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MEMORANDUM

DATE: June 13, 2011

TO: Friends of the Court
cc: Chief Circuit Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Steven D. Capps

RE: SCAO Administrative Memorandum 2011-01 - UPDATED 8/9/2023
Medical Policy for Friends of the Court
(Supersedes Administrative Memorandum 2005-03)

The State Court Administrative Office (SCAO), and specifically SCAO's Friend of the Court Bureau, develops guidelines for the conduct, operations, and procedures of all friend of the court (FOC) offices. Each FOC shall take all necessary steps to adopt office procedures to implement the recommendations of the bureau. See MCL 552.503(7).

State and federal laws, policies, and regulations govern the establishment and enforcement of medical care obligations for children. This policy outlines the criteria and steps to establish and enforce medical support obligations in child support orders in FOC cases, as well as outlines the threshold for FOCs to follow when collecting extraordinary medical support charges on a case.

If court or FOC staff have any questions, or would like additional information or clarification regarding this memorandum, please contact Paul Gehm at (517) 373-5975, or by e-mail at gehmp@courts.mi.gov or focbinfo@courts.mi.gov.

A. MEDICAL SUPPORT REQUIREMENTS AND RECOMMENDATIONS FOR COURT ORDERS

1. Child support includes the payment of medical and health care related expenses. MCL 552.602(ii). MCL 552.605a provides that child support orders in friend of the court cases require each party to keep the friend of the court (FOC) informed of the following information:

    a. The name and address of his or her current source of income; and

    b. Any health care coverage available to the parent as a benefit of employment or otherwise maintained by the parent. This information must include:

        i. The name of the insurance company, nonprofit health care corporation, or health maintenance organization;

        ii. The policy, certificate, or contract number; and

        iii. The names and birth dates of persons who are covered by insurance.

2. MCL 552.605a also states that child support orders must require one or both parents to obtain or maintain health care coverage for their children that is available to them at a reasonable cost, as a benefit of employment. However, the statute says that courts "shall not require both parents to provide health care coverage under this subsection unless the parents already provide coverage or both parents agree to provide coverage." The clause adds that self-employed parents who maintain health care coverage must obtain dependent coverage if it is available at a reasonable cost.[1]

3. In setting a support obligation, the Michigan Child Support Formula (MCSF) recommends that child support orders specify:

    a. Each parent's share of qualified uninsured medical expenses,[2] and

    b. The amount of annual ordinary health care expenses for all dependents.

4. The State Court Administrative Office (SCAO) recommends that child support orders also specify:[3]

    a. The parent who is responsible to provide health care coverage for the children;

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[1] SCAO recommends that court orders specify which parent has responsibility to maintain health care coverage, as opposed to generic language (e.g., both parties must provide health care coverage). Specifying which parent must maintain coverage will avoid duplicate coverage and costs and prevent unnecessary enforcement actions.

[2] This is the percentage that each parent is responsible for paying toward ordinary and extraordinary uninsured medical expenses. It is based on the parent's share of total family income.

[3] The Uniform Support Order has language stating which parent is responsible for carrying health care coverage, as well as many of the other factors listed.

b. The specific reasonable cost[4] for a parent providing health care insurance;

c. Each parent's share of the monthly health care coverage;

d. The type of health insurance that will be provided by each parent (i.e., vision, dental, etc.); and

e. The source of health insurance (i.e., employment, private).

B. HEALTH CARE COVERAGE

1. Establishing Health Care Coverage

Although child support orders must require one or both parents to maintain health care coverage, FOC offices are not required to investigate health care coverage issues unless there is a dispute. Normally, when the parties agree on how they will provide the required health care coverage, the FOC can merely record the agreement in the order[5]. In such cases, the FOC's main concern should be to include sufficient information to avoid unwarranted automated enforcement measures, such as the National Medical Support Notice (NMSN). A NMSN is sent out through MiCSES in all support cases where a parent or parents are ordered to obtain or maintain health insurance, and an employer is known. It is recommended that orders identify the parent who is to maintain coverage; otherwise, the NMSN may be sent automatically to the employer when a data match indicates the *nonproviding* parent has obtained a new job.

The FOC should recommend, and the order should specify, the respective health insurance obligations of the parties, based on the requirements of the statute and the MCSF criteria (see Appendix A).

2. Reasonableness of Cost of Coverage

When reviewing health care coverage at the point of a support determination, the standard of "reasonable cost" for providing health care insurance coverage is defined in the MCSF. The formula states that the cost is "reasonable" where it does not exceed *six* percent of the parent's gross income and is based on the cost of adding a child.[6] When a parent whose net income is below 133 percent of the federal poverty level, or whose resident child is covered by Medicaid, the parent should not be ordered to provide or even contribute toward health care coverage unless it is available through employment without employee contribution. Further, the cost of insurance is not "reasonable" if the

[4] "Reasonable cost," as defined by 45 CFR 303.31 and 45 CFR 303.31(a)(3) allow a state to use an alternative income-based numeric state standard instead the federal regulation's standard. Michigan uses an income-based numeric state standard, listed in Section 3.05(A) of the 2008 MCSF.

