

**WISCONSIN DEPARTMENT OF CHILDREN & FAMILIES**  
**Division of Family & Economic Security**  
**Bureau of Child Support**

**To: Child Support Directors**  
**Child Support Supervisors or Lead Workers**  
**Child Support Attorneys**

**From: Director**  
**Bureau of Child Support**

**CHILD SUPPORT  
BULLETIN**

**No.: 08-23**

**Date: 12/19/2008**

**Subject: Medical Support Establishment and Enforcement**

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**Purpose**

The purpose of this Child Support Bulletin is to notify child support agencies about new requirements for setting and enforcing medical support orders. This CSB replaces *CSB 02-03* "Health Insurance Enforcement", which is now obsolete.

**Background**

In 2007, the child support Policy Advisory Committee (PAC) conducted the required four-year review of Wisconsin's child support guidelines, DWD 40 Percentage of Income Standard for Setting Child Support (Changed to DCF 150 effective 12/1/08). The Wisconsin Child Support Guidelines Review was issued in January 2008, included recommendations to implement proposed Medical Support Regulations that had been published in September 2006.

On July 21, 2008, OCSE published the Medical Support *Final* Regulation. The final Medical Support Regulations are effective upon publication. Most of the new medical support requirements under the regulations can be carried out under the authority of existing Wisconsin statutes. The Department of Children and Families is seeking changes to DCF 150 to formally incorporate the new federal medical support requirements into the child support guidelines.

This Medical Support Final Regulation include the following provisions:







- Requires states to address how parents will provide for the children's health care needs through health insurance coverage and/or through cash medical support.
- Defines *cash medical support* as an amount paid toward the cost of health care, or toward other medical costs not covered by health insurance (HI). This includes orders for non-covered expenses that are split between parents (i.e. 50%-50%).
- Defines *reasonable cost* as an amount that does not exceed 5% of the parent's monthly gross income to add children to existing coverage or for paying the difference between self-only and family coverage premiums.
- For all new and modified child support orders, requires states to petition the court for orders:
  - That include private HI that is accessible to the children and available to the parent at a reasonable cost, or
  - For cash medical support if private HI is not available at a reasonable cost.
- Requires states to identify orders that do not address the children's health care needs, and petition the court to modify such orders.
- Permits, but does not require, states to enforce medical support orders that require the *custodial parent* to provide health insurance coverage.

## Policy

This Child Support Bulletin sets new policy for the establishment, enforcement and modification of orders for medical support to implement the new federal regulations governing medical support.

The new policy requires that the child support agencies seek a court order for either parent to provide health insurance for the children that is accessible to the children, provides comprehensive, coverage, and is available at a reasonable cost or a with reasonable contribution from the other parent. Child support agencies must also seek court orders that address payment of non-covered medical expenses incurred by the child(ren).

## Definitions

-  *Accessible:* A health care plan is considered accessible if the plan's service providers are located within a reasonable distance from the child's home. In general, coverage is considered accessible if the service providers are located within 30 minutes or 30 miles of the address where the child resides or, in some rural areas, a greater distance.
-  *Cash Medical Support:* An amount paid by either parent toward the cost of health care, or toward other medical costs not covered by health insurance (HI), including non-covered expenses that are split between parents (i.e. 50%-50%).
-  *Comprehensive:* A health care plan is considered comprehensive if the health insurance plan would cover hospitalization and other medical costs without large out-of-pocket deductibles or co-payments. The determination about what constitutes large out-of-pocket deductibles or copayments may vary on a case-by-case basis depending upon the parent's income and other expenses.
-  *Reasonable Cost:* A health care plan is considered available at a reasonable cost if the cost to add the children to an existing, comprehensive health care policy does not exceed 5% of the insuring parent's monthly gross income, or if the difference between the self-only and family coverage does not exceed 5% of the insuring parent's gross monthly income available for child support.
-  *Reasonable Contribution:* If an accessible, comprehensive health care plan is available to a parent and the cost for the coverage exceeds 5% of the *insuring* parent's income, but is less than **5% of the combined income** of both parents, the CSA must seek an upward or downward adjustment to the child support amount under Wis. Stat. § 767.511(1m)(f) as a *reasonable contribution* toward the coverage from the non-insuring parent. The CSA may not seek a *reasonable contribution* that would exceed 5% of the *non-insuring* parent's gross monthly income available for child support. A *reasonable contribution* meets the definition of cash medical support.
-  *IV-D Enforceable HI Policy:* A comprehensive, private health care plan that is accessible to the children and available at a cost that does not exceed 5% of the parents' combined gross income, i.e. *reasonable cost* (up to 5%) of the insuring parent's income, plus a *reasonable contribution* (up to 5%) of the non-insuring parent's gross income.

## Medical Support Petition

Under Wis. Stat. § 767.513 (2), the court is required to specifically assign responsibility for and direct the manner of payment of the child's health care expenses. The court must consider the availability of health insurance to each parent, the extent of coverage available to a child, and the costs to the parent for the coverage. This statute provides the court with broad authority to enter or modify support orders to include provisions for payment of medical expenses, medical costs, or insurance premiums.

