AssuredPartners

Qualified Medical Child Support Order Guide

September 2023

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Introduction to Qualified Medical Child Support Orders

Background

The Employee Retirement Income Security Act (ERISA) requires certain employer-sponsored benefit plans to provide medical coverage, which can include health, dental, vision, prescription drug, and mental health coverage (whether through a fully-insured or self-funded plan or through account-based plans like an HRA) to the employee's child (referred to as the "alternate recipient") when ordered to do so by a state or local authority. The Child Support Performance and Incentive Act (CSPIA) requires state and local government plans to comply with National Medical Support Notices (NMSNs) and church plans to comply with NMSNs and Qualified Medical Child Support Orders (QMCSOs).

Qualified Medical Child Support Order

A medical child support order is a judgment, decree, or order (including approval of a settlement agreement) made pursuant to a state domestic relations law (e.g., divorce, paternity action, custody dispute, etc.) which provides for child support and creates or recognizes the existence of the child's right to coverage under a group health plan for which the employee is eligible. A medical child support order is qualified if it lists:

- Name and last known mailing address of the employee;
- Name of the child(ren) to be covered by the plan (a/k/a "alternate recipient");
- EITHER the mailing address of the child(ren) OR the name and mailing address of a state or local child support agency;
- Reasonable description of type of coverage to be provided (i.e., medical, dental, vision, etc.); and
- The period of time to which the order applies.

The vast majority of support notices come in the form of an NMSN. The NMSN is a standardized form created by the federal Department of Health and Human Services (HHS) which is used by state child support agencies to notify employers of the existence of a medical support order. A properly completed NMSN is a valid QMCSO.

HHS released an updated version of the NMSN on January 19, 2023. States have until November 1, 2023 to implement the new NMSN. While the previous version of the NMSN is similar, the information in this guide is based on the new version of the notice.

Changes to the NMSN

Among other changes, the revised forms now include a sample Part A, standalone instructions, a new addendum to Part B, and a matrix of state specific requirements relevant to implementing an NMSN. The updated forms and supplemental materials can be found on the HHS website: https://www.acf.hhs.gov/css/form/national-medical-support-notice-forms-instructions

Structure of the NMSN

An NMSN consists of two parts: Part A and Part B.

Part A is completed by the employer and includes:

- Basic information concerning the employee and children to be covered and the coverage to be provided;
- Information on income withholding limits;
- Employer's Response Form & Instructions; and
- Termination information (if terminating a prior NMSN).

Part B is completed by the Plan Administrator and includes:

- Basic information concerning the employee and children to be covered and the coverage to be provided;
- Plan Administrator Response Form & Instructions; and
- Addendum to Part B (used to provide details regarding the coverage in which the children are enrolled).

Note that in the vast majority of cases the employer is also the Plan Administrator and will complete both Part A and Part B. Exceptions may include situations where the employee is enrolled on a union plan administered by the union, or the employer is part of a professional employer organization (PEO) and the PEO administers the plan. *Do not send Part B to the insurance carrier or TPA to be completed* – they are almost never the Plan Administrator, and you will delay processing the NMSN if you send Part B to them.

Timeframe for Processing the NMSN

The employer has 20 days from the date of receipt of the NMSN to complete the Employer Response in Part A and return it to the child support agency who issued the NMSN. If the employer is not the Plan Administrator and the children are to be enrolled in the health plan, Part B needs to be forwarded to the Plan Administrator withing 20 business days of the date of the order.

The Plan Administrator has 40 business days from receipt of Part B from the employer to complete the Plan Administrator Response in Part B and enroll the children in the plan, if applicable, *or sooner if reasonable*. It's not clear from what date the 40 days should be measured when the employer and Plan Administrator are the same. But it will almost always be reasonable to complete Part B and enroll the children in fewer than 40 days, in which case the employer must do so, i.e., the employer cannot delay enrollment for 40 days if it's reasonable to enroll the children sooner.

Once the employer determines the NSMN is complete and that the children must be enrolled in the plan, the children must be enrolled at the first available opportunity. If coverage under the plan is always effective the first day of the calendar month, enrollment can be delayed until the first of the month following the date the employer determines the NMSN is complete, and the children must be enrolled. *Do not delay enrollment until open enrollment* – receipt of an NMSN is a special enrollment event.

Enrolling the Employee

Most plans will not allow children to enroll unless the employee is also enrolled on the plan. If the employee is not enrolled on the plan at the time you receive the NMSN, the employee must be enrolled on the plan as well along with the children. If this is the case, the cost of enrolling the children for purposes of determining if income withholding limits are exceeded will include the cost of enrolling the employee as well as the children.