[5] However, if only one of the parents has public coverage and the parents agree that parent will provide the coverage, further analysis is needed. See the addendum for the analysis on those cases.

[6] Section 3.05(A)(2) – In applying this standard, the cost of providing health care coverage is the parent's net cost of adding the children to the parent's coverage (e.g., difference between self-only and family coverage) or adding the children to the existing coverage.

parent's total support obligation (the sum of base support, day care, extraordinary health care coverage and insurance premiums) *exceeds* 50 percent of the parent's net income.

When the cost of health care insurance exceeds a "reasonable" amount, an order requiring that parent to contribute to the purchase of insurance is a deviation. The court order should specify what is a reasonable dollar amount or percentage amount for future enforcement processes. Michigan law requires that a deviation from the Formula recommendation be supported by a finding that the Formula would produce an unjust or inappropriate result, and that the court's reasoning be recorded in the order.

In addition to being available at a reasonable cost to the parent, the coverage must be accessible to the child.[7] This means that the "primary services are covered within 30 miles or 30 minutes from any of a child's residences. Coverage may be considered at greater times and distances in areas where residents normally travel longer to access primary services.

3. **No Coverage Available at a Reasonable Cost**

When neither parent has access to a reasonably priced health insurance policy through an employer, the court can direct a party to purchase private insurance for the child. The court might order one parent to purchase an individual or group policy and then divide the cost between both parents.[8] The court can also opt to direct a party or parties to pay cash medical support for the child. If the expense to the parents exceeds the "reasonable cost" standard, enrollment in MI-Child or another health care assistance program will satisfy the insurance coverage requirement, provided the order requires the parties to notify the FOC and purchase private insurance where it becomes available at a reasonable cost.[9]

4. **Health Care Premiums**

The MCSF directs that the cost of providing health insurance for the children be shared between parents.[10] When a parent is providing health insurance for children other than those identified in the support order, the premium paid for coverage of those other children is deducted from the parent's income before his or her support obligation is calculated in the case at hand.

5. **Third Party Insurance Coverage**

The MCSF recognizes there are cases in which the best available source of health care coverage is a third party (e.g., a new spouse).[11] If a third party is willing to provide insurance on a parent's behalf, the order should identify the parent who is maintaining coverage and allow the obligation to be fulfilled through the third party's insurance

[7] MCSF 3.05(A)(3).
[8] The definition of support includes "payment of the expenses of medical, dental, and other health care." This is not limited to employment-sponsored health care coverage. MCL 552.502a(h)(i).
[9] MCL 552.517 requires the FOC to review the order if there are reasonable grounds to believe that health care coverage is available.
[10] MCSF 3.05(C)(2)(c).
[11] MCSF 3.05(B)(3).

policy. Such a clause should add, however, that the medical support obligation will be reviewed if the third party's coverage is withdrawn or otherwise becomes unavailable.[12]

6. **Maintaining Health Care Coverage Information in the Michigan Child Support Enforcement System (MiCSES)**
Parents ordered to maintain health care coverage must inform the FOC of health care coverage that is available as a benefit of employment or that the parent purchases directly.

The FOC should enter the health care coverage information into MiCSES. If no information is included in the system, its absence may trigger enforcement measures that are unwarranted.

C. ENFORCING MEDICAL SUPPORT OBLIGATION

The MCSF contains two significant provisions concerning health care coverage. One is that *both* parents are obligated to contribute towards health care insurance premiums. The other is that the estimated cost of ordinary (uninsured) health care expenses[13] should be added to the monthly support payment, with the order specifying the health care obligation for each child. Both insurance premiums and uninsured expenses should be apportioned between the parents according to their incomes. For example, if the custodial and noncustodial parents had the same annual income, then the cost of health coverage for the children and uninsured medical expenses would be split evenly between them. Likewise, one half of the estimated cost of uninsured expenses would be added to the payer's support payments.

When enforcement is necessary, the FOC has several options for enforcing the court ordered health care coverage.

1. **Qualified Medical Child Support Order (QMCSO)**
In 1993, the Employee Retirement Income Security Act (ERISA) was modified to require employment-based group health plans to extend health care coverage to dependents of an employee who is divorced, separated, or never married when ordered to do so.[14] When a court orders health care coverage on a child, the court must first determine that the child is eligible for health care coverage on an employment based health care plan. If the child is eligible, the court is required to issue a QMCSO to notify the employer of the health insurance requirement.

A QMCSO is an order that recognizes a recipient's right to receive health care benefits. For an order to be a QMCSO, the notice to the employer and health care provider must provide the name and last known mailing address of the employee-parent and the name and mailing address of each child covered by the order.[15]

[12] Alternatively, the order could require one of the parents to obtain health care coverage immediately upon the third party coverage becoming unavailable.
[13] As of 2020, the ordinary medical expenses are $454 for a single child, based on consumer expenditure data.
[14] 29 USC 1167.
[15] 29 USC 1169 (a)(2).

