

ENFORCING A SUPPORT ORDER

Enforcing Health Insurance Orders

CS 520.7

SUPERSEDES

CS 520.7 Enforcing Health Insurance Orders, August 28, 2017

REFERENCES

42 USC § 666(a) (19); 45 CFR §§ 303.31 and 303.32; MCA §§ 40-5-208 and 40-5-801 through 40-5-825

Policy

Scope of Enforcement

The CSSD is responsible for enforcing medical support in all IV-D cases where a health insurance order is in effect against a parent. In cases where both parents are ordered to provide health insurance the CSSD uses procedures in CS 520.3 Reviewing Health Insurance Orders to identify the appropriate enforcement parent. The CSSD is also responsible for enforcing medical support dollar amounts specified in child support orders, but these amounts are treated as child support for enforcement purposes, and the procedures in this section do not apply.

Support orders entered under the Montana Medical Support Reform Act generally contain not only health insurance provisions, but also certain other medical support provisions relating to sharing or reimbursement of medical expenses or access to coverage between parents. The CSSD does not at this time enforce these additional provisions except in rare occasions, and only in Medicaid cases, (further information regarding the expedited process can be found at MCA § 40-5-824). Either party may, however, seek a judgment for any costs or penalties associated with these provisions in district court.

Definitions

Employer/Payor: For purposes of this section an employer/payor means either a business that pays income to the parent but is not owned or operated by the parent, or the parent's business that is registered with the Montana Secretary of State as a DBA (Doing Business As) or as a corporation.

Employment Related Insurance: The CSSD considers employment related insurance from Unions or TRICARE* to be employment insurance. References to employer or employer insurance should be read to include the employer related insurances mentioned above. In cases where the enforcement parent refuses to obtain health insurance from either of these, the CSSD can enforce the insurance requirement through a contempt or medical penalty action. Hardship determinations for employment related insurance should be treated in the same manner as those for ordinary employer insurance.

*TRICARE, formerly known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), provides civilian health benefits for military personnel, military retirees, and their dependents. Included under the TRICARE name is a number of options such as TRICARE Standard, TRICARE Prime and TRICARE Reserve Select (TRS). In addition, dental is offered through the TRICARE Dental Program (TDP). Details on the TRICARE options can be found at <http://www.tricare.mil/>.

Geographically Accessible: For purposes of this section geographically accessible means some or all covered medical services are available within one hour's drive of the child's residence.

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Enforcement Action--Standard Procedure

The CSSD enforces health insurance orders by ordering the employer/payor and the plan administrator to enroll the children in a plan available to the parent's dependents. The CSSD initiates the enforcement action by serving on or obtaining from the enforcement parent one of the following three notices:

- 1. Notice of immediate enrollment.** This notice is contained in the Notice and Order for Medical Support (NOMS), and in the Notice and Order Concerning Support (NOCS) either one of these notices is issued by the CSSD during the establishment process. A Notice of immediate enrollment is also included in the Modification Notice and Order (MONO) issued during a modification action. It tells the parent the CSSD intends to order enrollment immediately upon entry of the support or modification order. Immediate enrollment may be contested by requesting a hearing on the NOMS or MONO within the time allowed for response to the notice. *(Note that immediate enrollment is available only if the NOCS or MONO actually contains the necessary language. Generally, NOCS and MONO documents issued before January 2002 did not contain immediate enrollment language, and documents issued between January 2002 and November 2003 contained immediate enrollment language for the non-custodial parent only.)*
- 2. Notice of Intent to Enroll (NIE).** This notice is used when the support order does not contain a provision for immediate enrollment. It tells the enforcement parent the CSSD intends to order enrollment if the parent does not request a hearing within 10 days.
- 3. Voluntary Enrollment Authorization.** This authorization, when signed by the enforcement parent, allows the CSSD to issue an Order to Enroll to the parent's employer. The parent gives up his or her right to be served with, or to request a hearing on, the Notice of Intent to Enroll. Once entered, the authorization may not later be withdrawn.

In the case of the notices in 1. and 2. above, if the parent does not request a hearing or obtain a medical hardship as in CS 520.5 Medical Hardship Review, or other special determination within the prescribed time, the CSSD issues an Order to Enroll (OTE) as soon as an employer/payor is located. If the employer/payor does not offer health insurance for which the parent's dependents would qualify, it so informs the CSSD and the CSSD takes no further action in this section until the status changes. If the employer/payor does offer health insurance the plan administrator must enroll the children, and the employer/payor must withhold the premiums from the parent's income.

If the total withholding for child support (current support plus arrears) and health insurance exceeds the limits of the federal Consumer Credit Protection Act (CCPA), the current support and the health insurance have priority before arrears. If the total cost of the health insurance and current support exceed CCPA limits, the employer/payor may not withhold the premiums; enrollment cannot proceed. The employer/payor must inform the CSSD if the CCPA limit prevents enrollment in cases where the enforcement parent is the non-custodial parent.

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If CCPA limits prevent enrollment, the employer must withhold current support and arrears up to the CCPA limit.

The plan administrator may not disenroll the children unless the CSSD orders disenrollment, the parent proves that he or she is providing comparable coverage outside employment, or the employer stops withholding premiums to avoid exceeding the CCPA limit.

Send Order to Enroll (OTE) to Employer/Payor Only

The employer/payor is the only recipient of the OTE package. The law does not require the obligor or obligee to receive a copy and does not include amounts or otherwise give rise to a hearing right. The obligor should have been informed through an NIE, or an administrative notice that the OTE would be sent to any employer. Also, they were made aware of their legal obligation as part of their support order.

If the obligor or obligee request a copy of the OTE the Personally Identifiable Information (PII) **must** be redacted. Refer to your supervisor before making the decision to send a copy of the OTE.

Medical Care Defined

To be enforceable under this section health insurance must provide medical care or benefits for a child as defined by MCA § 40-5-804(7) which states,

"Medical care means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body."

Under Montana law, an insurance plan that provides any of the services listed above is sufficient to satisfy the enforcement parent's requirement for health insurance.

Procedures

Procedures for Caseworker

- 1. Initiating Enforcement.** Upon identifying an enforcement parent, as in CS 520.3 Reviewing Health Insurance Orders, in a case where medical support enforcement action is required:
 - proceeds to step 2 for each child for whom a Notice of Intent to Enroll (NIE) to the enforcement parent is required, refer to NOTE 1.
 - proceeds to step 3 for each child for whom the support order contains a provision for immediate enrollment against the enforcement parent, refer to NOTE 3.

All active-status children in the case are considered, regardless of custodian, unless enforcement is restricted, see CS 520.3.

NOTE 1:

Requirement for NIE. An NIE is required for each child for whom immediate enrollment does not apply. A signed and notarized Voluntary Enrollment Authorization (VEA) for the child may be used in place of the NIE.

NOTE 2:

Obsolete Enrollment Notices. Until July 2001, the CSSD used a Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH) to enforce medical support. The NOIEH promised that the CSSD would not order the employer/payor to enroll the child, as long as, the non-custodial parent obtained and maintained voluntary enrollment. This notice is now obsolete; it does not fulfill the requirement for the NIE in these procedures.

NOTE 3:

Immediate Enrollment Language. Immediate enrollment is included in the support order if the order contains the following language or its equivalent with respect to the enforcement parent:

"When dependent health insurance is available through the [enforcement parent]'s employer or payor, immediate enrollment applies upon entry of this support order, and the CSSD may order the employer or payor and the plan administrator to withhold premiums and enroll the children (and the [enforcement parent] if necessary) in a health plan available to the [enforcement parent]'s dependents."

TERMINOLOGY NOTE 1: In the remainder of these PROCEDURES, unless otherwise specified, the term **parent** means the enforcement parent identified in CS 520.3.

TERMINOLOGY NOTE 2: In the remainder of these PROCEDURES, the term **custodian** means the custodian who is not the subject of this enforcement.

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2. Preparing and Serving the NIE. Proceeds in step 2a or 2b below as applicable.

- a. Unless the exception in step 2b applies, prepares CS-520.7A Notice of Intent to Enroll generated from the Notice of Intent to Enroll Detail (NID) screen. Includes in the notice all the children identified in step 1, the document automatically includes the current custodian for each child.

