. R183-18), the source of this section, contains the following provision not included in NAC:

“Sec. 22. 1. The provisions of section 18 of this regulation [[NAC 425.155](#)] apply to any order for the support of a child that is issued or modified in this State on or after the effective date of this regulation [February 1, 2020].

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

#### **NAC 425.160 Termination or modification of order when child reaches certain age. ([NRS 425.620](#))**

1. Except as otherwise provided by law, if an order pertains to only one child, the child support obligation **is terminated beginning on the first day of the month following the date on which terminates when<sup>14</sup>** the child reaches 18 years of age or, if the child is still in high school, when the child graduates from high school or reaches 19 years of age, whichever comes first.

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

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

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

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<sup>14</sup> Voted and approved December 9, 2022.

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

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

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

**NAC 425.165 Notice required in order that pertains to more than one child and does not allocate specific amount to each child. ([NRS 425.620](#))** Any order that pertains to more than one child and does not allocate a specific amount of the total child support obligation to each child must include the following notice:

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

**NAC 425.170 Modification or adjustment of child support obligation must be based on change in circumstances. ([NRS 425.620](#))**

1. Except as otherwise authorized by law or this chapter, after a court has established a child support obligation, any subsequent modification or adjustment of the child support obligation must be based upon a change in circumstances.

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

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

**NAC 425.XXX: A court shall determine a total child support obligation of the obligor as the sum of:**

- 1. The base child support obligation as determine by NAC 425.140 or NAC 425.145 as applicable;**
- 2. Any equitable division of child care costs determined pursuant to NAC 425.130;**
- 3. Any equitable division of medical support determined pursuant to NAC 425.135; and**
- 4. Any adjustments determined by the court pursuant to NAC 425.150.**