2. **National Medical Support Notice (NMSN)**

State and federal law require use of the NMSN[16] to enforce the health care coverage provisions of child support orders. A NMSN complies with the requirements of QMCSO because it implements an order recognizing a child's right to a parent's employment-based health care coverage by providing the names and addresses of the employee-parent and all children.[17]

a. **NMSN Process Initiated**

Where a parent has been ordered to provide health care coverage for a child, Michigan law requires the FOC to send a NMSN to the parent's employer within two business days of being notified that the parent has obtained employment. Notice may be received from the state's directory of new hires or by other means. The NMSN should be sent whenever the parent ordered to provide health care support has a new job. MiCSES can automatically generate and send the NMSN to the employer.

States are not required to use the NMSN where the court has ordered insurance other than employer-based health care coverage.

b. **Employer Responsibility**

The NMSN requires the employer to respond to the FOC within 20 business days if health care coverage is unavailable for any of the following reasons:

i. The employer does not maintain or contribute to a health care plan that provides dependent or family coverage.

ii. The parent is among a class of employees that are not eligible for family health care coverage under any group health plan maintained by the employer or to which the employer contributes.

iii. State or federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.

iv. Parent is subject to a waiting period before health coverage is available. After the waiting period, the employer will take action to process the enrollment.

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[16] The Office of Child Support published a Medical Support Policy discussing the changes to the revised NMSN that will be implemented through MiCSES in 2011. The Office of Child Support Enforcement (OCSE) laid out the specific requirements of the NMSN changes at OCSE AT 11-03, is at http://www.acf.hhs.gov/programs/cse/pol/AT/2011/at-11-03.htm.

[17] MCL 552.626b states that the notice provided by the courts to a health care plan administrator must adhere to QMCSO requirements. 45 CFR 303.32(a) requires states to use the NMSN to enforce health care coverage. 29 USC 1169(a)(2) states that a NMSN is considered a QMCSO when it identifies the participants and beneficiaries eligible to receive benefits.

v. Health care coverage is no longer available because the employer no longer employs the parent. The employer must also provide the following information:

(1) Date of termination

(2) Last known telephone number

(3) Last known address

(4) New employer (if known)

(5) New employer telephone number

(6) New employer address

If none of the above exceptions apply, the employer must forward the NMSN to the health care plan administrator within 20 business days. The NMSN directs the plan administrator to enroll the child in the parent's health care plan and requires the employer to deduct the premiums (if any) from the parent's income.

The employer still must comply with the income withholding limitations in the Consumer Credit Protection Act (CCPA) when deducting the premium from the parent's income if the paying parent is employed outside of Michigan. This means that, if the parent's total support obligation (including base support, child day care, ordinary medical, and premiums) exceeds the CCPA limits, the employer cannot deduct the premium from the parent's income and the child need not be enrolled in the insurance plan. If the paying parent is employed in Michigan, the employer can withhold up to 50 percent when deducting the premium from the parent's income.[18]

c. **Plan Administrator Responsibility**
Statute requires the plan administrator to notify the parent with the health care obligation when health care coverage is available.[19] Within 40 business days after the date of the notice, the plan administrator must notify the issuing agency of the following:

i. Whether the child is covered under the plan; and

ii. Either the effective date of the coverage, or any necessary steps to be taken by the custodial parent to effectuate the coverage.[20]

[18] MCL 552.626b.
[19] MCL 552.626a.
[20] For example, choosing from any of the multiple health care plans an employer offers. Federal regulations require a IV-D agency to assist a parent with selecting health care coverage if multiple options are available. 45 CFR 303.32(c)(8). If the

d. **FOC Action if NMSN Rejected by Employer/Plan Administrator**
If the employer or plan administrator rejects the NMSN, the FOC may need to review the health insurance requirement in the order (see Section A[1], above).[21]

e. **Parent Objection to NMSN**
A parent may object to the NMSN by submitting an objection to the FOC. The parent must object in writing and must state the reason for objection. The only valid objections are that the parent is not the person named in the order, the parent's order does not require the parent to carry insurance, the cost of insurance is not reasonable, the coverage is not accessible to the child(ren), or that the parent already maintains the ordered coverage.

f. **FOC Action in Response to NMSN Objection**
If a parent objects to the NMSN, the FOC should look at the health insurance provision in the order. If the parent is not the person named in the order, the parent is not obligated to maintain health care coverage, or if the parent already maintains coverage, the FOC should notify the employer and cancel the NMSN, if necessary.

If the objection concerns the cost of coverage, the FOC should compare the cost of the insurance against the amount deemed reasonable in the support order. If the order does not specify an amount, the FOC should refer to the definition of "reasonable cost" earlier in this memorandum.

