



Electronic Dispatch

Employee Benefits Law Information Memo

July 2004

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A NEW TOOL FOR ENFORCEMENT OF MEDICAL SUPPORT ORDERS

Divorce agreements or other custody agreements often require parents to provide health benefits for their children, including COBRA continuation coverage. As with other child support orders, parents do not always voluntarily comply. In order to obtain health care coverage for such children, new laws have created the National Medical Support Notice (“NMSN”), a standardized federal form that all state child support enforcement agencies must use. The NMSN is designed to assist employers who now receive many different medical insurance forms from different states. The NMSN, by authorizing employers to withhold the cost of a child’s coverage from an employee’s wages, is used to enforce medical child support obligations whenever a parent is ordered to provide health care insurance for his/her child(ren) and that parent is employed or in active military or reserve military duty.

The NMSN should make it easier for employers and plan administrators to process child support orders received from state child support enforcement agencies. However, employers could, in certain circumstances, be subject to sanctions under State law or the Employee Retirement Income Security Act (“ERISA”) for failure to properly comply with an NMSN. Employers should review existing procedures or establish new ones to make certain they can fulfill their obligations under the NMSNs.

What Types Of Plans Must Comply With An NMSN?

An appropriately completed NMSN is considered to be a qualified medical child support order (“QMCSO”) and, as such, must be honored by an employer’s group health plan.

The QMCSO provisions of ERISA apply to “group health plans.” For this purpose, a “group health plan” generally is one that is sponsored by an employer or employee organization (or both) and provides “medical care” to employees, former employees or their families. “Medical care” means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of a disease; for the purpose of affecting any structure or function of the body; transportation primarily for or essential to such care or services; or for insurance covering such care or services.

Additionally, church plans, and State and local government plans, are required to comply with NMSNs.

What Should You Do When You Receive An NMSN?

An NMSN is comprised of documents for the employer and the plan administrator to complete.

Step 1 – Complete the Employer Response if one of the following situations exists (initially, you may only be able to determine whether one of the first three apply):

1. the employer does not provide health care coverage for employees;
2. the employee is not eligible for the health care coverage provided;
3. the employee has been terminated or has left employment; and/or
4. the deduction for health care coverage cannot be made because of Federal or State withholding limits.

Step 2 – If the four criteria on the Employer Response do not apply, or if more information is needed regarding the withholding limits, forward Part B to your plan administrator. If you determine that the amount of support, coupled with the deduction for health care premiums, exceeds the maximum deduction allowable under the applicable withholding limits, you must determine the priority for payment. Additional analysis may be needed if the withholding limits preclude payment of on-going support and health care premiums.

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Step 3 – Enroll the child in the health care coverage specified in the NMSN. Once the child is enrolled in the health plan, the plan administrator must send a copy of all health insurance information necessary to access benefits to the child and the custodial parent, including identification cards, a summary plan description, and claim forms, as applicable. Notify the issuing agency if the employment or health care coverage stops.

What If An Employee Named In An NMSN Is Not Already Enrolled In The Plan?

Generally, where the employee is not currently enrolled in your health plan, both the employee and child must be enrolled. If more than one option is available under your plan, the plan administrator should use the Plan Administrator Response to notify the issuing agency of that fact, and inform the agency of the available options for coverage. Finally, if enrollment cannot be completed until after a waiting period or other contingency, you must notify the plan administrator when the employee is eligible for enrollment.

What If A Plan Provides Benefits Solely Through A Health Maintenance Organization (“HMO”) Or Other Managed Care Organization With A Geographically Limited Benefit Area?

An NMSN will not be considered a QMCSO if it requires a plan to provide a type or form of benefit that is not otherwise available under the plan. If the existing plan provides benefits solely through a limited-area HMO, any requirement that the plan provide benefits to alternate recipients outside of the HMO’s service area will generally be considered a benefit not otherwise available. However, if a child is able to travel to the HMO’s service area for medical care, the plan may be required to provide benefits to the child.

Who Is Obligated To Pay Employee Contributions Or Premiums?

A participant generally is required to pay any costs associated with the coverage provided, subject to the appropriate Federal or State withholding limitations.

How Does An NMSN Affect COBRA?

A child who is the subject of an NMSN must be treated in the same manner as any other beneficiary under a group health plan. Appropriate COBRA notices should be sent to each child and to the custodial parent. Whenever COBRA rights conflict with or are different from the terms of an NMSN, additional analysis will be needed to determine which coverage should be made available.

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