CHAPTER 8-000 REVIEW AND MODIFICATION OF CHILD SUPPORT ORDERS

This chapter outlines the role of the Department and the County/Authorized Attorney in the review and modification of child support orders.

8-001 NOTICE OF RIGHT TO REQUEST A REVIEW: At least once every three years, the Department will notify each party subject to a IV-D child support order in Nebraska of the right to request a review of the order and the appropriate place and manner in which the request should be made.

8-002 CRITERIA FOR A REVIEW: All Nebraska IV-D court orders or foreign orders registered under UIFSA or RURESA in Nebraska are eligible for a review for possible modification of the child support amount and inclusion of health care coverage if the following criteria are met:

1. The order is for current support;
2. The order is an active Nebraska order;
3. Nebraska maintains continuing exclusive jurisdiction under UIFSA or is the proper state to acquire continuing exclusive jurisdiction under UIFSA for the support order;
4. At least one party resides in Nebraska;
5. The location of all parties involved is known;
6. The non-custodial party is not institutionalized or incarcerated;
7. The order is not a tribal order;
8. The youngest child in the order will not reach the age of majority within the next 12 months;
9. The order is not registered for income withholding only; and
10. The order does not require a change in custody to effectuate the modification of support.

8-002.01 Child Support Obligation; Request For Review; Frequency

1. An order will not be reviewed by the Department or County/Authorized Attorney if it has not been three years since the present child support obligation was ordered unless:

   a. The newly calculated child support and current support obligations vary by the percentage determined by the Nebraska Supreme Court and the variance is due to financial circumstances which have lasted three months and can be reasonably expected to last an additional six months;
   b. Health care coverage is available to either party and the child(ren) do not have health care coverage other than the Medical Assistance Program under the Medical Assistance Act;
   c. The requesting party demonstrates a substantial change in circumstances that has lasted for at least three months and is expected to last an additional six months;
   d. The present child support obligation does not provide for health care coverage; or
   e. Such review is required by Title IV-D of the Social Security Act, as amended.

2. An order may be reviewed one year after the most recent request for review if: the Department's determination after the previous review was not to refer to the County/Authorized Attorney for filing an application for modification because financial circumstances had not lasted for three months or were not expected to last for an additional six months; it has been three years since the present child support obligation was entered; and no exception under 466 NAC 8-002.01~~A~~ section 1 a through e requires an earlier review.

8-002.01A Review Denied: If a party requests a review and if at any time during the review process the review criteria are not met, the requesting party will be notified that the order is no longer eligible for review. Once denied, the request for review and modification is considered closed.

8-002.01B Good Cause: The Department will not conduct a review of an order in cases where the support has been assigned to the State and Department IV-D staff or designated IV-D contract staff has determined pursuant to a good cause exemption it would not be in the best interest of the child(ren) or custodial party to pursue a modification. See 466 NAC 3-003.

8-003 TIMEFRAMES FOR REVIEW AND MODIFICATION: Within 180 calendar days of the date that the Department or the County/Authorized Attorney receives a completed application for review and modification, or location of the non-requesting party, whichever occurs later, the Department or the County/Authorized Attorney will:

1. Conduct a review of the order and modify the order; or
2. Determine that the order should not be adjusted as specified in 466 NAC 8.

An application for review and modification is considered complete when the application has been fully completed and signed by the requesting party, and is accompanied by all required supporting documentation. See 466 NAC 8-005.03.

8-004 INITIATION OF REVIEW: A review may be initiated by the Department or the County/Authorized Attorney, any other State IV-D agency, or either party subject to the order.

8-004.01 Department-Initiated Review for TANF or IV-E Foster Care: The Department will initiate the review of a support order meeting the review criteria listed in 466 NAC 8-002 once every three years when:

1. Child support is assigned to the State; and/or
2. IV-E Foster Care services are being provided.

The Department will determine within 15 calendar days of initiating a review on a case whether a review should be conducted.

8-004.01A Department-Initiated Review for Medical Support Cases: The Department or the County/Authorized Attorney will initiate the review of a support order meeting the review criteria listed in 466 NAC 8-002 when medical support is assigned to the State and health care coverage is not already included in the order for support.