If the NMSN is canceled because it exceeds the reasonable cost specified in the order, the FOC should review the health care coverage requirement in the order through a review and modification for a change to dependent health coverage.[22]

If the cost of coverage does not exceed the reasonable cost specified in the order, and there is no mistake of fact, the objection must be denied. The parent may file a motion to modify the health care coverage requirement. This is true even if the order requires both parents to maintain insurance, and one parent maintains full coverage. In that circumstance, both parents remain responsible for maintaining coverage until the court order is changed.

g. **Confidentiality of Medical Care Orders**
The Health Insurance Portability and Accountability Act (HIPAA) creates national standards to protect the confidentiality of medical records and personal health information. Health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically are bound by these privacy standards even if they contract with

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employed parent does not select an option, federal regulations require the employer to enroll the child in the employer's default insurance plan.

[21] If the NMSN is rejected due to a technical error, the FOC should fix the error and send the NMSN back to the employer.

[22] MCL 552.517(1)(f)(iii-iv).

others to perform some functions. HIPAA creates stringent guidelines for releasing confidential health information on an individual, and it specifies penalties for the willful and improper disclosure of private information ($100-$250,000 fine and up to 10 years in prison).

HIPAA should not interfere with the NMSN process, but employers' concerns about the HIPAA penalties for the improper disclosure of personal health information prompted the federal Office of Child Support Services (OCSS) to issue a Policy Interpretation Question. PIQ 2004-03 states that a health plan may disclose protected health information to a IV-D agency pursuant to a NMSN.

3. **FOC Enforcement for Failure to Provide Coverage**
Regardless of the NMSN process (in which the system automatically generates a notice upon finding a new hire data match), if the FOC discovers that a parent has failed to obtain or maintain court-ordered health care coverage, the FOC must do one of the following:

a. Initiate contempt proceedings against a parent who fails to maintain court ordered health care coverage.

b. If the order is not qualified,[23] send a notice of noncompliance to the parent. The notice must include all the following information:

i. That the FOC will notify the parent's employer to enroll the children in the employer's health care plan and deduct premiums from the parent's income unless the parent does one of the following within 21 days:

(1) Submits written proof to the FOC that the child is enrolled in a health care plan.

(2) Requests a hearing to determine the availability or reasonable cost of the health care coverage.

ii. That the order for dependent health care coverage will be applied to current and subsequent employers and periods of employment. MCL 552.626(4)(b)(ii).

D. UNINSURED MEDICAL EXPENSES

1. **Qualified Medical Expenses**
Qualified medical expenses include treatments, services, equipment, and medicines associated with oral, visual, psychological, medical, dental, orthodontic, and other

[23] The Uniform Support Order states that the order is a qualified medical support order. The NMSN provides the information necessary to complete the requirements to qualify the order as a QMSO. 29 USC 1169.

health-related needs provided or prescribed by health care professionals for the child(ren). As used in this memorandum, "uninsured medical expenses" are those qualified medical expenses that are not covered by health care plans (e.g., deductibles, co-pays, and uncovered services).

The base support obligation covers routine remedial care items, such as first aid supplies, cough syrup, vitamins, contact lens supplies, and over-the-counter items. These expenses are not qualified medical expenses.

2. **Establishing and Modifying Medical Expense Payments in Support Orders**

a. **Uninsured Medical Expenses Apportioned Between Parents**
The support order should establish each parent's responsibility to pay for qualified uninsured medical expenses, which must be apportioned between the parents based on their share of total family income. Neither parent's share may exceed 90 percent or be less than 10 percent. The percentage limits apply to both the accounting for ordinary expenses and the enforcement of extraordinary expenses. MCSF 3.01(B)(2).

i. **Annual Ordinary Health Expense Amount**
Unless the parents agree on a different means of handling the children's uninsured health care costs, every support order should include a dollar amount for annual ordinary medical expenses. Ordinary medical expenses include insurance co-payments and deductibles, and other qualified uninsured health care expenses. The MCSF has a presumptive amount for annual ordinary expenses."[24] If the court is aware of or anticipates higher qualified uninsured expenses for the children, the court may set a higher amount. The amount in the order is presumed to have been spent by the payee. MCSF 3.04(B)(3)(b)(ii).

Example: For one child, the annual ordinary health care amount in the order is $454 ($37.83 per month). Based on each parent's share of total family income, the order allocates 50 percent of the uninsured health care expenses to each parent. The payer's share of ordinary expenses ($18.92 per month) is added to the general support obligation. The payee parent contributes directly by paying for the expenses when they are incurred.

The payer's share of the ordinary medical expenses is added to the support obligation or otherwise charged to the support payer. The payee contributes directly when paying each expense. When the parenting time offset results in a low or zero-support obligation, the court order should clearly reflect which parent is presumed to be the support recipient.

[24] The 2021 MCSF presumes $454 for a single child based on national consumer expenditure data.

The annual ordinary health care amount restarts every calendar year, unless the court directs that enforcement be administered on an order-year basis. It continues with the support obligation or until further order of the court. Changes to the ordinary health care expense amount must be pro-rated for the year in which a change occurs.