Notifying the Employee

While not technically required, we recommend the employer notify the employee upon receipt of an NMSN. This will avoid any surprises when deductions start coming out of the employee's check and also gives the employee a chance to contact the child support agency if there is a mistake or produce documentation the children have other coverage before the children are enrolled. *Do not give the employee a copy of the NMSN itself* unless you redact the address of the custodial parent and the children.

The employer must process the NMSN and enroll the children and the employee, if necessary, even if the employee objects or claims the NMSN is in error unless the employee provides written documentation verifying the children are already enrolled in other comparable coverage or the child support agency sends a notice terminating the NMSN.

Step by Step Guide to Processing an NMSN

Step 1 – Verify the NMSN is Complete

A properly completed NMSN is automatically a QMCSO. To be complete, at least the following information must appear on the first page of the NMSN:

Employee's name and last known mailing address (if known)	RE: _____ Employee's Name (Last, First, MI) _____ Employee's Social Security Number _____ _____ _____ Employee's Mailing Address
The name(s) of the child(ren) to be enrolled in the plan	Child(ren)'s Name(s) Gender DOB SSN _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____

The mailing address of the children OR the mailing address of the child support agency	_____ _____ _____ Custodial Parent's Mailing Address _____ _____ _____ Child(ren)'s Mailing Address (if different from Custodial Parent's) **Notice Date:** _____ Issuing Agency: _____ Address: _____ _____
The type of coverage to be provided	The order requires the child(ren) to be enrolled in ☐ all health care coverages available; or only the following coverage: ☐ Medical; ☐ Dental; ☐ Vision; ☐ Prescription drug; ☐ Mental health; ☐ Other (specify): _____

(To be qualified a QMCSO must also list how long the coverage is to be provided. Part A contains boilerplate language under the heading "Duration of Withholding" later in the instructions that satisfies this requirement.)

Step 2 – Determine if Income Withholding Limits are Exceeded

There is a limit as to how much an employer can withhold from an employee's paycheck to pay child support, including the employee contribution towards health insurance for enrolling the children under an NMSN. This amount should be listed in Part A under "Limitations on Withholding."

LIMITATIONS ON WITHHOLDING

The total amount withheld for both cash and medical support cannot exceed _____% of the employee's aggregate disposable weekly earnings. The employer may not withhold more under this National Medical Support Notice than the lesser of:

1. The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b));
2. The amounts allowed by the State of the employee's principal place of employment; or
3. The amounts allowed for health insurance premiums by the child support order, as indicated here: _____.

Note: Older versions of the NMSN do not have a space for the child support agency to enter the withholding limit and the employer is required to determine the correct percentage itself under applicable state or federal law.

In most cases, this percentage will be the applicable limit under the federal Consumer Credit Protection Act (CCPA), which ranges from 50%-65% of disposable earnings depending on whether the employee is supporting another family and is behind on their child support payments. Most states follow the CCPA percentages, but a few have their own lower limits either on the overall amount of disposable earnings that can be used to pay child support or a specific limit on the amount the employee can be required to pay for health coverage for the children.

If there is a state specific limit on the amount of premiums, this should be listed in this section or you can check the OCSE Medical Support Matrix on the HHS website.

Except in the case of state specific limits on the cost of health coverage, this contribution limit applies to the total amount of all child support, not only under the NMSN but also any cash child support orders a/k/as Income Withholding Orders (IWO) the employee may have.

To determine if the income withholding limits are exceeded:

1. Calculate Disposable Earnings

"Disposable earnings" are the employee's gross pay minus mandatory deductions. Mandatory deductions are federal and state incomes taxes, the employee's share of FICA taxes, and any other required state taxes or deductions, e.g., mandatory contributions to a state paid family leave program. Mandatory deductions do not include benefit contributions (unless specifically allowed by state law), retirement plan contributions (unless required by state law, e.g., state and local government employees), amounts owed to the employer, union dues, other child support orders, or any other deductions that are not legally mandated.

While the NMSN refers to "weekly" disposable earnings, it's OK to calculate disposable earnings based on your pay period as long as the cost of coverage is calculated over the same time frame.

2. Determine Disposable Earnings Available for Child Support

Multiply disposable earnings times the limitations percentage listed in the NMSN. This is the amount of disposable earnings available to pay child support.

3. Determine the Cost of Enrolling the Children

Add up the total amount of employee contributions to enroll the child(ren) in all the required plans. If there are multiple plan options with different costs and the employee is already enrolled in coverage, use the plan option on which the employee is enrolled; if the employee is not enrolled, test each of the options separately. Note that this amount may be $0 if the employee is already enrolled in family coverage and there will be no additional cost to enroll the children.