Secures service of the NIE on the parent by one of the following service documents:

- *CS- 405.1 Acknowledgment of Service
- Certified restricted mail
- CS-401.3C Sheriff’s Praecept or cover letter to private process server if it is believed acknowledgement or certified restricted mail will be ineffective

*Special provision for service by acknowledgement. Send the original acknowledgment form and a self-addressed stamped envelope for the obligor’s return. If the obligor does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure.

NOTE: In addition to sending the Notice and Acknowledgment form retains a copy in the case file. Replaces the copies of the acknowledgment form with the *signed* originals upon their return.

Enters the date and method of service on the NID screen, and retains the written proof of service in the case file. Monitors for the parent's response within 10 working days from the date of service; proceeds to step 4, 5, or 6 as applicable. In the case of service by acknowledgment, if a signed acknowledgment is not returned within 20 calendar days after the mailing date, immediately arranges for service by sheriff or private process server.

If service of the NIE fails, enters a case note in system for the failure; reattempts service of the original document as applicable, and enters a case note in system for each attempt.

Use of NIE Not Related to Current Enrollment or Hardship. The CSSD issues the NIE for any child identified in step 1 where the CSSD has jurisdiction in the case regardless of whether,

- the parent has voluntarily enrolled the child in insurance coverage
- the CSSD has granted a medical hardship for the current employer/payor coverage
- the child is eligible for services from the Indian Health Service (IHS)
- the CSSD has already ordered the current employer/payor to enroll the child based on a pre-July 2001 notice

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It is considered best practice to issue the Notice of Intent to Enroll to both parents at case opening or upon establishment of the medical order. The goal is to get both parents into enrollable status, which reduces the time delay in pursuing medical enforcement.

- b. **EXCEPTION: Voluntary authorization.** If the parent agrees to enrollment of the child and is willing to give up the right to notice and opportunity for hearing on the enrollment action prepares and sends to the parent CS-520.7C Voluntary Enrollment Authorization (VEA), and monitors for return within 10 calendar days after the date mailed.
 - i. If the parent contacts the CSSD with questions concerning the intent to order enrollment, explains or takes action in step 4 as applicable, adapting the instructions as necessary for the voluntary authorization. Upon resolution of any issues proceeds as in step 2b(ii).
 - ii. If the parent does not contact the CSSD with questions concerning the intent to order enrollment, and the parent
 - parent timely returns the signed and notarized authorization, completes the NID screen as if for immediate enrollment, using the date signed by the parent as the resolved date, and proceeds to step 9
 - does not timely return the authorization, returns to step 2a to issue the NIE

NOTE:

Role of VEA. Once signed by the parent, a Voluntary Enrollment Authorization has the same effect as an NIE resolved in favor of enrollment. The VEA cannot be withdrawn

if the parent later disagrees with a CSSD enrollment action for the children covered by the authorization.

- 3. Immediate Enrollment Authority.** If the support order contains a notice of immediate enrollment against the parent, enters a case note in system for the immediate enrollment authority and completes the NID screen for the immediate enrollment notice.

If the parent responds to entry of the support order by contacting the CSSD and questioning the intent to order enrollment, explains or takes action in step 4. as applicable, adapting the instructions as necessary for the immediate enrollment notice instead of the NIE.

Upon resolution of any issues in step 4., or if the parent does not respond to the support order on the subject of enrollment, proceeds directly to step 9.

The following relating to enroll ability applies:

- a. A Notice of Intent to Enroll does not lapse or become invalid when a new order is entered, or a modification occurs.
- b. Immediate enrollment authority derived from a NOTICE AND ORDER CONCERNING TEMPORARY SUPPORT (TNOCS) terminates by operation of law upon entry of a final District Court Order. At this time, a Notice of Intent to Enroll or Voluntary Enrollment Authorization must be issued.

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- c. Immediate enrollment authority derived from a NOTICE AND ORDER CONCERNING SUPPORT (NOCS) terminates by operation of law when the order is modified by a District Court. However, immediate enrollment authority is not affected if the CSSD continues to enforce the medical support provisions of the NOCS when a determination is made that the District Court order did not modify medical support.
 - d. If the CSSD consents to a District Court modification of an administrative order, immediate enrollment authority is terminated by operation of law unless the CSSD specifically exempts that provision from the consent to modification. When this occurs, a Notice of Intent to Enroll must be issued, unless Voluntary Enrollment Authorizations are in place.
- 4. Discussions with Parent.** If the parent responds to the NIE by contacting the CSSD and questioning the intent to order enrollment, explains or takes action as applicable in 4.a through 4.j below:
- a. Notice incorrect. If the parent proves that the NIE is incorrect, either amends or dismisses the notice as applicable.
 - To amend the notice--issues an amended NIE from the NID screen, and begins again at step 2.
 - To dismiss the notice--issues CS-401.3F Motion and Order to Dismiss Administrative Notice, and enters the date dismissed on the NID screen.
 - b. Voluntary enrollment. If the parent objects that the child is already voluntarily enrolled in employer/payor coverage, explains the CSSD must order enrollment anyway, to comply with federal regulations, and this is not a punitive action. If the enrollment was previously unknown to the CSSD, updates the medical screens for the insurance coverage. Also notifies any affected custodian of the coverage as in step 14.b.
 - c. Existing order. If the parent objects that the CSSD has already ordered the employer/payor to enroll the child, explains the order will remain in place; the NIE has been issued to advise the parent of the actions the CSSD will take should the parent's employment change. This may occur as a transition situation for cases in which the NIE is replacing a previous CSSD notice to the non-custodial parent issued before July 2001.
 - d. No insurance. If the parent objects that the employer/payor does not provide dependent health insurance for which the parent is eligible, explains as in 4.d(i) or 4.d(ii) below:
 - i. If the caseworker has verified that the employer/payor does not currently provide dependent health insurance for any employees, explains the CSSD will not issue the order, as long as, that situation applies. Refer to Step 9., item 4), NOTE 4.
 - ii. If the caseworker has not verified insurance availability, or is aware the employer/payor does provide insurance to some or all employees, explains there is a provision in the order that allows the employer/payor to respond that insurance is not available; however, the order and response are required for CSSD records.

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- e. Waiting period. If the parent objects that employer/payor coverage is not currently available because of a waiting period, explains the CSSD is required to order enrollment now; the employer/payor and plan administrator must arrange for enrollment as soon as the waiting period expires.

NOTE:

Delay for Open Enrollment Not Allowed. The waiting period referred to above is not the same as the time remaining before the next health insurance open enrollment period. Montana law at MCA§40-5-812(3) does not allow the plan administrator to delay ordered enrollment for that purpose. Part B of the enrollment order issued in step 10 advises the plan administrator that, "All enrollments are to be made without regard to open season restrictions".

- f. Existing hardship. If the parent objects that the CSSD has already granted a medical hardship for the current situation, explains the hardship will be honored, as long as, the situation remains the same; the NIE has been issued to advise the parent of the options available when the hardship expires. This may occur as a transition situation for cases in which the NIE is replacing a previous CSSD notice to the non-custodial parent issued before July 2001.
- g. Other parent providing coverage. If the parent objects that the other parent already provides health insurance coverage for the child, investigates to determine whether the other parent's insurance is valid. If so, and if the other parent is ordered to provide health insurance in the case, considers whether it would be appropriate under the procedures of CS 520.3 to initiate enforcement against the other parent. If changing the enforcement parent is not appropriate, proceeds against the noticed parent in this step; explains to the parent he or she may request a hearing and, if the support order allows, obtain a ruling on whether the combination of the two plans would be cost beneficial.

If the enforcement parent is not re-designated and the other parent's coverage is verified, enters the insurance information on system and informs the CSSD Medical Liaison as in step 14.