Example: An order effective October 1, 2022, has $454 per year in ordinary health care expenses for one child. Based on their shares of total family income, the order allocates 50 percent of the expenses to each party. Because there are three months left in the calendar year (October-December), the amount for that year is $113.50 ($454/12 =$37.83 x 3 months = $113.50). The parents are each responsible for contributing $18.92 per month (the support payer through the support obligation, the payee contributing directly). Any expenses that the payee parent incurs in the three months that exceed $113.50 are considered extraordinary medical expenses.

When the parent's percentages are changed during a calendar year, apply the percentage in effect at the time the expense was incurred.

Example: The order is modified July 1 and sets the payer's obligation for uninsured expenses at 75 percent ($28.38 per month).[25] Previously, the payer's obligation was 60 percent ($22.70 per month). An expense that is incurred in June, but that does not go through the insurance process until July, is split between the parties according to the order in effect in June. The payer is responsible for 60 percent. For the year in question, the payer will pay $306.48 for uninsured expenses ($22.70 x 6 months = $136.20, $28.38 x 6 months =$170.28; therefore $136.20 + 170.28 = $306.48).

ii. **Adjusting the Annual Ordinary Health Expense Amount**
In most cases, the annual ordinary health expense amount should be used. However, there may be cases where it is appropriate to adjust the amount. In modifying the OME amount, the court may add predictable costs to the OME amount, or completely eliminate the OME amount.

(1) **Increasing the Amount**
When the child(ren) have known and predictable expenses above the annual OME, the court may consider adding those

[25] This example assumes the Annual Ordinary Expense is $454 per year.

amounts to the OME amount.[26] This may occur when the child(ren) have ongoing therapies, or medications that will keep the costs higher than the standard OME amount. By adding this amount, the reimbursement is built into the monthly order, instead of requiring the contribution through additional medical enforcement.

(2) **Eliminating the OME Amount**
In a limited number of scenarios, the court may eliminate the OME amount, which would then mean contribution for those expenses are enforced as additional medical expenses.[27] The four scenarios are:

a. Both parents routinely take one or more children-in-common for medical care and incur qualifying medical expenses;
b. The support payer will likely incur most qualifying out-of-pocket costs for the children;
c. An incapacitated payer's base support obligation is set at zero (MCSF 4.02); or
d. The recipient has an employer-paid benefit (e.g., health reimbursement arrangement) that pays the recipient's initial out-of-pocket expenses for the children.

b. **Accounting for Uninsured Medical Expenses**
The payee should maintain a record of qualified (ordinary) uninsured medical expenses, and the payee must pay the expense. Parents can use SCAO Form FOC 13 or FOC 13a to maintain the record. To request reimbursement of uninsured medical expenses, the payee must provide documentation that the actual annual expenses exceed the amount stated in the order (see the following section, *Additional Health Care Expenses*).

All qualified uninsured medical expenses the support payer incurs are enforceable as additional medical expenses (see the following section, *Additional Health Care Expenses*).

If a health care expense extends between enforcement years, apply the expense to the calendar or order year in which the care was given. If the health care bill does not distinguish the expenses between enforcement years, apply the entire bill to the year in which the bill is received.

Example: The child is hospitalized December 28, 2020, through January 5, 2021. If the hospital bill lists the daily expenses,

[26] Adding known and predictable costs follows the MCSF, and does not require a deviation. MCSF 3.04(B)(2).
[27] MCSF 3.04(B)(3).

apply the December 28-31 expenses to the 2020 calendar year expense account, and the January 1-5 expenses to the 2021 calendar year expense account. If the hospital bill does not list daily expenses, and instead gives an amount due for the entire period of care, apply the entire amount to the 2021 expense account.

c. **Additional Uninsured Medical Expenses**

The payee's qualified uninsured medical expenses that exceed the annual ordinary medical amount established in the order, and all the payer's qualified uninsured medical expenses are additional medical expenses. The parents are responsible for reimbursing each other for these uninsured medical expenses according to the percentages established for each parent in the order.

Example: For one child, the annual ordinary health care amount in the order is $454. Based on their share of total family income, the order allocates the uninsured health care expenses between the parents at 50 percent for each party. Before requesting enforcement for medical expenses, the payee must provide proof that he or she spent more than $454. The payer will owe the payee 50 percent of any net expense that exceeds the annual ordinary health care amount. If the payer incurs any health care expense, the payee will owe the payer 50 percent of the expense.

If an order requiring payment of annual ordinary health care amounts is in effect for only part of a year, the pro-rated threshold amount for that year must be reached before an expense can be considered additional. For example, if the order becomes effective October 1st, the pro-rated amount for the calendar year is $113.50 ($454/12 =$37.83 x 3 months = $113.50). The payee must provide proof that more than $113.50 was spent between October and December on uninsured medical expenses when requesting enforcement for additional expenses.

d. **Medicaid**

Pursuant to federal law,[28] a support recipient who receives Medicaid assistance must assign medical support payments to the state. That means the payer's portion of the ordinary medical expense amount will be assigned to the state.[29]

3. **Health Savings Accounts (HSAs)**

An HSA allows a parent to deposit money into an account to cover medical expenses.[30] Sometimes an employer will contribute a portion of the amount deposited.[31] Employer

[28] 42 USC 1396k

[29] These assigned amounts are "MS" debt types in MiCSES. However, uninsured, or additional, medical expenses are not assignable; these are "MR" debt types in MiCSES.