If you have to enroll the employee as well, then add in the contributions for the employee's coverage. Do not include the employee cost if the employee is already enrolled in coverage.

4. Determine Total Amount of Child Support

Add together the amount calculated in Step 3 plus the amount of child support from any IWOs for the employee or any other NMSNs.

If the amount in step 2 is more than the amount in step 4, the cost of coverage is within income withholding limits and you can proceed with completing the Employer Response form. If the amount in step 2 is less than the

amount in step 4, then you must check the state's priority of withholding rules in the OCSE Medical Support Matrix on the HHS website. Most states will prioritize cash child support over health coverage, which means if the employee does not have enough earning to pay both you will continue deducting cash child support and will not enroll the children in the health plan.

There may be other circumstances in which the total amount of all child support orders exceeds the amount of disposable earnings, e.g., the employee has multiple IWOs/NMSNs for different children or there are enough disposable earnings to cover the cost of enrolling the children on some of the required plans but not all of them, but the OCSE Medical Support Matrix does not address how to prioritize those orders. In that situation, we recommend contacting the child support agency for guidance on how to proceed, either by attempting to call them or using Option 6 (Other) on the Employer Response form to explain the situation (see below).

Step 3 – Complete Employer Response Form

Section 1 – No Enrollment Possible

The employer knows that the plan administrator cannot enroll dependents in employer-provided health care coverage for the employee named on page 1, because: (select all that apply)

☐ 1. The employee named in this Notice has never been employed by this employer.

☐ 2. We, the employer, do not offer our employees the option of purchasing dependent or family health care coverage as a benefit of their employment.

☐ 3. The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health care coverage under any group health care plan maintained by the employer or to which the employer contributes. **If the employee is only temporarily ineligible for health care coverage, do not check this box, and advance to Section 2.**

☐ 4. Health care coverage is not available because employee is no longer employed here:

Effective date of separation: _____

Reason for separation: _____

Last known telephone number: _____

Last known address: _____

(If new employment information is known, add at #6).

☐ 5. 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. (*See page 2 for description and instructions.*)

☐ 6. Other (new job information for employee, child adequately covered by 3rd party, other reason for no coverage): _____

Option 1 – The employee was never employed by you.

Option 2 – You do not offer dependent health coverage.

Option 3 – The employee is not eligible for benefits, e.g., because they are part-time. Do not check this box if the employee is in a waiting period or is otherwise only temporarily ineligible for benefits.

Option 4 – Employee is no longer employed. Note that in addition to providing information on the date and reason the employee's employment terminated, you are also required to provide information on the employee's new employer, if known.

Option 5 – Income withholding limits are exceeded.

Option 6 – Other. Use this option if the employee provides proof of enrollment in other comparable coverage (see Terminating Coverage, below) or other miscellaneous reasons you cannot proceed with enrollment that do not fit any other option.

Section 2 – Dependent Enrollment Not Yet Available

☐ 7. The participant is subject to a waiting period that expires _____*(more than 90 days from the date of receipt of this Notice*), or has not completed a waiting period, which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: _____). At the completion of the waiting period, the Plan Administrator will process the enrollment.

☐ 8. Employee is on an unpaid leave of absence. Expected date of return: _____

Section 3 – Dependent Coverage Available

☐ 9. Employer forwarded Part B - Medical Support Notice to Plan Administrator on this date: _____

COMPLETED BY:

Employer Company Name	Plan Administrator Company / Union Name
_____	_____
Contact Name: _____	Contact Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
Telephone: _____	Telephone: _____
FAX: _____	FAX: _____
FEIN: _____	FEIN: _____

Option 7 – Waiting period. Only use this option if the waiting period is more than 90 days (which rarely will be the case because of ACA rules) or the waiting period is measured by something other than number of days, e.g., working a specified number of hours. If the waiting period is 90 days or less check Box 9 and move on to Part B.

Option 8 – Unpaid leave. Do not check this box if the employee's leave is paid, e.g., they are using paid time off or receiving income replacement benefits from the employer, like a self-funded short-term disability (STD) plan. While not entirely clear, an employee receiving STD, long-term disability (LTD), workers' compensation, or state disability/paid family leave benefits can likely be treated as on an unpaid leave since there is no paycheck from which to deduct any required premiums.

Option 9 – None of the other options apply. Enter the date you forwarded Part B to the Plan Administrator, if different from the employer, or the date you completed Part A if you are the Plan Administrator.

Forward the completed Employer Response form to the child support agency at the address listed on the first page. You can send both the Employer Response and Plan Administrator Response at the same time but remember you only have 20 days to return the Employer Response form.