- Effective immediately, in all new and modified child support orders, the CSA must petition the court for an order to require *either* parent to enroll the children in a *comprehensive* private health care plan that is *accessible* to the children and available to the parent at a *reasonable cost*. If the court determines that coverage is available, the CSA must seek an order that specifies *which parent* is required to cover the children under the plan.
- If such a plan is available to a parent, but the out-of-pocket cost to the insuring parent exceeds *reasonable cost*, the CSA must ask the court to adjust the regular child support order to require the non-insuring parent to provide a *reasonable contribution* toward the health insurance costs. The CSA may not seek a *reasonable contribution* that exceeds 5% of the non-insuring parent's income and must be assessed by seeking an adjustment to the payer's regular support under Wis. Stat. §767.511 (1m) (f) as follows:
  - If the payer is the insuring parent, the CSA must seek a downward adjustment to the payer's support amount, not to exceed 5% of the payee's gross income, if said adjustment will allow the children to be covered under an accessible, comprehensive health insurance plan that is available to the payer with a reasonable contribution from the other parent.
  - If the payee is the insuring parent, the CSA must seek an upward adjustment to the payer's support amount, not to exceed 5% of the payer's gross income, if said adjustment will allow the children to be covered under an accessible, comprehensive health insurance plan that is available to the payee with a reasonable contribution from the other parent.
  - Under this formula, private health insurance is considered reasonable if the cost does not exceed 5% of the combined income of both parents. The CSA may not seek an order under which either parent would pay or contribute more than 5% of the parent's monthly gross income toward said coverage, as this would exceed reasonable cost.
- If a parent is determined to be a low-income parent as defined as less than 125% of FPL, the CSA should not seek an order for the parent to make a reasonable contribution toward the cost of coverage, or to enroll the children under a HI plan unless coverage is available at *no cost* to the parent.
- Depending upon the circumstances of the case, the CSA may also ask the court to consider existing coverage or insurance plans available to other individuals, including stepparents, grandparents or guardians who might *voluntarily* enroll the child(ren) under an accessible, comprehensive health care plan.
- If there is more than one health care plan available to cover the children, the CSA may ask the court to consider the circumstances of the case and identify the most appropriate plan to cover the children. The court may order that the parent(s) enroll the children in either the CP's or NCP's plan, in both parent's plans, or under another available plan depending on case circumstances.
- In addition, the CSA should seek an *if-then* order so that if the children are not covered by a IV-D Enforceable HI Policy and such coverage later becomes available to either parent at a reasonable cost, that parent will enroll the child(ren) under said plan.

Federal regulations and BCS policy require that child support agencies follow this directive in seeking health care orders, and take reasonable steps to ensure that the court has the information necessary to evaluate the health care coverage that might be available to the children and the cost for the coverage. However, the statute gives the court broad authority to consider all factors in the case and to establish medical support provisions that may or may not be consistent with application of this policy. In determining the medical support order, the court may use a different formula to assess the costs for the coverage, including assessing each parent ½ of the out-of-pocket costs for the coverage.

### **BadgerCare Plus Coverage**

If private health insurance is not available to cover the children, BadgerCare Plus may be an option for the family. If the BadgerCare Plus premium exceeds 5% of the income of the parent who enrolled the children in BadgerCare Plus, the CSA may seek a deviation to the child support order for the other parent to make a *reasonable contribution* to the current child support amount under § 767.511(1m)(f), as provided above, to help cover the costs of the BadgerCare Plus premium.

The CSA is not to seek a *separate* cash medical support payment toward the other parent's BadgerCare Plus premium. Certain BadgerCare Plus funding sources require an automatic assignment of cash medical support orders. KIDS is not programmed to effectuate an assignment of cash medical support and direct that payment to the Medicaid program. The CSA cannot ensure that the BadgerCare Plus premium will be paid by the custodial parent and failure to pay a required BadgerCare Plus premium will result in loss of eligibility for the children.

### **Court Finding of \$0 Cash Contribution toward Insurance**

For cases where there is a court determination that comprehensive, private health insurance coverage that is accessible to the children is not available to either parent under these guidelines, the CSA should seek an appropriate *court finding in the order* that no comprehensive private health insurance policy is available to the parents that will cover the children at a reasonable cost, plus a reasonable cash contribution. The cash medical support in this matter is therefore \$0.

In addition, if the NCP has income below 125% of the federal poverty level and does not have health insurance available at no cost, the CSA should seek an appropriate *court finding in the order* that the non-custodial parent's cash medical support obligation is therefore \$0.

These findings must be recorded in KIDS.

### **Non-Covered Medical and Cash Medical Support**

Whether or not private health insurance coverage is available, the CSAs must seek an order which assess parental responsibility for non-covered expenditures. The order may require that parents share all non-covered medical expenses on a 50-50 basis, or may require another allocation of non-covered expenses between the parents.

CSAs are not required to provide services to collect non-covered medical payments incurred for a child unless there is a judgment or order for the non-covered expenditures (OMED USGNA). At the CSA option, the CSAs may seek a judgment or order to recover non-covered medical payments and may seek a periodic payment on said expenses. These judgment amounts must be entered as OMED USGNA orders and payments must be directed through KIDS.