[30] HSAs may be used to pay for deductibles, copayments, coinsurance. However, HSA funds generally are not used to pay premiums.

contributed funds are not considered income.[32] In some cases a parent may satisfy the responsibility to pay for qualified medical expenses through an HSA.[33] Unlike insurance premiums, the parents do not normally share any of the cost of the HSA. Although the final treatment of accounting for HSA contributions and payments are subject to the discretion of the trial court, for purposes of setting support, determining whether the HSA is an acceptable means to pay for qualified medical expenses, and determining whether the ordinary medical expense is met, the FOC should use the following guidelines:

a. Accounting for Income

Employer contributions are not considered as income to the individual, because the parent can only use those funds for qualified medical expenses if incurred. MCSF 2.01(D)(2). A parent's own contributions are considered as income because of the voluntary choice to contribute funds for medical expenses.

b. HSA funds as meeting qualified medical expenses for OME

A support recipient must meet the child(ren)'s total annual OME before asking for additional medical expense enforcement. In determining whether the total annual OME threshold has been met, the MCSF allows HSA funds to be used, and counted, if the contributions were already considered as that parent's income (e.g., the parent's own contributions to the account and not relying solely on employer contributions). To the extent that the support recipient's HSA contributions are below the total annual OME threshold, the court will want to closely consider the circumstances. The MCSF allows the court to determine that no ordinary medical expenses are appropriate when the recipient has an employer-paid benefit. MCSF 3.04(B)(3).

The MCSF allows a court to order no OME when there is an employer-paid benefit because it is presumed that the party will use those funds to pay for OME that the party would otherwise incur. Therefore, any OME expense not covered by the HSA would be eligible for enforcement. However, there is no requirement that the party use the HSA for OME for the party's child(ren). To treat the parties with an HSA the same as parties without an HSA, the order should provide that the payee still incur more than the payee's share of OME for the year before submitting expenses for reimbursement.[34] A payer who has an HSA for the child(ren)'s qualified medical expenses may be eligible for additional medical enforcement, because all qualified medical expenses paid by the payer are considered additional medical expenses. Instead, a court may want to closely consider the circumstances in these cases to determine whether, and how, cost-sharing is appropriate. (e.g., the amount contributed by the payer, the

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[31] Some HSAs are wholly funded by the employer; others may use some matching contributions.
[32] MCSF 2.01(D)(2). Individual contributions are voluntary, so should be counted as income. Employer contributions are not controlled, so not counted as income.
[33] MCSF 3.04(A)(6).
[34] The FOC may use the payee's share of OME as a threshold for enforcement in cases for which the court does not include the required language. That will allow a payer to raise the issue and obtain a hearing.

amount contributed by the employer, the share of income, and the amount of the qualified medical expense) and could, like the payee's expenses require the payer to exceed the payer's share of OME for the year before submitting expenses for reimbursement.[35]

3. **Court-Ordered Birth Expenses**

a. **Confinement Formula**
In June 2011, the Office of Child Support, with SCAO's involvement, released Michigan IV-D Child Support Manual, section 4.25, *Birth Expenses*, that instructs FOC offices how to calculate birth expense repayment amounts that are enforceable under Federal IV-D regulations.[36]

b. **Exceptions**

i. **Physical or Sexual Battery**
If there has been a judicial determination in a separate proceeding[37] that a pregnancy or complication of a pregnancy was the result of a physical or sexual battery by a party to the case, the court must apportion all of the birth expenses to the perpetrator of the battery. MCL 722.712(4).

ii. **Medicaid Paid Expenses**
If Medicaid paid for the birth expenses determined as reasonable and necessary medical expenses connected to the mother's pregnancy,[38] the court cannot apportion expenses to the mother. In these circumstances, the father may be ordered to pay up to 100 percent of the expenses. MCL 722.712(3).

iii. **Parents Marry**
The court order must provide that if the parents marry each other after the child is born, the father's obligation for unpaid birth expenses is abated, subject to reinstatement for good cause.[39] Good cause includes, but is not limited to, dissolution of the marriage. To initiate the abatement, the parents must provide proof of the marriage to the FOC. MCL 722.712(5).

The law does not state how long the expenses are eligible for reimbursement. Conceivably, the expenses could be reinstated for as

[35] The FOC could similarly use the payer's share of OME as a threshold for enforcement.
[36] This policy is part of the Michigan IV-D Child Support Manual, Section 4.25, *Birth Expense* found at http://mi-support.cses.state.mi.us/policy/manual/4.0/4.25.pdf.
[37] Such as a criminal case or PPO hearing, but not the paternity case in which the reimbursement is sought.
[38] "Reasonable and necessary medical expenses" are defined in MCL 722.712.
[39] All support orders entered before the effective date of this law are considered to contain the provision by operation of law.

long as the payer lives. Courts should consider whether the statute of limitations or another standard applies.