Step 4 – Complete the Plan Administrator Response

Again, in most cases, the employer will be the Plan Administrator and must also complete the Plan Administrator Response form.

1. ☐ This Notice was determined to be a "qualified medical child support order," on this date _____. Complete **Response 2 or 3, and 4**, if applicable.

2. ☐ The participant (employee) and alternate recipient(s) (child(ren)) are or will be enrolled in the following family coverage:
   a. ☐ The child(ren) is/are currently enrolled in the plan as a dependent of the participant.
   b. ☐ There is only one type of coverage provided under the plan. The child(ren) is/are included as dependents of the participant under the plan.
   c. ☐ The participant is enrolled in an option that is providing dependent coverage and the child(ren) will be enrolled in the same option.
   d. ☐ The participant is enrolled in an option that permits dependent coverage that has not been elected; dependent coverage will be provided.

Coverage is effective as of _____ (includes waiting period of less than 90 days from date of receipt of this Notice). The child(ren) has/have been enrolled in the following option:_____ (if plan is insured, provider, policy and group numbers, and addresses for submitting claims, are provided in Addendum Section 1). Any necessary withholding should commence if the employer determines that it is permitted under State and Federal withholding and/or prioritization limitations.

3. ☐ There is more than one option available under the plan and the participant is not enrolled. The Issuing Agency must select from the available options. Each child is to be included as a dependent under one of the available options that provide family coverage. If the Issuing Agency does not reply within 20 business days of the date this Response is returned, the child(ren), and the participant if necessary, will be enrolled in the plan's default option, if any:_____(if plan is insured, see Addendum Section 1).

4. ☐ The participant is subject to a waiting period that expires_____(more than 90 days from the date of receipt of this Notice), or has not completed a waiting period which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: _____). At the completion of the waiting period, the plan administrator will process the enrollment.

5. ☐ This Notice does not constitute a "qualified medical child support order" because:
   ☐ The name of the child(ren) or participant is unavailable.
   ☐ The mailing address of the child(ren) (or a substituted official) or participant is unavailable.
   ☐ The child(ren) identified in the Addendum Section 2 is/are at or above the age at which dependents are no longer eligible for coverage under the plan.

Box 1 – This box should always be checked unless the NMSN is missing information that prevents it from being qualified and you are checking Box 5. You can use the date you complete the Plan Administrator Response as the date you determined the NMSN was qualified.

Box 2 – The children will be enrolled in the plan. Enter the date when the coverage will be effective. If the employee is in a waiting period that is less than 90 days, check this box and enter the effective date as the date after the waiting period ends.

Box 2a – The children are already enrolled in the required coverage. Note that while you do not have to enroll the children if the employee has already voluntarily done so, the employee may not drop that coverage once you receive an NMSN.

Box 2b – There is only one plan option and the children will be enrolled in that option.

Box 2c – The employee is already enrolled in a plan that provides dependent coverage, e.g., the employee has enrolled themselves and their spouse in family coverage, and the children will be enrolled in that same plan option.

Box 2d – Employee is already enrolled in single coverage and children will be enrolled in the same plan option.

Box 3 – Employee is not currently enrolled in the plan and you offer multiple plan options. You must send information regarding the available plan options to the child support agency and ask them to choose one. You are not required to enroll the children while you are waiting for a response from the child support agency. You can (but are not required to) choose a default option in which the children will be enrolled if you do not receive a response from the child support agency within 20 days; if you do choose a default option, list that option in the space provided.

Do not check Box 3 if only one of the plan options is within the income withholding limits. Enroll the children in the only affordable plan and check Box 2.

Box 4 – The employee is in a waiting period that is longer than 90 days (which will almost never be the case because of ACA rules) or the waiting period is determined by something other than number of days. You must enroll the children at the end of the waiting period.

Box 5 – The NMSN is missing required information. Check the box to indicate what information is missing.

NATIONAL MEDICAL SUPPORT NOTICE – ADDENDUM TO PART B

Notice Date: _____ Issuing Agency: _____ Address: _____ Case Identifier: _____ Telephone Number: _____ Email Address: _____ FAX Number: _____	Court or Administrative Authority: _____ Order Date: _____ Order Identifier: _____ Document Tracking Identifier: _____ Employer web site: _____ See NMSN Instructions: http://www.acf.hhs.gov/programs/css/resource/national-medical-support-notice-form

SECTION 1: HEALTH INSURANCE DETAILS

Use section 1-1 through 1-6 to provide the information on the plans in which child (ren) is/are enrolled. Complete all of the following information for each type of health care coverage that the child(ren) is receiving (enrolled in) and attach this document to the completed PLAN ADMINISTRATOR RESPONSE.