- h. Insurance too expensive. If the parent objects that the employer/payor coverage is too expensive, explains the CSSD will review the case for a medical hardship, and informs the parent of the possible outcomes as described in the NOTE following sub step 4j. Proceeds to CS 520.5 Medical Hardship Review to determine the hardship. Also proceeds to step 5 or 6 in this section if applicable.
- i. Not geographically accessible. If the parent objects that the employer/payor coverage is not geographically accessible to the child, explains the CSSD will review the case to determine accessibility, and informs the parent of the possible outcomes as described in the NOTE following sub step 4j. Investigates accessibility according to the definition at the end of this sub step (4.i), and proceeds as follows:

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- i. If there is no employer/payor plan option that satisfies the definition, updates the MEC screen and takes no further action in this section unless accessibility changes. If there is a change in accessibility in favor of enrollment, updates the MEC screen and proceeds to step 7.
- ii. If employer/payor coverage is accessible, enters a case note in system for geographically inaccessible denied, and proceeds to step 9.

DEFINITION: For purposes of this section geographically accessible means some or all covered medical services are available within one hour's drive of the child's residence.

EXCEPTION: If no medical services are available at all, regardless of coverage within one hour's drive, but the nearest medical services that are available would be covered, then the plan is considered geographically accessible. For example, the nearest hospital is 2 hours away, and services provided by that hospital would be covered under the plan. In questionable cases or extenuating circumstances, the caseworker should consult the supervisor or staff attorney to determine accessibility.

IHS accessibility. As of the date of this printing, it has been determined that IHS coverage is accessible throughout the state of Montana.

- j. **Alternative coverage.** If the parent objects that he or she already provides health insurance coverage for the child outside employment (alternative coverage), explains the CSSD will review the case to determine whether the alternative coverage is acceptable; informs the parent of the possible outcomes as described in the NOTE following sub step 4j.

Investigates the alternative coverage. The parent is considered to provide alternative coverage if i. and ii. below apply:

- i. The parent, the parent's current spouse, the parent's relative, who is not a custodian in the case, or a member of the parent's household actually carries the coverage; or the child is eligible for services from HMK, IHS or some other non-public assistance plan or program that does not require a premium, based on facts about the parent or child, and the services are geographically accessible to the children.
- ii. The coverage includes medical care or benefits for the child as defined in policy under, Medical Care Defined. Note that according to this definition alternative coverage may be satisfied by a plan that provides emergency services only.

If alternative coverage is provided by the parent, takes action in step 14., and monitors for a change in supporting facts. If the facts change in favor of enrollment, proceeds to step .7; otherwise takes no further action in this section.

If alternative coverage is not provided by the parent, enters a case note in system for alternative coverage denied and proceeds to step 9.

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NOTE:

Sub steps 4.h, 4.i, 4.j--Caseworker Determinations. In cases where the parent requests a determination by the caseworker on the subject of medical hardship, geographic accessibility, or alternative coverage, the caseworker should make clear that the time for requesting a hearing on the NIE is not extended. If the determination is in the parent's favor (the caseworker finds that the cost of insurance is not reasonable, the coverage is not accessible, or alternative coverage is in place), the CSSD will not order enrollment unless the situation changes. However, if the determination is against the parent and the parent has not timely requested a hearing on the NIE, the hearing opportunity is lost and the CSSD will order enrollment without further notice.

- 5. Time Up on NIE.** If the parent does not timely respond to the NIE by requesting a hearing, enters the resolved date and result on the NID screen. If the parent has not initiated a caseworker determination in step 4.h, 4.i, or 4.j (coverage too expensive, not geographically accessible, or already provided outside employment) that has resulted in non-enrollment, proceeds to step 9.
- 6. Request for Hearing.** Upon being informed in step 8.a that the parent has timely requested a hearing on the NIE--either initially or as a result of a contact in step 4. --takes action in steps 6.a through 6.d below.
 - a. Contacts the parent and attempts to resolve the problem informally by explaining or taking action as in step 4. Note that this step includes determining any claim made by the parent re: medical hardship, geographic accessibility, or alternative coverage.
 - i. If resolution is successful (the parent is satisfied with the results of the discussion and with any caseworker determination on the issues, and no longer wants a hearing), asks the parent to withdraw his or her request in writing. Takes action as applicable to
 - amend or dismiss the notice--step 4.a
 - enter existing coverage in system--steps 4.b and 4.g
 - notify the custodian of coverage--step 4.b

Processes the non-enrollment coverage and monitors reasons, too expensive, not geographically accessible, or already provided outside employment. Proceeds with enforcement as in step 9.

- ii. If resolution is not possible, for example, the parent disagrees with the caseworker's determination that insurance is reasonable in cost, proceeds to step 6.b.
 - b. Reviews the required elements of the case with the parent, and identifies any elements the parent intends to contest at hearing. Issues that may be contested are whether
 - the parent is the person named in the NIE
 - the parent has been served with the NIE
 - the CSSD has authority to act in the matter, and has personal jurisdiction over the parent there is a support order in effect that requires the parent to provide health insurance for the child
 - health insurance is available at a reasonable cost

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NOTE:

The CSSD applies a reasonable cost test (if requested) when enforcing a health insurance requirement regardless of whether the support order actually specifies a reasonable cost limitation.

- health insurance is geographically accessible
- the parent is providing alternative health insurance
- If the support order allows, the available health insurance is cost-beneficial combined with insurance provided by the other parent.

CSSD support orders entered under the Montana Medical Support Reform Act beginning in November 1996 generally contain a provision requiring both parents to provide health insurance if it is cost beneficial.

- c. Prepares testimony, arranges for witnesses, and assembles exhibits needed to present evidence on the issues in step 6.b, see Proving the Prima Facie Case in the note below and Attachment 1 at the end of this section. Prepares a witness and exhibit list and submits the original list and exhibits to the Office of the Administrative Law Judge, with copies to the parent, by the exhibits due date.

Appears at the hearing as a witness; gives evidence as requested by the Administrative Law Judge, and enters a case note in system for the testimony presented. Monitors for a proposed decision and order and any timely motion for review under ARM 37.62.949 and 951, and enters a case note in system for the proposed decision received.

NOTE:

Proving the Prima Facie Case. The evidence prepared by the caseworker must address, at a minimum, the five elements of the CSSD's prima facie case. These elements are service of notice, authority to act, personal jurisdiction over the parent or the employer, existence of a health insurance order against the parent, and reasonable cost of insurance. The caseworker must also arrange for testimony and exhibits addressing the other issues identified in step 6.b, geographic accessibility, alternative coverage, and cost- beneficial issues.

- d. Upon receipt of the final decision and order, enters the associated system case note, enters the resolved date and result on the NID screen, and takes action as follows according to the result of the hearing:
 - i. If the final decision and order contains a determination in favor of enrollment, proceeds to step 9.
 - ii. If the final decision and order contains a determination against enrollment, proceeds in sub step A or B below as applicable.
 - A. If the determination is conditional, as in step 8.b, sets a tickler for any expiration date or to review for specific circumstances contained in the decision and order. Proceeds to step 7. if and when enrollment becomes appropriate.

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- B. If the determination is unconditional as in step 8.b, proceeds according to the basis given in the decision and order:
- If enrollment is denied because insurance is not available at a reasonable cost, monitors for a change in the parent's income or premiums for coverage. If a change occurs and insurance may be reasonable under CS 520.5, works with the regional legal unit to move the Administrative Law Judge for a change in the decision and order, and proceeds according to instructions.
 - If enrollment is denied because the CSSD did not have the proper authority to issue the Notice of Intent to Enroll for example, the parent has no health insurance obligation for one or more of the children, evaluates the case for the next appropriate action. Consults with the regional legal staff as needed and proceeds according to case requirements.

- 7. OTE Warning Letter.** In the case of a medical hardship coordinates the requirements of this step with those of CS 520.5. Upon entry of a CSSD decision and order containing a conditional determination against enrollment in step 8.b, and upon becoming aware that the facts have now changed in favor of enrollment, proceeds in steps 7.a through 7.c.

EXCEPTION: In cases where the conditions in this paragraph apply and a new-hire report is received, takes no further action in this step but proceeds directly to step 10. to issue an OTE to the new employer/payor.