Expenses apportioned to the mother would normally not be affected by the abatement provisions. The statute does not provide that the expenses apportioned to the mother may be abated upon marriage. However, if the mother is ordered to pay the expenses to the father, the court should consider whether marriage serves to merge obligations owed by the parties to each other and extinguish the debt.[40]

4. **Enforcement of Additional Medical Expenses**

a. MCL 552.511a outlines the process for enforcing extraordinary uninsured medical expense reimbursement:

i. The parent seeking reimbursement for the uninsured medical expenses must demand payment from the other parent within 28 days after the insurer's final payment or denial of coverage.

ii. The health care expense is equal or greater to the established reimbursement threshold established by SCAO.

iii. The parent responsible to pay did not pay within 28 days of receiving the demand for payment.

iv. The enforcement complaint is submitted to the FOC on or before any of the following:

(1) One year after the expense was incurred;

(2) Six months after the insurer's final payment or denial of coverage (the request for coverage must have been made within two months of the expense); or

(3) Six months after a parent defaults on paying the expense if the parents had a written agreement outlining how much the parent would pay and a schedule for the payment.

b. Michigan law requires the FOC to enforce extraordinary medical expenses so long as the parent requesting enforcement follows certain procedures. FOC policies that require a parent to accumulate bills to a certain threshold before enforcing the bills can create a financial hardship. SCAO recommends that a

[40] See *Sierra v Minnear*, 341 Mich 182; 67 NW2d 115 (1954).

$100 threshold amount per child should be met per calendar year before the FOC has to begin enforcement of the extraordinary medical expense. If the $100 amount has not been met within the calendar year, the expenses can be submitted at the end of the calendar year, by a predetermined date set by the FOC.[41]

c. If the parent requested enforcement on an extraordinary medical expense and met the criteria of MCL 552.511a, and the FOC has determined that the expense qualifies for reimbursement, the FOC must enforce against the parent obligated to pay the medical expense.[42] The FOC enforces by sending the following information to the other parent:

   i. A copy of the complaint submitted from the parent requesting reimbursement.

   ii. Notice that if the obligated parent does not pay the bill or object to the complaint within 21 days, the amount of the uninsured medical expense will become a support arrearage, subject to all available support enforcement remedies.

   iii. Notice that if the parent files an objection to the complaint within 21 days, the FOC will set a hearing before a judge or referee to resolve the complaint.

d. If the obligated parent does not pay the medical expense and does not file a written objection to the complaint within 21 days, the amount of the medical expense becomes a support arrearage, subject to any enforcement remedy available.

e. If the parent files a written objection within 21 days, the FOC must schedule a hearing before a judge or referee to determine the matter. An objection may challenge the necessity of the expense, claim that insurance coverage is available, assert that the parent already has paid the expense, or raise any similar defenses. When a hearing is scheduled, both parents must attend the hearing and should be advised that the FOC does not represent the interests of either parent.

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[41] Example: A case has two children, making the minimum threshold amount for enforcement $200. If the parent only incurred $140 in extraordinary medical expenses, then the requesting parent would have to wait until the end of the calendar year to submit the $140 for reimbursement by the other parent.

[42] The FOC review determines if the expense is a qualified uninsured expense and if the annual ordinary health care amount was exceeded. The FOC does not determine if the expense is reasonable or necessary. If the other parent objects that an expense is unreasonable or unnecessary, the court decides the issue. The parent requesting enforcement is responsible for providing the FOC with proof that the annual ordinary amount was exceeded. Parents may use form FOC 13 or FOC 13a to document their medical expenses.

E. REVIEW OF SUPPORT ORDER

1. Statutory Requirement to Review Order

Michigan law requires the FOC to review support orders periodically after final judgment if there are reasonable grounds to believe that previously unavailable dependent health care coverage has become available, and the order does not include an order for health care coverage.[43]

Reasonable grounds to review an order include probable access by an employed parent to dependent health care coverage. If an order requires a parent to maintain dependent health care coverage, and that parent changes health care providers, another FOC review is not required or specifically authorized. However, if there are reasonable grounds to believe that the health care amount should be adjusted due to employment or unemployment of a parent, the FOC should request a modification of the support order. If the child is receiving Medicaid, the FOC must review the order at least once each 36 months unless either of the following applies:

a. The order requires health care coverage and neither party has requested a review.

b. The office receives notice from DHS that good cause exists not to proceed with support action and neither party has requested a review. MCL 552.517(1)(c)(i)-(ii).