SECTION 1-1: MEDICAL INSURANCE **Effective Date of Coverage:** _____

_____ _____ _____
Insurance Provider Name | Group Number | Policy Number

_____ _____
Insurance Provider Claims Address Line 1 | Insurance Provider Claims Address Line 2

_____ ____ _____ _____
Insurance Provider Claims City | State | Zip Code | Phone Number for Claims

Medical Insurance Coverage Also Includes: (Check all that apply)
☐ Dental ☐ Vision ☐ Prescription Drug ☐ Mental Health ☐ Other (Specify): _____

SECTION 1-2: DENTAL INSURANCE **Effective Date of Coverage:** _____

_____ _____ _____
Insurance Provider Name | Group Number | Policy Number

_____ _____
Insurance Provider Claims Address Line 1 | Insurance Provider Claims Address Line 2

_____ ____ _____ _____
Insurance Provider Claims City | State | Zip Code | Phone Number for Claims

Addendum to Part B – If you checked Box 2 or you checked Box 3 and chose a default plan, complete the Addendum to Part B listing the plan information for the specific plan(s) in which the children will be enrolled.

While the instructions only technically require the Addendum be completed for fully-insured plans, we recommend you complete the Addendum for all plans regardless of funding, as you can use the completed Addendum to satisfy your notice obligations to the employee and custodial parent in the next step.

Once the Plan Administrator Response is complete return it to the child support agency. If you checked Box 3 you must also send copies of the summary plan descriptions (SPDs) for each available plan option or other applicable documents that describe the coverage options (e.g., benefit enrollment guide) along with the cost of enrolling the children and employee, if necessary, in each plan option.

Step 5 – Notify the Employee and Custodial Parent

If you checked Box 2 on the Plan Administrator Response and will be enrolling the children, you must notify the employee, the custodial parent, and the children (if their address is different from the custodial parent) that coverage will be provided; under what plans; and the effective date of that coverage. You can use the completed Addendum to Part B to provide this notice.

You must also provide the custodial parent with a copy of the SPD for each plan in which the children will be enrolled as well as any forms, documents, or information necessary to effectuate such coverage for the children, e.g., plan ID cards. If the carrier / TPA sends ID cards and other plan information directly to participants be sure to provide them with the custodial parent's address (or the children's address if different) when enrolling the children.

Step 6 – Enroll the Children and Employee

If the employee is willing to cooperate, you can follow your normal process for midyear enrollments (e.g., completing paper forms, using an online enrollment portal, etc.) to enroll the children and the employee, if necessary. However, it is your responsibility to ensure the employee actually completes the process and enrolls the children on the required plans. It is not a defense that you instructed the employee how to enroll the children and the employee did not do so.

If the employee does not cooperate, you will have to complete the enrollment process yourself. You may need to do this manually and/or provide a copy of the NMSN to the carrier/TPA to explain why the employee has not signed the enrollment forms or completed enrollment themselves. Check with your carriers/TPAs for details on how to handle NMSN enrollments when you cannot follow your normal process for midyear enrollments.

Step 7 – Setup Payroll Deductions

For the most part, paying premiums for children enrolled under the NMSN is the same as any other dependents on the plan. The costs are the same and the employee can pay the premiums through pretax deductions. There is a cafeteria plan midyear special enrollment event which will allow you to add or increase a pretax deduction because of a QMCSO.

Note that you have an ongoing obligation to ensure that income withholding limits are not exceeded. You may need to recheck those limits at open enrollment or any other time the cost of premiums goes up, or if the employee's pay decreases. If the income withholding limits are exceeded after you have enrolled the children, do not take that deduction from the employee's check and contact the child support agency for direction. You can either try calling the agency or resend a new Employer Response form using Option 6 to explain what has changed. We recommend you also indicate the date on which you will terminate coverage for non-payment of premiums if you do not receive a response from the child support agency.

Step 8 – Terminating Coverage

Once the children are enrolled, neither you nor the employee may disenroll the children from the plan unless

- You receive a notice from the child support agency terminating the NMSN or a copy of a court order terminating the employee's medical support obligation.
- The employee provides written documentation that the children are or will be enrolled in other comparable coverage as of the date the employee is asking to drop coverage.
- The children lose eligibility for coverage, e.g., the employee quits or moves into a non-benefits eligible position or you cease offering coverage to dependents.
- While not explicitly listed as a reason for disenrollment, non-payment of premiums by the employee, e.g., because income withholding limits are exceeded, should also permit you to disenroll the children.