EXAMPLES: The following changes in case facts may require action in this step (not an exhaustive list):

- Before a caseworker-determined medical hardship expires the parent's out-of-pocket premium or gross income changes, and a new determination under CS 520.5 indicates the hardship should be terminated.
 - The service provider or the child has moved, or the provisions of the plan have changed, so that covered medical care is now geographically accessible.
 - The approved alternative coverage is no longer in place, and the parent has not obtained replacement coverage.
- a. Issuing warning letter. Issues CS-520.5F Order to Enroll (OTE warning letter). Sends the letter to the parent by regular mail, and monitors for a response within 3 mailing days plus 10 working days after the mailing date.

NOTE:

Role of OTE Warning Letter. The warning letter states the CSSD will issue an OTE unless the parent provides proof that the conditional decision and order still applies. Note that in this situation the original enrollment notice is not involved; the NIE or notice of immediate enrollment was resolved earlier, and the opportunity for hearing is no longer available.

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- b. Non-enrollment continued. If the parent timely responds and shows that the non-enrollment determination still applies, enters a case note in system for the response and monitors for a change in circumstances; takes no further action in this section.
- c. Enrollment required. If the parent does not timely respond with information showing the conditional determination should be continued, enters a case note in system for the response and proceeds to step 9.

Procedures for Office of the Administrative Law Judge (OALJ) & Administrative Law Judge (ALJ)

- 8. Conduct of NIE Hearing.** Upon receiving a timely request for a hearing on an NIE issued in step 2, enters a case note in system for the request received and proceeds in steps 8a through 8c below. Note that a request is considered timely only if it is received within 10 working days after the date of service.

OALJ

- a. Sends a facsimile copy of the hearing request to the caseworker and obtains any dates the caseworker will not be available. Sets the hearing time and date, and other due dates (witness and exhibit lists, exchange of exhibits, requests for discovery or subpoenas), and issues a notice of hearing and scheduling order as in ARM 20510819. If applicable, includes with the notice of hearing a letter listing the documents commonly needed for an NIE Hearing. Refer to Attachment 1 Exhibits for NIE Hearing at the end of this section. Sends an informational copy of the notice of hearing to each affected custodian.

NOTE:

Option for 10-Day Hold. The OALJ may, at its option, allow a short period of time for the parent to withdraw the request before issuing the notice of hearing. This option is especially useful in cases where the parent does not understand the reasons for the NIE and is likely to drop the request after discussion with the caseworker.

ALJ

- b. Conducts the hearing according to the requirements of ARM 37.62.941 through 945. Limits the hearing to the issues listed in step 6b. Issues a proposed decision and order, reviews and takes necessary action on any motions for review, and issues a final decision and order as in ARM 39.62.949 and 951. Enters case notes in system for the hearing held and the proposed and final decisions and orders signed.

The final order should include a determination for or against enrollment; a determination against enrollment may be conditional or unconditional. In the case of a conditional determination, the order should include a specific date, or a specific set of circumstances identifiable by the caseworker, under which the CSSD may proceed to enroll the children without further legal action. A determination against enrollment whether conditional or unconditional should be clear that it does not limit the CSSD's ability to enforce non-employer insurance where applicable.

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OALJ

- c. Sends copies of the proposed decision and order to the parent, each affected custodian, and the caseworker. Schedules due dates or oral arguments required by the ALJ for any motions for review received; sends copies of the final decision and order to the parent, each affected custodian, and the caseworker, retaining the original for the OALJ file. Monitors for any petition for judicial review. Enters case notes in system for the proposed and final decisions and orders mailed, and for the receipt and determination of any motion to review.

Procedures for Caseworker

9. Conditions for Enrollment Order. Reviews the case for authority to proceed with enrollment, according to the conditions in 1) through 4) below. Immediately proceeds to step 10 for each child for whom all of the conditions apply.

- 1) Due process. The parent has been served with notice of the CSSD's intent to enroll the child or has returned a Voluntary Enrollment Authorization, and the NIE has been resolved in favor of enrollment by default (Step 5.), or a hearing on the NIE has resulted in a decision and order that currently allows enrollment (step 6.), or the notice of immediate enrollment has been resolved in favor of enrollment by entry of a support order containing the immediate enrollment provision, or the Voluntary Enrollment Authorization has been signed and notarized.

NOTE:

Notice Follows Parent-Child Pair. Once an enrollment notice against a parent is resolved in favor of enrollment for a particular child, the resolution continues to apply to that parent-child pair in any case that may be opened in the future, as long as the underlying support order containing the health insurance obligation "follows the child" as in MCA § 40-5-290. It is not necessary to initiate a new notice action against the parent just because the child changes custodians. However, the enrollment order in step 10 must be issued for the case and custodian to which the child is attached at the time.

- 2) No conflicting determination. There is no previous determination of non-enrollment in effect for the current facts for example, a medical hardship that was granted before the OTE was issued.
- 3) No preventing facts. The CSSD is not aware of any case facts, such as those described above (coverage too expensive, not geographically accessible, or already provided outside employment), that would support a determination of non-enrollment. Active investigation is not required unless the issue is raised by the parent. Note that existing coverage through another employer/payor may be considered alternative coverage in determining this condition.
- 4) Employer identified with no enrollment order. An employer/payor is identified with whom there is no enrollment order currently in effect for the child. See the exceptions in notes 3 and 4 below. Note that an enrollment order issued on the basis of a pre-July 2001 notice is still valid, and remains in effect until there is reason to amend or terminate the order.

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NOTE 1:

Proceeding for multiple employers. If more than one employer/payor is identified at the same time, the caseworker must **EITHER**

- Proceed concurrently for all employers; if coverage under more than one employer/payor is obtained, identify the least expensive coverage, and terminate the other coverages according to the procedures in CS 520.8 Amending/Terminating/Replacing the Order to Enroll.

OR

- Proceed first for the employer/payor if any, for which the CSSD has a reasonable expectation of dependent coverage; if coverage is not obtained, proceed concurrently for the remaining employers.

If an employer/payor is identified after alternative coverage (including ordered coverage through a different employer/payor) is in place, the caseworker must re-verify the alternative coverage and, if the coverage has lapsed, proceed in step 10 **within the applicable time frames.**

NOTE 2:

Federal Compliance. Once coverage is in place for a child as a result of a CSSD enrollment order or voluntary enrollment outside employment, the federal requirement for enforcing health insurance is fulfilled. Coverage under more than one employer/payor, or under a different employer/payor whose plan may be considered more beneficial, is not required.

NOTE 3:

Exceptions for Certain Payors. CSSD policy recognizes certain payors to whom it is not necessary to send an OTE. These are the payors of unemployment insurance benefits, workers' compensation benefits, social security/SSI benefits, and prison wages.

NOTE 4:

Exception for Payors Not Offering Health Insurance. According to federal guidance in Policy Interpretation Questions (PIQ) 02-03 issued by the Office of Child Support Enforcement (OCSE) in December 2002, it is not necessary to send an enrollment order to an employer/payor that does not provide dependent health insurance for its employees. The CSSD interprets this guidance strictly, and has established the following requirements for using the no insurance exception:

- (1) The caseworker must obtain specific confirmation in the form of a Payor Statement, a telephone call to the employer/payor, or some other retainable evidence that the employer/payor does not provide dependent insurance.

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- (2) The evidence must show that the employer/payor does not provide dependent health insurance for any employees. If dependent insurance is available for some employees, the enrollment order must be sent; the employer/payor can respond that the particular employee is among a class of employees who are not eligible.
- (3) Facts supporting a no insurance exception must be documented in a case note in the system.
- (4) Payors identified in NOTE 3 above are not subject to the above requirements; CSSD policy excepts these cases automatically.

NOTE 5:

Exception for Department of Defense. According to federal guidance in PIQ 06-02 issued by the Office of Child Support Enforcement (OCSE) in March 2006, **it is not appropriate** to send the National Medical Support Notice (NMSN) to the Defense Manpower Data Center (DMDC) to enforce health care coverage for dependents of active-duty military or retired military personnel.

If for this reason an Order to Enroll is not sent, a case note must be entered in to the system to document where the child's enrollment status was obtained.

This **exemption does not apply to Department of Defense Civilian personnel**. For civilian employees the National Medical Support Notice must be sent to the employer address provided in the NDNH/Quarterly Wage Reports.