2. Seeking Modification of a Medical Support Order

a. **Support order lacks medical care provisions**
The FOC must seek modification when a support order lacks provisions for medical coverage, and health care coverage is accessible to the child and available at a reasonable cost.[44]

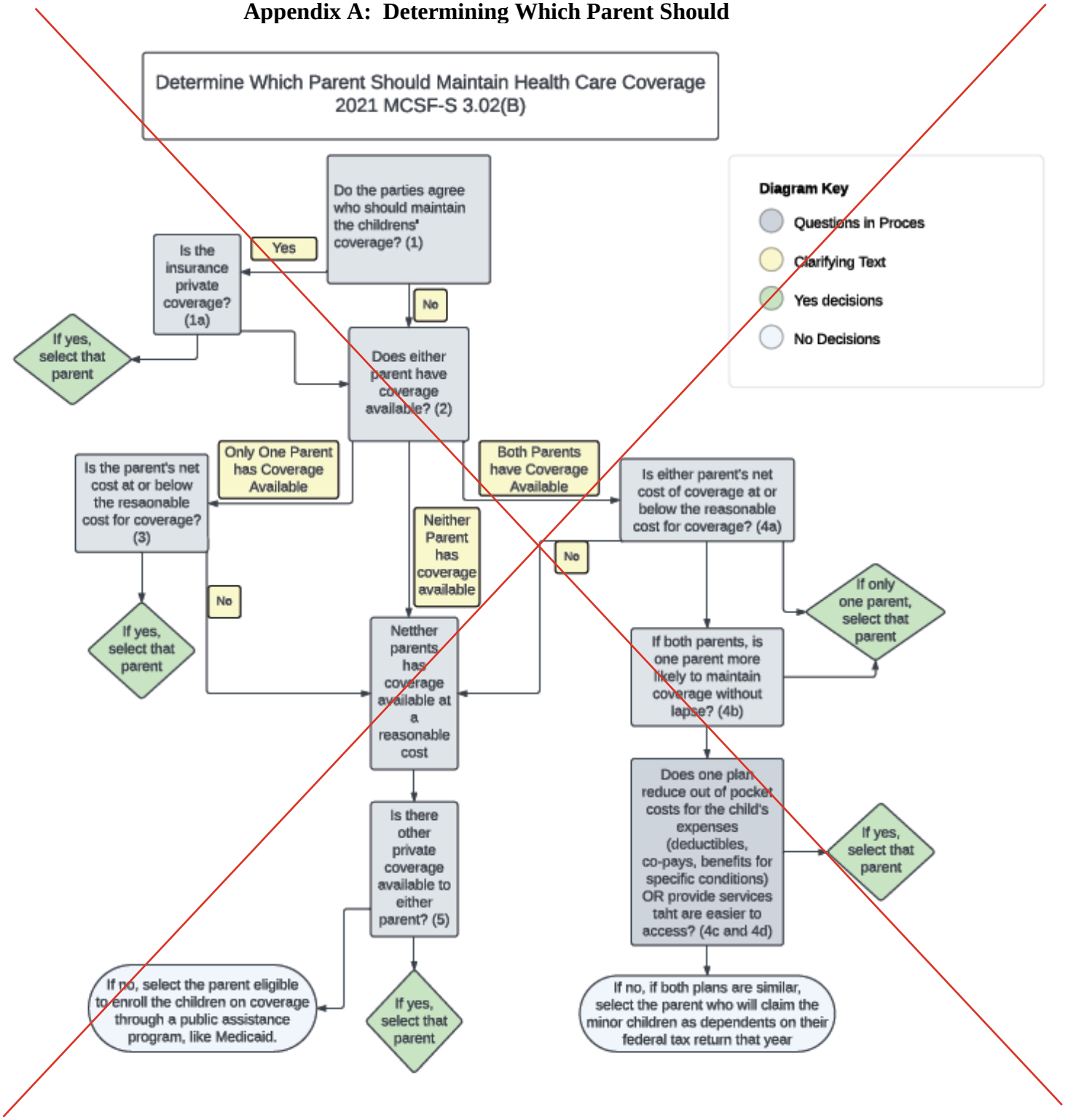
b. **Review of order warrants modification**
When the FOC review shows that a change to the order is necessary, the FOC recommendation should include all the factors listed in section A, *Medical Support Requirements and Recommendations for Court Orders*.

[43] MCL 552.517(1)(f).
[44] MCL 552.517(8).

This flowchart was updated 11/25/2025.

Updated Health Care Coverage Flow Chart

Appendix A: Determining Which Parent Should



Appendix B: Checklist

Insurer/Plan Name:	Plan A	Plan B	Plan C	Plan D
Person Providing:				
Parent Enrolled?	Y / N	Y / N	Y / N	Y / N
Child Enrolled?	Y / N	Y / N	Y / N	Y / N
Does Coverage Include:				
Medical Hospitalization				
Acute Care				
Chronic Care				
Prescriptions				
Dental				
Orthodontics				
Vision/Eye Care				
Mental Health				
Substance Abuse				
Other:				
Cost of Medical & Hospitalization Coverage:				
Drug Co-pay				
Total Premium				
Adding children				
Co-payment				
Deductible				
Cost to Add Other Coverage:				
Dental				
Vision				
Other				
Geographic Limits				
Out-of-Network coverage limits				