There is no definition of what constitutes "comparable coverage". We do not think the employer is required to compare deductibles, co-pays, or other cost sharing or coverage between the two plans in deciding whether the other coverage is comparable. Medicare, Medicaid, Tricare, another employer's group health plan, and individual plans purchased through the exchange should all be considered comparable. On the other hand, MEC-only plans, short term duration plans, indemnity plans and other similar plans providing limited coverage most likely are not comparable.

If the employee terminates employment while the NMSN is in effect, you must notify the child support agency of that fact either by sending them another copy of the Employer Response form with Option 4 checked or sending them a copy of the children's COBRA election notice. While the rules don't specifically require notice if the employee has a reduction in hours that results in a loss of coverage, we recommend notifying the child support agency of that as well in the same manner.

If the employee experiences a COBRA qualifying event while the NMSN is in effect, you must send a separate COBRA election notice for the children to the custodial parent's address (or the children's address if different). You cannot rely on the COBRA election notice sent to the employee if you know the employee and children have different addresses. Either the employee, the custodial parent or the child support agency can elect COBRA on the children's behalf. Normal COBRA premium amounts and payment deadlines apply to children enrolled through an NMSN.

Miscellaneous Issues

Enforcement and Non-Compliance

The Department of Labor (DOL) has administrative and interpretive authority regarding ERISA's QMCSO requirements and the authority to issue regulations in consultation with HHS. With respect to SSA §1908, HHS has administrative and interpretive authority, while states have the responsibility to administer and enforce the state laws described in SSA §1908, as well as the authority to enforce compliance with QMCSOs.

States may sue to enforce a QMCSO. In addition, an affected person may use the ERISA Part 5 civil enforcement rules to enforce a QMCSO. Thus, participants may recover benefits, interest, and attorney's fees in an action under ERISA §502, i.e., the employer could be held liable for the children's medical expenses that would have been covered by the health plan if the employer had enrolled them in a timely manner.

Non-NMSN QMCSOs

In the unlikely event you receive a QMCSO that is not a NMSN, you will largely follow the same process as with an NMSN. The main differences with a non-NMSN QMCSO are:

- The QMCSO is likely to come directly from the custodial parent or their attorney rather than a child support agency.
- There is a greater likelihood the order will be missing some of the information necessary for the order to be qualified and will require some communication back and forth to identify the information you need to qualify the order.
- You will have to determine for yourself what the applicable income withholding limit is under federal or state law.
- You will have to create your own letters and communications regarding the qualified status of the order, whether the children can be enrolled or not and why not, choosing plan options when there are multiple plans available, etc.

Written Procedures

ERISA technically requires group health plans to establish, in writing, reasonable administrative procedures that outline the steps to be followed upon receipt of QMCSOs, including NMSNs. These procedures are supposed to be available upon request. However, many employers do not have formal QMCSO procedures.

Sample QMCSO Procedures are included in Appendix A and B.

ICHRA and Medical Support Order Notices

This is an area where further guidance from the Internal Revenue Service (IRS), DOL or HHS would be helpful addressing how an employer offering an Individual Coverage Health Reimbursement Arrangement (ICHRA) should respond to a NSMN. The ICHRA is a group health plan so technically the employer will need to "enroll" the child(ren) in the ICHRA in response to the NSMN. However, enrolling the child(ren) in the ICHRA only provides access to funds to purchase individual coverage. It does not provide any actual coverage and the employer has no ability either to purchase or force the employee to purchase an individual policy.

If the coverage available to the employee is an ICHRA but they do not have an individual policy and are not currently participating in the ICHRA, our recommendation, absent additional guidance, is to complete the Employer Response form and use Option 6 Other to explain to the child support agency what an ICHRA is and how it works and that unless the employee purchases an individual policy, the employee and children are not eligible for the ICHRA, and the employer has no ability to force the employee to purchase an individual policy.

If the employee does have an individual policy so that they are eligible for the ICHRA, our suggestion would be to choose Option 3 on the Plan Administrator Response form in Part B (more than one option available) and return it to the child support agency along with information explaining what an ICHRA is and how it works; that the employer has no ability to actually enroll the children in an individual policy; the mechanism by which the ICHRA will pay for or reimburse any individual premiums; and that someone other than the employer (i.e., either the employee themselves, the custodial parent or the child support agency) will need select an individual policy for the children and enroll them.