NOTE 6:

Employer/Payor Defined. For purposes of this section an employer/payor means **either** a business that pays income to the parent but is not owned or operated by the parent, **or** the parent's business that is registered with the Montana Secretary of State as a DBA (Doing Business As) or as a corporation.

REMINDER: Use of OTE Required. The CSSD issues an enrollment order in step 10 whenever the conditions in this step are met **even if**,

- the parent has voluntarily enrolled the child with the current employer/payor.
- the child is enrolled elsewhere by the other parent (but see the discussion in step4g).
- the caseworker believes dependent health insurance is not available to the parent through the employer/payor (unless an exception in NOTE 3 or 4 above applies).
- the caseworker made a determination of non-enrollment based on medical hardship or geographic inaccessibility for a previous employer.
- the notice was resolved before the parent gained employment or changed employers.

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10. Order to Enroll. Issues an OTE to the employer/payor as in steps 10.a through 10.d below.

a. Proceeds to step 10.b according to the time frames described in 1) through 3) below:

1) New-hire report. If the enforcement parent is the non-custodial parent and a new-hire report is received, the time frames in 2) and 3) below apply, unless coverage is currently in place through the custodian.

- A new-hire report is received after the enrollment notice is resolved, proceeds in 10.b within two working days after the new-hire report
- A new-hire report is received before the enrollment notice is resolved, proceeds in 10.b according to the time frames in 2) or 3) below

If the enforcement parent is the custodian and a new-hire report is received for the non-custodial parent, applies the time frames in 2) or 3) below for the custodian.

2) Immediate enrollment. If immediate enrollment is authorized by the support order and

- a withholding order is issued as a result of the support order, proceeds in 10.b concurrently with issuance of the withholding order.
- no withholding order is issued as a result of the support order, proceeds in 10.b within 15 calendar days after the support order is entered.

EXCEPTION: If a new-hire report is received before the 15 calendar days have expired, proceeds in 10b within two working days of the new-hire report.

3) Notice of Intent to Enroll/Voluntary Enrollment Authorization If the action is based on an NIE or VEA, proceeds within 15 calendar days after resolution of the notice or receipt of the signed authorization.

EXCEPTION: If a new-hire report is received before the 15 calendar days have expired, proceeds in 10b within two working days of the new-hire report.

b. Prepares an Order to Enroll (OTE) package comprising the FED-MED, National Medical Support Notice CS-520.7M Order to Enroll Supplement and except as provided in NOTE below, Acknowledgment of Receipt of Order(s) and Waiver of Service.

NOTE:

Electronic service. Electronic service is permitted for entities that enter an agreement to accept service electronically. When service is electronic, the Acknowledgment of Receipt of Order(s) and Waiver of Service may be omitted.

Generates the FED-MED and CS-520.7M and assembles the package according to the requirements in 10b(i) through 10b(vi) below. FED-MED and CS-520.7M are generated together on the OTD1 screen. See NOTES 1 and 2 below for contents.

- i. Before generating FED-MED, if the employer/payor has requested that the instruction pages be omitted from the National Medical Support Notice (FED-MED), requests an update of the EMU screen. When EMU is updated, the system will automatically omit these pages when the FED-MED document is generated.

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- ii. In generating FED-MED includes all of the children identified in step 9, the document will automatically include the current custodian for each child.
- iii. In cases where the employer's system address is outside Montana, but the parent's work location is in Montana, adjusts generation of the OTE Supplement to ensure the cover letters will be created.
- iv. Before printing, checks the FED-MED for any addresses that should be suppressed based on a system domestic violence indicator; where necessary corrects the address to read "c/o the CSSD." Also checks the FED-MED to ensure the correct underlying support orders are identified on the front of the document.
- v. Signs the cover letters generated for a Montana employer or a Montana work location.
- vi. Signs, or if regional policy requires, obtains the approval and signature of the supervisor on, Parts A and B of the FED-MED; retains a copy for the file.

The CSSD Administrator has designated both the supervisor and the caseworker who prepared the OTE package as individuals authorized to issue the National Medical Support Notice.
- vii. Completes the acknowledgment by designating the order(s) included in the package an OTE only, or OTE with Income Withholding Order.

NOTE 1:

Contents of OTE Supplement. The OTE Supplement includes a cover letter to the employer, a cover letter to the plan administrator, and a supplemental information sheet for the plan administrator. The cover letters inform the employer and plan administrator of their rights and additional obligations under Montana law. The supplemental sheet allows the plan administrator to provide required insurance information not listed in the Plan Administrator Response, see NOTE 2. When the employer's address is outside Montana, the system automatically omits the cover letters from the OTE Supplement.

NOTE 2:

Mechanisms of FED-MED. The FED-MED document includes a Part A for the employer to keep, and a Part B for the employer to forward to the plan administrator. Each part notifies the recipient to take certain steps to affect the enrollment of the child and/or to notify the CSSD of the enrollment status. The employer/payor must either respond to the CSSD or forward Part B to the plan administrator within 20 working days after the date of the document. The plan administrator must respond to the CSSD within 40 working days after the date of the document (in practice the CSSD allows 40 working days from the date of service of the OTE package on the employer/ payor).

- c. Sends the OTE package to the employer/payor by regular mail, and monitors for return of the signed acknowledgment confirming receipt by the employer/payor. If there is reason to believe service by acknowledgment will not be effective, arranges for service of the package by certified mail, return receipt requested, or by sheriff's service, and monitors for confirmation of service.

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Upon written confirmation of service, retains the proof of service in the case file, enters the date and method of service on the OTD screen, monitors for response, and proceeds in steps 11., 12., and 13. as applicable.

NOTE: Service on Parent's Business. If the employer/payor is owned and operated by the parent i.e., the parent's business is registered with the Montana Secretary of State, the CSSD serves the OTE package on the business. Service must be through the registered agent if the business is a corporation.

- 11. Parent Responds to OTE Received by Employer/Payor.** If at any time after the OTE is issued to the employer/payor the parent contacts the CSSD to contest the enrollment, takes action as follows:
- a. If the parent proves a mistake of fact, for example enforcement against the wrong person; no health insurance requirement, proceeds to terminate the OTE according to the procedures in CS 520.8. In the case of enforcement against the wrong person, it may also be necessary to vacate the notice.
 - b. If the parent claims the insurance is too expensive or is not geographically accessible, determines the claim as in step 4.h or 4.i.
 - i. If the determination finds that ordered enrollment is not appropriate, informs the parent and proceeds to amend or terminate the OTE as in CS 520.8. Also proceeds in CS 520.5 as applicable.
 - ii. If the determination finds that ordered enrollment is appropriate, informs the parent and takes no further action on the contest. If the claim was for insurance geographically inaccessible, enters a case note in system for the claim denied.
 - c. If the parent claims he or she provides alternative coverage for the child, investigates the claim as in step 4.j.
 - i. If investigation shows the parent provides alternative coverage and the coverage was in place at the time the CSSD issued the OTE, or the parent obtained the coverage before the children were (or will be) enrolled under the OTE, informs the parent and proceeds to amend or terminate the OTE according to the procedures in CS 520.8. Also proceeds in step 14. as applicable.
 - ii. If investigation shows the parent does not provide alternative coverage, enters a case note in system for the alternative coverage denied, informs the parent, and takes no further action on the contest.
 - iii. If investigation shows the parent provides alternative coverage but coverage began after the plan administrator enrolled the children based on the OTE, documents the facts on system and informs the parent that he or she must contact the plan administrator and show proof of comparable coverage for the child. Also proceeds in step 14. as applicable.

If the plan administrator is satisfied the coverage is comparable, the plan administrator can disenroll the child without an order from the CSSD. The CSSD will not intercede for the parent with the plan administrator.

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- d. If the parent contests the enrollment on the grounds that the child is already voluntarily enrolled in the employer/payor coverage; that coverage is not currently available because of a waiting period; that the employer/payor does not provide dependent coverage; or that the other parent is providing coverage for the child, explains the CSSD is still required to issue the OTE. Further explains required procedures as applicable, and takes no further action on the contest.
- e. If the parent contests the enrollment for any other reason, explains that due process was provided by the NIE, VEA, NOMS, NOCS, or order issued in CS 408.3, Review and Modification of Support Order. No further administrative remedy is available. If the parent wishes to pursue the issue, suggests he or she seek legal advice re: available action outside the administrative process.