The Department will determine within 15 calendar days of initiating a review on a case whether a review should be conducted.

8-004.01B Department-Initiated Review for ~~Interstate~~ Intergovernmental Cases: The Department will initiate the review of a support order meeting the review criteria listed in 466 NAC 8-002 when Central Registry received a request for review from another state IV-D agency.

The Department will determine within 15 calendar days of initiating a review on a case whether a review should be conducted.

8-004.02 Individual Request for Review: A party may request a review of his/her order for possible modification if the order meets the review criteria in 466 NAC 8-002 and the request for review:

1. Is for the modification of support, or to include health care coverage; and
2. Does not include a request to modify spousal support, custody, or visitation rights.

When a party requests a review of his/her order, the Department or County/Authorized Attorney will send an application for review and modification to the party. The requesting party must complete and return the application before the Department can determine if a review should be conducted.

8-004.02A Receipt of Completed Application: The Department will determine within 15 calendar days of receipt of a completed review and modification application whether the request meets the review criteria stated in this chapter.

8-004.02B Withdrawal of Request for Review: A review may be terminated by a written request from the party who requested the review if:

1. The request is made before the review determination is sent; and
2. The non-requesting party, after receiving the written notice of his/her right to request that the review continue, does not object to terminating the review.

8-005 REVIEW

8-005.01 Failure to Locate All Parties of Standing: If the location of all parties of standing is not known, the Department will attempt location. If the Department cannot locate the interested parties, the request will be denied.

8-005.02 Notice of Intent to Review: If it is determined that a review will be conducted, the Department will send all parties subject to the order, at their last known mailing address, a notice of intent to review for modification. The review must begin 30 calendar days from the date of the notice of intent to review.

8-005.03 Information Needed for a Review: All parties must submit financial information and supporting documentation and information about the location of other parties and the financial circumstances of other parties, if known. Supporting financial documentation may include:

1. Two most recent years' tax returns with all IRS schedules;
2. W-2 statements;
3. IRS 1099 forms;
4. Pay stubs or other verification of all sources of income from the last three months;
5. Health care coverage information; and
6. Other items deemed necessary under the Nebraska Child Support Guidelines.

All parties in a Department-initiated review and the non-requesting party in a requested review must return financial information and supporting documentation within 30 calendar days of the date of the notice of intent to review.

8-005.03A Request for Additional Information: If the Department requests additional information, the parties must return the requested information postmarked within 15 calendar days of the date of the request.

8-005.03B Disclosure of Financial Information: Any financial or health care coverage information provided to the Department or the county/authorized attorney by either party may be disclosed to the other parties to the case or to the court.

8-006 CALCULATION: The Department will calculate the support obligation in accordance with the Nebraska Child Support Guidelines using the financial information available for the parties involved. The Department may utilize all available resources to verify or locate financial information should either party fail to return financial information and/or documentation.

8-007 CRITERIA FOR REFERRAL TO THE COUNTY/AUTHORIZED ATTORNEY: An order must be referred to the County/Authorized Attorney for filing an application for modification of a child and/or medical support order when:

1. The newly calculated child support and current child support obligations vary by the percentage determined by the Nebraska Supreme Court and the variance is due to financial circumstances which have lasted at least three months and can be reasonably expected to last an additional six months;

2. The current child support order does not contain any provision for health care coverage; or

3. Health care coverage is available to the non-custodial or custodial party at reasonable cost through an employer or organization which may extend to cover any child(ren) affected by the order and the child(ren) do not have health care coverage other than through the Medical Assistance Program under the Medical Assistance Act.

8-007.01 Health Care Coverage Referral Exceptions: It is not necessary to refer an order to the County/Authorized Attorney for filing an application for modification of a medical support order when the existing order:

1. Includes cash medical support;
2. Includes language that requires health care coverage to be provided should it become available in the future, and that cash medical support is ordered until such time; or
3. Stipulates alternative health care coverage to employer-based coverage.

8-008 REVIEW DETERMINATION

8-008.01 Notice of Review Determination: The Department will send all parties a notice of the review determination. This notice must include the notice of the parties' right to submit a written request for a reconsideration of the determination.