Resources:

HHS Office of Child Support Enforcement - https://www.acf.hhs.gov/css/form/national-medical-support-notice-forms-instructions

Sample Form – National Medical Support Notice Part A Notice to Withhold for Health Care Coverage: https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970-0222_a_sample.pdf

Supplemental Instructions for Employers, Employer Partners, and Child Support Agencies: https://www.acf.hhs.gov/sites/default/files/documents/ocse/omb_0970-0222_a_instructions.pdf

For Frequently Asked Questions (FAQs) about the NMSN, see https://www.acf.hhs.gov/css/faq/medical-support-answers-employers-questions#G1

For more information from the Department of Labor about NMSNs and QMCSOs, see https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/qualified-medical-child-support-orders.pdf

Appendix A

Sample Written QMCSO Procedures

The sample procedures are for a hypothetical employer and may not apply to your factual situation. They are for illustrative purposes only, and may not be used "as is" for any purpose.

[INSERT PLAN SPONSOR NAME] GROUP HEALTH PLAN PROCEDURES FOR HANDLING MEDICAL CHILD SUPPORT ORDERS

Determination and Handling of Qualified Medical Child Support Order (QMCSO)

The plan administrator will designate a responsible individual, by name, title, or both, to receive all medical child support orders (MCSOs) delivered to [Insert Plan Sponsor Name]. The designee is authorized to determine whether an Order is a QMCSO and conduct any necessary actions to fulfill the Plan's obligations with respect to a QMCSO:

[Insert job title of employee(s) fulfilling obligation such as Director of Human Resources, Benefits Administrator, etc.]

Upon receipt of an Order

The procedures followed upon receipt of an order depend on whether the order is a National Medical Support Notice or another type of court order.

1. National Medical Support Notice

Upon receipt of a National Medical Support Notice, the employer will:

- Promptly provide written acknowledgment of receipt of the Notice to the participant and alternate recipient named in the order (and their legal representatives, if any)
    - that the plan has received the Notice; and
    - provide a copy of the Plan's written QMCSO procedures to the participant and alternate recipient named in the Notice (and their legal representatives, if applicable

Note: the information about Custodial Parent and Child(ren) contained in the Notice is confidential and may not be shared with or disclosed to the employee.

- Review the Notice to determine if it has been properly completed and qualifies as a QMCSO, using the Checklist attached to these procedures.

NMSN - Employer Response

If the named "employee" is not an employee of the Organization, if the named employee is not in a class of employees eligible for coverage, or if the Plan does not have dependent coverage, check the appropriate boxes on the Employer's Response (Part A) and return to the applicable state agency within 20 business days. If none of the above apply, forward Part B of the Notice to the Plan Administrator. [insert language, if applicable, that if the employer is also the plan administrator, the employer is also responsible for completing Part B of the NMSN].

NMSN - Plan Administrator Response

Complete and return Part B, the Plan Administrator Response, within 40 business days after the date of the Notice, or sooner if reasonable. Notify the participant, alternate recipient, state agency, and any other parties identified in the Notice (legal representatives, etc.) that either:

- The Notice does not qualify as a QMCSO.

  Check box 5 on the Plan Administrator Response Part B of the Notice. Indicate the reason for the determination using the pre-defined options in the Plan Administrator Response Part B.

- The Notice qualifies as a QMCSO

  Check Box 1, indicating that the Notice was determined to be a "qualified medical child support order," and complete Response 2 or 3, and 4, if applicable on the Plan Administrator Response Part B of the Notice.

2. Upon Receipt of Any Other Order

Upon receipt of an order other than a National Medical Support Notice, the employer will

- promptly provide written notification to the participant and the alternate recipient named in the Notice (and their legal representatives, if any):
  - that the plan has received the Notice; and
  - provide a copy of the plan's QMCSO procedures.
    - For the Participant, the employer should send the notification to the participant at the address shown in the employer's records.
    - For the alternative recipient, the employer should send the notification to the address in the order, or if the order does not specify an address, to the last-known address shown in the employer's records); and

- Review the Notice to determine if it qualifies as a QMCSO using the Checklist attached to these procedures.
- Within a reasonable time after receipt of the order, using the time limits for reviewing the National Medical Support Notices, the employer will notify the participant and alternate recipient that either:
    - The order is a QMCSO; or
    - The order is not a QMCSO (an explanation of the defective or missing provisions should be included).

Designated Representatives

If an alternate recipient designates a representative to receive copies of notices with respect to an Order or coverage under the health plan, include the representative in all mailings as required by the QMSCO.

Disputes

Within 30 days after the date of the employer's notice as to whether an order is a QMCSO, the parties (or their legal counsel) will have the right to submit written comments regarding the determination. The Plan Administrator (or employer, if Plan Administrator), shall consider the written comments and make a final determination as to the status of the Order or Notice. If written comments are not received within the 30-day period, the determination will become final.

Resubmitted Orders

If the Plan Administrator (or employer, if Plan Administrator), determines that an Order or a Notice does not meet the requirements of a QMCSO, the parties or applicable state agency may submit a revised Order or Notice to attempt to correct any deficiencies. If a revised Order or Notice is received, the Plan Administrator will review the Order or Notice as if it were a newly submitted Order or Notice.