12. Employer/Payor Responds to OTE. Processes the employer/payor response to the OTE in steps 12.a through 12.c below.

- a. No response. If neither the employer/payor nor the plan administrator responds to the OTE within 40 working days of the date of service of the OTE, investigates and attempts to obtain an appropriate response in this step (12b or 12c) or step 13. Investigation should begin with the employer/payor, proceeding to the plan administrator if the employer/payor has forwarded the OTE as required. Enters a case note in system for the contact.

If attempts fail documents the attempts and proceeds to enforce compliance through administrative civil contempt as outlined in CS 503.5 Administrative Civil Contempt, or through the special medical penalty provided by the Montana Medical Support Reform Act.

Montana Medical Support Reform Act Enforcing Employer/Payor Compliance. Enforcing employer/payor compliance through Contempt or Penalty Action the CSSD action for administrative civil contempt is authorized under MCA § 40-5-813(4)(c). Unless circumstances dictate otherwise, the CSSD determines the number of counts of contempt and the amounts to be entered as follows:

- For failure to forward Part B of the OTE to the plan administrator, \$500 per month, beginning on the first day of the first month following the 20th day after service of the OTE.
- For failure to withhold premiums after receiving notification of enrollment from the plan administrator, \$500 per pay period, beginning on the first day of the first pay period following the date of notification by the plan administrator.

The amount of \$500 per count is authorized at MCA § 40-5-226(15). In addition, the CSSD may impose a separate penalty of up to \$150 under MCA § 40-5-813(4)(c). A penalty of \$25 per day under MCA § 40-5-821 is also available through the CSSD legal unit. See NOTE 2 for cases where the employer/payor is the parent's business.

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Serving the Contempt or Penalty Action on the Parent's Business. In the case where the employer/payor is a business owned and operated by the parent and registered with the Montana Secretary of State, additional service procedures apply. The CSSD serves the contempt or penalty action on the business (by the registered agent if the business is a corporation) and, separately, on the parent. The order or citation initiating the action should list both the name of the business and the name of the parent.

- b. (Deleted step. To preserve references, section not renumbered)
- c. No insurance for this employee. The employer/payor may respond that it cannot provide dependent health insurance for the parent because it
 - does not provide dependent health insurance for any employees
 - provides dependent health insurance but the parent is not and will not become eligible for the insurance e.g., the insurance is not available to part-time or non- union employees
 - no longer employs/pays the parent

This response is the **only** acceptable response from the employer/payor. If it does not apply, the employer/payor is required to forward Part B of the OTE to the plan administrator, and need not respond to the CSSD. Upon receiving this response, updates the MEC screen and issues CS-510-8B CP Action Letter to each affected custodian, informing the custodian that employer/payor insurance is not available.

If the situation changes and insurance becomes available for the parent through this employer/payor, returns to step 10. to issue a new OTE, refers to NOTE 2 Employer/Payor Response Terminates following this step for a possible EXCEPTION.

- d. Insurance exceeds federal withholding cap. The employer/payor may respond that insurance is available but that the withholding required for the premium is prevented by limitations contained in the OTE. This response should occur, if at all, only after the plan administrator has responded in step 13.b.

Upon receiving this response, enters a case note in system and issues CS-510-8B CP Action Letter to each affected custodian, informing the custodian that employer/payor insurance is not available.

If the parent's net earnings or premium costs change, and employer withholding for premiums becomes possible, returns to step 10. to issue a new OTE.

- e. Insurance exceeds 5% of gross income. The employer/payor may respond that insurance is available, but withholding is prevented because the parent's premium costs would exceed 5% of gross income. Upon receiving, this response proceeds to CS 520.5 to process the employer hardship.

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- f. Objection to length of OTE. In responding to or complying with the OTE the employer/ payor may also state its objection to the length or volume of the OTE package. Upon receiving this objection contacts the employer and asks if the employer prefers to receive OTE packages without the instruction pages. If it does, submits an update to the employer's record on the EMU screen noting the "short OTE" request. Includes with the submission specific information documenting the employer's request, the date of the contact, whether the request was made by telephone or letter, the name of the person making the request. Note that the updated EMU record will cause the document generation function to automatically exclude the instruction pages in any OTE package issued for this employer.

If at any time in the future the employer/payor contacts the CSSD requesting that OTE packages again include instruction pages, submits another update to the employer's EMU record to remove the short OTE request. Includes the same type of documenting information as with the original request.

NOTE 1:

Withholding Limits and Priorities. The OTE states that withholding for the required insurance premium, when added to withholding for current support and any arrears, may not exceed 50% of net earnings. This limitation is based on the provisions of the federal Consumer Credit Protection Act (CCPA). Under Montana law, if the total withholding for child support (current support plus arrears) and health insurance exceeds the limits of the CCPA, the current support and the health insurance have priority over arrears. If the total cost of the health insurance and current support exceed CCPA limits, the employer/payor may not withhold the premiums; enrollment cannot proceed. If CCPA limits prevent enrollment, the employer must withhold current support and arrears up to the CCPA limit.

VOLUNTARY ENROLLMENT: If a child was voluntarily enrolled before the OTE was issued and CCPA limits prevent enrollment, the OTE instructs the employer/payor not to automatically disenroll the child; although the CSSD cannot order withholding that exceeds the statutory limit, the parent may wish to continue the enrollment and the withholding on a voluntary basis.

NOTE 2:

Employer/Payor Response Terminates. Once the employer/payor responds as in 12.c, 12.d, or 12.e above, the OTE is effectively terminated, without need for further action by the CSSD; the caseworker should update the OTD screen to show the order status as inactive. If dependent health insurance later becomes available through this employer/payor, the employer/payor is not bound by the previously issued order, and the CSSD must issue a new OTE to secure compliance.

EXCEPTION: If the caseworker is aware that the employer/payor is willing to honor the previously issued order, and to arrange with the plan administrator for any necessary written response, it may not be necessary to issue a new OTE. This exception is most likely to apply in cases where the parent was laid off, then reinstated within a short time after the employer/payor's response in 12c.

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13. Plan administrator response to OTE. Processes the plan administrator response to the OTE in steps 13a through 13f below.

- a. No response. If neither the plan administrator nor the employer/payor timely responds to the OTE within 40 working days of the date of service of the OTE, investigates and attempts to obtain an appropriate response in this step (13.b through 13.e) or step 12. Investigation should begin with the employer/payor, proceeding to the plan administrator if the employer/payor has forwarded the OTE as required. Enters a case note in system for the contact. If attempts fail, documents the attempts and consults with the regional legal unit concerning enforcement of a medical penalty under MCA § 40- 5-821. Note that neither contempt action under MCA § 40-5-226 nor a civil penalty under MCA § 40-5-813(4)(c) is available against the plan administrator.

NOTE:

HIPAA Refusal to Respond. If the plan administrator enrolls the children as required but refuses to provide the necessary enrollment information in the plan administrator's response, and the refusal is based on the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA), the caseworker should ask to speak to the plan administrator's HIPAA Privacy Officer. The caseworker can explain that under federal regulations the CSSD is a law enforcement official for purposes of HIPAA privacy restrictions, and disclosure is permitted. If the plan administrator still refuses, the caseworker should refer the matter to the regional legal unit for further contact with the plan administrator.

- b. Children enrolled in coverage. If the plan administrator responds that the children are enrolled or will be enrolled in dependent coverage, proceeds to step 14. Note that this response includes coverage that takes effect after a waiting period of less than 90 days from the date the plan administrator received Part B of the OTE. For waiting periods of 90 days or more, see sub step 13.d.

NOTE:

Enrollment Procedures. If the response in this sub step (13.b) applies, the OTE also requires the plan administrator to transfer the applicable enrollment information to the employer/payor for a determination that the necessary employee contributions are available. If the employer/payor withholds and sends the required premiums, no further notification to the CSSD is required. The OTE also requires the plan administrator to notify each custodian and to furnish the custodian with a summary plan description and information necessary to submit claims.