8-008.02 Request for Reconsideration of the Determination: Either party may request a reconsideration of the review determination. This request must be postmarked within 30 calendar days of the date of the determination notice. The request must include the reasons for the request as well as written evidence to support the request. Upon completion of the reconsideration, the parties must be sent a written notice of the second review determination.

8-009 FILING OF APPLICATION FOR MODIFICATION: Within 15 calendar days of receiving a referral, the County/Authorized Attorney must file an application for modification unless s/he determines in the exercise of independent professional judgment that the:

1. Variation from the guidelines is based on a material misrepresentation of fact concerning the financial information;
2. Variation from the guidelines is due to a voluntary reduction in monthly net income; or
3. The incarcerated non-custodial party has a documented history of willfully or neglectfully failing to pay support; or
4. Amount of the order and/or the availability of health care coverage is considered with all the other undisputed facts in the case, the criteria in 466 NAC 8-007 have not been met.

8-009.01 Inadequate Financial Information

8-009.01A One Party: When one of the parties fails to return the information needed for review in 466 NAC 8-005.03, or if the information received is incomplete, a rebuttable presumption is created. A referral sent to the County/Authorized Attorney creates a rebuttable presumption of a material change in circumstances of one of the parties if there is inadequate financial information regarding the:

1. Non-custodial party, the child support obligation will be increased at least ten percent; or
2. Custodial party, the child support obligation will be decreased at least ten percent.

8-009.01B All Parties: If all parties fail to return the information needed for review in 466 NAC 8-005.03, or if the information received is incomplete, a determination will be made based on the information available. If the case meets the criteria in 466 NAC 8-007, the case must be referred to the County/Authorized Attorney for filing an application for modification.

8-010 INCOME WITHHOLDING WITH MODIFIED ORDERS: If an application is filed for modification and the support order does not contain a provision for income withholding, the County/Authorized Attorney must request that the modified order contain such a provision.

8-011 ~~INTERSTATE~~ INTERGOVERNMENTAL REVIEW AND MODIFICATIONS

8-011.01 Nebraska as Initiating State: When a party requests the review of an order in an ~~interstate~~ intergovernmental case, the Department or the County/Authorized Attorney will determine in what state a review should be conducted.

8-011.01A Request to Other State: The Department or the County/Authorized Attorney will refer the case to the child support ~~interstate~~ intergovernmental central registry in the responding state for action within 20 calendar days of

1. Determining that it is appropriate to request a review in another state; and
2. Receiving the information necessary to process the case.

8-011.01B Notification to the Nebraska Party: Within ten calendar days of receipt of any notice issued by the responding state in connection with the review and modification of an order, the Department or the County/Authorized Attorney will send the party in Nebraska, a copy of any such notice.

8-011.02 Nebraska as Responding State: Within ten working days of receipt of an ~~interstate~~ intergovernmental request for review and modification the ~~Interstate~~ Intergovernmental Central Registry must forward the request to the Department. Within 15 calendar days of receipt of a request from the ~~Interstate~~ Intergovernmental Central Registry, the Department will determine whether a review should be conducted.

8-011.02A ~~Interstate~~ Intergovernmental Request Denied: When the Department determines that a review should not be conducted, a Denial Letter will be sent to the initiating state advising them of the reason for the denial.

8-011.02B ~~Interstate~~ Intergovernmental Request Granted: When the Department determines that a review should be conducted, Department staff will:

1. Send a notice to each party that a review will be conducted;
2. Conduct a review;
3. Provide notice to the parties of the right to challenge the proposed modification or other determination; and
4. Modify the order or determine that the order must not be modified.

All of these actions must be completed within the timeframes stated in 466 NAC 8-003.

8-011.02C Additional Information: The Department will contact the initiating state if additional information about the requesting party is needed in order to conduct the review. However, if additional information regarding the non-requesting party is needed, the Department will contact the non-requesting party directly.

8-011.02D Notification to the Party in the Initiating State: The Department will send any notices of the review to the party in the initiating state through the appropriate agency in the initiating state.

8-011.03 Governing Laws: The applicable laws and procedures of the state conducting the review and modification will govern the outcome of the review and modification process. However, if the modification is not conducted in the state that issued the original support order, the tribunal of the state conducting the modification may not modify any final, non-modifiable aspect of the original order.