Appendix B

Sample Internal Procedures

Review Withholding Limits

Review whether the additional (or new) required contribution will exceed applicable state or federal withholding limits and comply accordingly with those limitations. If the required contribution cannot be withheld because of the above limitations, the custodial parent and any applicable child support agency must be notified. (If the QMCSO is a National Medical Support Notice, the Notice will contain a form in Part A of the NMSN for these purposes.) However, the participant may voluntarily agree to withholding in excess of the federal and state limitations. Any such agreement must be in writing and signed by the participant.

Process Enrollment

The Plan Administrator will enroll the alternate recipient in the coverage indicated by the QMCSO. If the QMCSO does not specify, the Plan Administrator will enroll the alternate recipient in the same coverage as the Plan participant, or the default coverage (as described below) if the participant is not currently enrolled. The Plan Administrator shall provide the appropriate parties with enrollment/election forms and will notify the parties that if a response is not received within a specified time period (e.g., twenty (20) business days), the alternate recipient will be enrolled in the default option (as described below).

The default level of coverage shall be [insert level of coverage such as Core PPO Plan, medical plus dental, etc.].

Determine Effective Date of Coverage

After the Plan Administrator approves a QMCSO, the alternate recipient will be enrolled in the plan(s) [insert appropriate date (i.e., first of the following month)], or as of a later date if so, required by the QMCSO. If the participant is not yet eligible for coverage (waiting period not fulfilled or initial measurement period not complete), then the coverage for the alternate recipient will be effective as soon as the participant is eligible for coverage. Upon the effective date of coverage, the Employer will then change, if necessary, the participant's payroll deductions corresponding to the new level of coverage for including the alternate recipient under the Plan.

Allow Change in the Participant's Cafeteria Plan Election, if applicable.

If benefits required to be provided under a QMCSO are paid for on a pre-tax basis, the QMCSO may qualify as a permitted election change event under the company's cafeteria plan. If applicable, and if the cafeteria plan document permits an election change on account of the QMCSO, the participant may submit a change in his or her cafeteria plan election in accordance with the cafeteria plan's rules.

Provide Confirmation

Provide the applicable parties with the following information:

- The effective date of the child's coverage
- A description of the coverage (e.g., medical summary, dental summary, vision summary, EAP summary (as applicable) and SPDs)
- ID cards, if applicable

Benefit Reimbursements

The QMCSO rules provide that if medical expenses are paid by either the alternate recipient or the alternate recipient's custodial parent or legal guardian, a plan must reimburse that person (not the employee) for those expenses. If expenses are submitted for reimbursement, information including the name and address of the individual to receive payment should be provided to the Plan.

Handling Election Changes at Annual Enrollment

Employee enrollment is necessary to permit coverage for the alternate recipient. Therefore, the participant (employee) will not be able to drop coverage at open enrollment while the order is still in effect.

COBRA for an Alternate Recipient

An alternate recipient will be managed in the same manner as any other Qualified Beneficiary and offered COBRA continuation coverage if a COBRA qualifying event occurs. The appropriate notices will be sent to both the alternate recipient and the alternate recipient's custodial parent or other legal representative. If the only available address for the alternate recipient is a state or local agency, the Plan Administrator will contact the agency to determine where applicable notices should be sent.

As applicable, appropriate notices may include:

- an Election Notice
- a notice of ineligibility for COBRA
- a notice of early termination, and
- any other relevant form.

[Note that it is not necessary to provide the alternate recipient (or the alternate recipient's representative) with an Initial (General) Notice, but the Plan Administrator may do so as a best practice.]

Payment for coverage

When a QMCSO provides that a person or entity other than the participant is responsible to pay for the alternate recipient's coverage, payment must be made [insert payment schedule here (for example, payments might be

required concurrent with each payroll period or on a monthly basis as required of qualified beneficiaries receiving COBRA continuation coverage)].

Termination of Coverage

Coverage for the alternate recipient will cease, subject to COBRA, if the alternate recipient ceases to be eligible to participate in the Plan for any reason, including the following:

- The period for coverage under the QMCSO ends;
- The QMCSO is revoked or materially amended by a court of competent jurisdiction or through an administrative process;
- The participant ceases to be a participant under the terms of the Plan or an applicable component plan of the Plan;
- The participant ceases to be eligible for coverage under the terms of the Plan or an applicable component plan of the Plan; or
- Similarly situated beneficiaries cease to be eligible for coverage under the terms of the Plan or an applicable component plan of the Plan.