CAUTION: Effective coverage is not assured until the employer/payor forwards the required premiums to the plan administrator. Because the plan administrator is required to respond in this sub step (13b) without waiting for confirmation of withholding from the employer/payor, actual coverage should not be assumed. If the employer/payor does not, or cannot withhold and forward the necessary premiums, the plan administrator may simply drop the enrollment. If the caseworker does not receive an "exceeds cap" response from the employer/payor in step 12d, it may be advisable to investigate briefly to confirm that premiums are being paid. The letter in step 14b cautions the custodian to confirm coverage with the insurance company before relying on it for the children's medical care.

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- c. Choice of option. If the plan administrator responds that there is more than one option available under the plan, and the least expensive option (automatically pre-selected by the language of the OTE) has a limited-service area, or there are two least expensive options, reviews the descriptions of the options and chooses the least expensive option that is geographically accessible to the children. Consults with the custodian if necessary, to determine geographic accessibility. Informs the plan administrator of the choice; documents the determination and the facts involved on system, and proceeds to step 14.

NOTE:

Requirement to Consult with the Custodian. The CSSD is required to consult with the custodian concerning any choice of plan options. For this purpose, the CP Action Letter sent in step 14b informs the custodian that if there was more than one option available under the plan the CSSD chose the least expensive plan option, and that the custodian may wish to contact the CSSD if there is any information about special coverage needs that indicates a particular option would be preferred. If the custodian contacts the CSSD and does not agree with the least expensive geographically accessible option, refers the case to the regional legal unit. The attorney/paralegal may explain the CSSD's limitations under Montana law (see POLICY, Medical Care Defined), and may advise the custodian, if applicable, that he or she may wish to seek a special modification of the support order outside the administrative process.

- d. Waiting period up to 90 days. If the plan administrator responds that the parent has not completed a waiting period that expires within 90 days after the date the plan administrator received Part B of the OTE, or is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked, enters a case note in system for the extended waiting period, monitors for enrollment at the later time, and proceeds in this step (13.) according to the results.

If the plan administrator indicates that dependent insurance will not be available to the parent for a period that exceeds 90 days enters a case note in system for the extended waiting period, monitors for enrollment at the later time, and moves to the other parent if applicable. Refer to the Enforcement Parent Decision Matrix at CS 520.3.

- e. Not a qualified order. If the plan administrator responds that the OTE does not constitute a "qualified medical child support order", checks the reason for the response.

If the problem is that essential information is missing in the OTE, proceeds to CS 520.8 to issue an amended OTE. If the problem involves more than omitted information, consults with the CSSD staff attorney, and takes steps to resolve the issue.

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NOTE:

Qualified Order Status. Part B of the OTE states that receipt of the order from the CSSD "constitutes receipt of a Medical Child Support Order under applicable law." The OTE is based on a federally designed and approved form; the only reason for rejection of its "qualified" status should be that the CSSD has failed to include the name or address of a child or the parent, or that a child is too old to be considered a dependent under the terms of the plan.

- f. Custodian not entitled to health plan information. If the plan administrator enrolls the children (responding correctly in step 13b) but refuses to provide the required information to the custodian because the custodian is not the "insured" i.e., not the employee, contacts the plan administrator, and explains Montana law requires the information be provided refers to MCA § 40-5-812. If the plan administrator still refuses, takes further action as applicable in 13. (f)(i) through 13. (f)(iii) below.
 - i. Refers the matter to the regional legal unit for further contact with the plan administrator concerning the requirements of Montana law.
 - ii. If the support order requires the parent who is the employee to submit all necessary information to provide available coverage to the children, or to file and update with the CSSD pertinent information about existing coverage under a health insurance plan, contacts that parent and directs him or her to provide the information the custodian needs. If the parent refuses, consults with the regional legal unit about further courses of action.
 - iii. If the support order does not require the parent to submit or update information as in 13f(ii) above, initiates an administrative subpoena action as in CS 405.12 to compel the non-custodial parent to provide the information necessary to provide coverage.

14. Processing enrollment information. Upon being informed by the plan administrator, the parent, the custodian, or another source that a child in the case is enrolled in health insurance coverage, proceeds in 14.a through 14.c below as applicable.

NOTE:

Exception for IHS Coverage. Geographically accessible IHS coverage, while fulfilling the parent's health insurance obligation, is not recorded on the MID screen and does not require notification to the TPL program as in step 14.a. Coverage is entered in system by updating the MEC screen. If there is reason to believe the custodian is unaware the child qualifies for IHS coverage, the caseworker should notify the custodian of the coverage in writing. The CP Action Letter used in step 14.b does not apply.

- a. Enters the insurance or HMK information on the MID screen. If the TPL number is unknown as in NOTE 1, requests the number and enters a case note in system for the request.

NOTE 1:

Obtaining a TPL Number. The insurance information entered on the MID screen must include an identifying number issued by the Medicaid third-party liability (TPL) program. The caseworker requests the TPL number through the CSSD Medical Liaison, who contacts TPL directly and provides the number received to the caseworker. If the coverage is HMK, the correct TPL number is HMK_.

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NOTE 2:

Notifying TPL. Entry of the insurance information on the MID screen automatically generates CS-520.7B Notification of Health Insurance Coverage. The form is printed by the CSSD Medical Liaison, who uses it to update the SIC screen. The Medical Liaison then forwards the information to the Medicaid third-party liability (TPL) program, and enters a case note in system for the information sent.

- b. For coverage provided by the non-custodial parent (through the employer/payor or alternative coverage), prepares and sends CS-510.8B CP Action Letter, informing the custodian of the coverage and providing information for contacting the insurance company. (This version of the letter is generated automatically from the MID screen when the policy is loaded in step 14a.)

For coverage of children residing with a third-party custodian, where the coverage is provided by a parent who has or may have a medical support obligation for the children, and is an obligee for other children in the case or is not a participant in the case, informs the third-party custodian of the coverage by sending CS-510.8B, CP Action Letter. When used in this situation the letter must be generated manually by the caseworker. The letter should include coverage information and information for contacting the insurance company.

OPTIONAL: For any coverage provided by a person other than a parent of the children, informs the children's custodian(s) of the coverage on CS-510.8B CP Action Letter. When used in this situation the letter must be generated manually by the caseworker. The letter should include coverage information and information for contacting the insurance company.

- c. Monitors for continued coverage as in CS 520.3. If coverage lapses, updates the MID screen for the insurance ended, investigates the cause of the lapse, and proceeds in 14.c(i) through 14.c(iv) below as applicable. For a lapse in coverage provided by the non-custodial parent, also prepares and sends CS-510.8B CP Action Letter, informing the custodian the coverage has lapsed. This version of the letter is generated automatically when the MID screen is updated for the loss of coverage.
 - i. If the parent's employment has terminated, checks for a new employer/ payor; if found, begins again at step 9. If the parent is the non-custodial parent in the case, also updates the EMP screen for the terminated employment and any new employer.

If no employer/payor is found, follows procedures in CS 520.3 for identifying health insurance, locating employment, or confirming unemployment.
 - ii. If the employer/payor or plan administrator has fallen out of compliance with the OTE, proceeds as in step 12a or 13a to enforce compliance.
 - iii. If the plan administrator has disenrolled the children because the parent has provided proof of alternative coverage, proceeds in this step as applicable for the new insurance.
 - iv. If the employer/payor has been unable to maintain the necessary withholding for coverage, proceeds to step 15.

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15. Lapses in Withholding Ability. Upon discovering that coverage obtained in step 13. has lapsed, and that the lapse is due to the employer's inability to withhold premiums because the premium costs now exceed the federal withholding cap (see NOTE following step 12.c), or the premium costs now exceed 5% of the parent's gross income, or the parent is now ineligible due to part-time, laid off pending possible return, activated for military service, etc., investigates the circumstances with the employer, enters a case note in system for the employer contact, and proceeds in steps 15.a through 15.c below, as applicable.