### **Modifying Medical Support Orders**

Under federal regulations, Review and Adjustment services must include medical support. The CSA must review the provisions of the medical support order when reviewing the amount of the child support.

If there is a substantial change in circumstances, either parent or the CSA may seek a modification to change the medical support provisions under the order. For example, the parties may seek to modify a medical support order that requires a parent to enroll the children under a private health insurance policy if the coverage is no longer available at a reasonable cost or is no longer accessible to the children.

If the application of this medical support policy would permit the children to be enrolled in a IV-D Enforceable HI Policy, and the medical support calculation would result in a change that meets the reasonable quantitative standard for Review and Adjustment services (support would change by 15% and \$50 per month), the CSA must provide Review and Adjustment services upon request of either parent.

### **Enforcing Medical Support Orders**

Child support agencies are *required to enforce* medical support orders by sending National Medical Support Notices (NMSN) to the *NCP's* employer. At the CSA option, the CSA *may enforce* a medical support order when the CP is ordered to provide health care coverage. The CSA may produce the NMSN if the CP's employer is known.

The CSA may also take other appropriate enforcement actions against a CP or NCP to enforce the medical support order, including contempt of court.

Under the new federal regulations, child support agencies are no longer required to send the CP notice of the coverage (HI05). However, CSAs are encouraged to send the notice if there is reason to believe that the CP is not aware of the child(ren)'s enrollment under a plan.

### **Interstate Actions and Medical Support**

Although final instructions have not been provided by OCSE, the Federal Register published comments discuss medical support in interstate cases. If a responding State has been asked by an initiating State to establish a medical support order, the responding State must determine if private health insurance that is accessible to the children is available to the non-custodial parent at a reasonable cost. If not, the initiating state should determine if private health insurance that is accessible to the child is available to the custodial parent and, if appropriate, ask the other state to modify the underlying order to require the CP to secure the insurance. The CSA may also ask the responding state to seek a cash contribution from the other parent.

### **KIDS Document Changes for Medical Support**

The Documents Workgroup has drafted new medical support language for petitions and orders. This language will be added to the appropriate KIDS documents in 2009. In January 2009, BCS will provide "Custom Text Elements" that CSAs may use until the final KIDS document changes are made.

### **KIDS Entry of Medical Support Orders**

Under federal law, OCSE must make a recommendation for Congress to implement a new performance measure that includes the establishment and enforcement of medical support orders. At this time, it is unclear when a medical support performance measure might take effect. However, states are required to report medical support performance information on the OCSE 157 Report.

To capture medical support information to accurately report medical support information on the OCSE 157 Report, court order information in KIDS must capture information that a parent is required to provide health insurance and/or make a reasonable contribution to the cost of coverage. KIDS must also capture orders for non-covered expenses.

New Non-Financial Obligation codes will be added to capture additional medical support information. The new codes will be added to KIDS in early 2009 and BCS will modify the Court Order Entry Fact Sheet for Medical Support Court Order Entry.

The new Medical Support Court Order Entry Fact Sheet will include the new codes and information about how to enter the terms of medical support orders including:

- HEAI obligation terms that specify which parent is to provide health insurance.
- HEAI obligation terms to capture *if-then* orders that health insurance is not presently available to cover the children, but either parent is required to enroll the children if such a plan becomes available to the parent at a reasonable cost.
- OTHR obligation terms that specify if the CP or NCP is a non-insuring parent required to make a Reasonable Contribution (deviation) as a cash medical support contribution to the insuring parent.
- OTHR obligation terms that specify that the court made a finding that insurance is not available to either parent at a Reasonable Cost/Reasonable Contribution and cash medical support is set at \$0.
- OTHR obligation terms that identify that a parent meets the definition of a Low-Income Parent under DCF 150 and cash medical support is set at \$0.
- NONM obligation terms that require parents to pay the costs of non-covered health care expenditures.

BCS will also provide reports that identify KIDS cases that do not include non-financial provisions for health insurance (HEAI) and/or non-covered medical expenses (NONM).

### **Summary**

In all new and revised child support orders, the CSA must seek a medical support provision for either parent to cover the children under an accessible, comprehensive, private health insurance plan if such a plan is available to either parent at a reasonable cost or with a reasonable contribution from the other parent.

CSAs must provide Review and Adjustment services that address medical support and enforce medical support orders by appropriately producing the National Medical Support Notice to the NCP's employer. At the CSA option, the CSA may issue the National Medical Support Notice to the CP's employer and take other appropriate enforcement action to enforce orders.

Whether or not the court orders the child(ren)'s enrollment under a private health care plan, the CSA must seek an order that addresses non-covered medical expenses. At the CSA option, the CSA may seek a court order or judgment under child support guidelines for recovery of non-covered medical expenses, including recovery of birthing expenses. To be considered cash medical support, recovery of non-covered expenditures must be set under the guidelines and all payments must be made through KIDS.

### **Resources:**

[Threshold for Review and Adjustment CSB 07-24C](#)