- a. Permanent loss of withholding ability. If it appears the withholding ability will be lost permanently (eligibility or earning levels will not return to pre-lapse status within 6 months), proceeds as in CS 520.5 for employer insurance that is too expensive or is not available, and takes no further action in this section.
- b. Temporary loss of withholding ability. If it appears the withholding ability will be lost only temporarily (eligibility or earning levels will return to pre-lapse status within 6 months, or longer for a military activation), inactivates the OTE on system, updates the MID screen, and enters a case note for the temporary nature of the lapse.
 - i. If the employer/payor and the plan administrator have agreed to reinstate coverage under the existing OTE, monitors for reinstatement, reactivates the OTE screen in system, and proceeds in step 14. at that time.
 - ii. If the employer/payor or the plan administrator requires a new OTE to reinstate coverage, returns to step 10. to issue a new (original) OTE.

For a lapse caused by a "cap" issue, also proceeds as applicable in step 12d.

NOTE:

Coverage During Military Activation. If the employer indicates coverage will be maintained during the entire period of military activation, the CSSD maintains the OTE as an active order. If not, and the OTE is inactivated in this step (15.b), the CSSD proceeds to enforce coverage available through the military; when the parent returns to the employer at the completion of military service, steps 15.b(i) and (ii) above apply.

- c. Fluctuations in withholding ability. If the situation will continue to fluctuate (the parent's eligibility or earning levels will alternately accommodate and prevent withholding), evaluates the following options and proceeds with any that will improve the coverage situation. Monitors for any change to stable condition and proceeds in step 15.a or 15.b at that time.
 - i. Performs a medical hardship determination in CS 520.5 averaging the parent's monthly gross income.
 - ii. Discusses the situation with the employer/payor or plan administrator there may be a mechanism available where coverage can be continued in the circumstances.
 - iii. Pursues the other parent for medical enforcement actions if applicable, see the Enforcement Parent Decision Matrix at CS 520.3.

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16. Expedited enforcement of medical cost sharing. In cases where the child is receiving Medicaid benefits and the support order requires the non-custodial parent and custodian to share medical costs, if either parent applies to the CSSD for a judgment against the other parent for reimbursement of copayments, deductibles, insurance premiums, or other uncovered costs and expenses, consults with the CSSD staff attorney and takes action as instructed. In non-Medicaid cases, informs the applying parent that relief is available only in district court.

NOTE:

Statutory Basis for Enforcing Medical Cost Sharing. If a parent is obligated by a medical support order to pay a share of the other parent's medical costs for a child receiving Medicaid benefits, the CSSD may, on application of the other parent, conduct a show-cause hearing under MCA § 40-5-824 to determine whether to award relief. Also, under MCA§40-5- 824, either obligated parent can petition the district court for relief if the support order provides for medical cost sharing, regardless of whether the child is receiving Medicaid benefits.

17. Loss of CSSD Enrollment Authority. This step applies only in cases where the enforcement parent is the non-custodial parent. Refer to CS 520.3 for direction in situations where the enforcement parent is a custodian in the case and a child goes to live with another non- parent custodian in the same case. In a case where the CSSD loses the authority to maintain ordered enrollment of a child because the child goes to live with another custodian in the same CSSD case, and the medical support order does not "follow the child" to that custodian under MCA § 40-5-290, proceeds in 17a through 17c below.

- a. Disenrolls the child from the existing coverage by amending or terminating the existing OTE in CS 520.8. Inactivates the child on the NID screen.
- b. Proceeds to establish a support order for the child with the new custodian, refer to CS 401.3 Notice and Order Concerning Support. Note that the new order will contain an immediate enrollment provision, and will be enforceable for any subsequent custodian of the child.
- c. Completes a new NID screen for the child as in step 3; issues an OTE for the child by proceeding in step 10 for an original OTE, if no other children in the case are currently enrolled, or in CS 520.8 for an amended OTE, if other children in the case are still enrolled.

18. Adjusting Enrollment for a New Case. If a child covered by a CSSD enrollment order goes to live with another custodian in a different case, and the underlying support order "follows the child" as in MCA § 40-5-290, the enrollment order must be replaced by an order reflecting the new case and custodian, see CS 520.8 for procedures. There is no need to initiate a new notice action for the child against the same parent. However, the notice information from the NID screen in the original case must be copied on system to the NID screen in the new case.

If the underlying support order does not "follow the child", disenrolls the child and inactivates the child on the NID screen as in step 17a. When a support order has been established in the new case, begins again in this section at step 1.

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19. Case or subcase closure. In a case where the CSSD loses the authority to maintain ordered enrollment of a child because the child's case or subcase is closed meaning the CSSD no longer provides current support services for the child, disenrolls the child as in step 17.a. It is not necessary to inactivate the child on the NID screen unless there are other children in the case for whom the CSSD is continuing to enforce medical support. If the case is reopened, the underlying support order and the previously resolved notice will again apply.

20. Proceeding Against the Other Parent. When the combined enforcement actions of this section and CS 520.5 and CS 520.10 Enforcing Health Insurance Order—Penalty Actions do not result in coverage of the children in the case, and the conditions below apply, proceeds to enforce against the other parent to obtain health insurance for the children.

- 1) The other parent is a non-custodial parent or custodian in this case.
- 2) The other parent is required by the provisions of the support order to provide health insurance for the children.
- 3) If the other parent is a custodian in the case, restrictions in CS 520.3 concerning third- party cases do not prevent the CSSD from enforcing against the parent custodian for at least some of the children.
- 4) The other parent is not the parent identified by the most recent application of the CSSD's Enforcement Parent Decision Matrix in CS 520.3.

Proceeds against the other parent by beginning again at step 1. The other parent now becomes the "enforcement parent" for purposes of this section.

Attachment 1: Exhibits for NIE Hearings

REQUIRED EXHIBITS

The following exhibits are required to support testimony on the issues and elements of the case presented at hearing:

1. Authorization to act/assignment of rights
2. Copy of the Notice of Intent to Enroll
3. Proof of service (green card, acknowledgment, sheriff's return)
4. Copies of all known support orders for the children
5. The following documents related to the employer insurance if it is available to the parent:
 - a. Insurance rate sheet and completed CS-404.6A Financial Affidavit, or electronic verification of income in lieu of the financial affidavit
 - b. [In lieu of the documents in 5a:] CS-520.5B Payor's Statement completed by the employer

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- c. [In lieu of the documents in 5a/5b:] CS-220 Employment Verification, it must contain both wage and insurance information.
- d. CS-520.5C Medical Hardship Calculation, completed for the employer insurance. Note that the documents in this item are required whenever employer insurance is available, regardless of whether the parent has stated any objection to the cost of insurance.

OTHER EXHIBITS--MAY BE REQUIRED

The following exhibits may be required in addition to the exhibits listed above, depending on the issues that could be raised at hearing given the facts of the case.

1. Geographic accessibility. If the parent and child reside in different states, and employer insurance is available to the parent, a copy of the summary plan description detailing any geographic limitations of the plan may be required.

CONSIDERATIONS: If the parent has agreed that the coverage is geographically accessible to the child, the copy of the summary plan description may not be needed. However, if the parent then raises the issue at hearing and the exhibit is not available, the ALJ may order an additional (continued) hearing to allow the copy of the plan to be presented. Also, the testimony of the plan administrator concerning specific geographic limitations may be required.

2. Alternative coverage. If the parent is claiming alternative coverage and the CSSD disagrees, information will be required showing that the alleged coverage does not exist, or that it is not attributable to the parent. This may include hard-copy information from the insurance provider about whether the children are covered, or about the identity of the policyholder. Testimony from the insurance provider or from other persons having knowledge about the alleged coverage may also be required.

CONSIDERATIONS: Any indication in conversation, hearing request, or other correspondence that the parent may claim alternative coverage at the hearing is reason to prepare the exhibits and testimony described in this item. However, if the CSSD agrees that alternative coverage exists and that it is attributable to the parent, and the parent still insists on a hearing, the exhibits or testimony related to this issue may not be needed.

3. Enforcement steps. [Optional] Exhibits from the case file showing the CSSD's medical enforcement steps may be useful. Optional exhibits may include but are not limited to Confirmation of Health Insurance Status; letters; or Employment Verification.