

ESTABLISHING A SUPPORT OBLIGATION
Subsequent Notice and Ordering Concerning Support

CS 401.6

SUPERSEDES

[New section]

REFERENCES

MCA 40-5-225(10)

Policy

Purpose

This implements section MCA 40-5-225(10) which reads, "After establishment of an order under [40-5-225], the department may initiate a subsequent action on the original order to establish a support obligation for another child of the same parents".

Replacement

The CSED takes the "subsequent action" mentioned above by replacing the existing order with an order that includes the additional ("another") child. This replacement action is similar to other CSED replacement actions where the existing order is not based on the Montana Child Support Guidelines; in this situation the existing order does not apply the guidelines for the additional child. Note that the replacement action is not the same as a modification action, which involves different forms, procedures, and responsibility, and which is subject to additional federal regulations. However, in some situations (see Limitations below) replacement under this section is not available, and the CSED must use modification or initial establishment to gain enforcement status for the child.

Advantages

The explicit authority to add a child to an existing support order has several advantages:

- 1) The opportunity to include all of the children of the case in one guidelines calculation, and to obtain a more accurate support amount as a result.
- 2) The opportunity to reduce the number of support orders containing the total obligations in the case, resulting in more efficient and accurate support order tracking and reporting.
- 3) The ability to establish support outside of the modification process. Modification generally requires more CSED time and resources than does basic establishment, is subject to stricter federal time frames for overall completion, and is not easily coordinated with paternity action for purposes of meeting the applicable federal service-of-process time frame.

Limitations

There are a number of limitations to the CSED's authority to add a child to an existing support order. First, by statute the authority does not apply to cases where the existing order is a non-CSED order, or where the existing order is a modification order. In these situations the CSED is limited to establishing a separate order for the additional child under section CS 401.3 Notice and Order Concerning Support, or modifying the order subject to federal time frames.

Second, CSED policy precludes the use of the authority in cases where there is a support action pending in district court for the additional child, or where the existing order is a temporary support order. EXCEPTION: In cases where the court action has been pending for an extended period of time and further delay would not be

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in the best interests of the additional child, the CSED may proceed with the replacement action upon approval of the CSED staff attorney. Documents issued in the action must be adjusted to include "temporary" language and to accommodate any other case facts related to the exception.

Finally, in certain situations specified in the PROCEDURES later in this section, there can be practical or legal obstacles to replacing an existing order; these obstacles generally involve the rights of a parent obligee, the coordination of current custody, or the requirements of the guidelines. However, in most cases not subject to the statutory or policy limitations in the preceding paragraphs, the steps given in this section for establishing support for additional children will apply.

Differences from Initial Establishment Process

When a replacement action does apply, the PROCEDURES in this section differ from those in section CS 401.3 in the following ways:

- 1) The Subsequent Notice and Order Concerning Support (SNOCS) does not contain a judgment; the new support amount is established prospectively only. The first-payment/ effective date is determined automatically based on the date of entry of the order.
- 2) The SNOCS document on SEARCHS does not contain a "temporary support" option. In exceptional cases where a temporary support obligation is appropriate, the document is adjusted off-line.
- 3) The exception to income withholding is available--under certain conditions--in the initial SNOCS as well as the amended SNOCS.
- 4) If the obligee has changed since entry of the existing order, the former obligee receives a copy of the SNOCS notice package and the final order.
- 5) Document generation on SEARCHS requires selection of the correct subcase, existing order, and former obligee.
- 6) All SNOCS default, consent, and default/ consent packages are submitted for supervisor approval before being forwarded to the Office of Fair Hearings for entry of an order.

Procedures for Caseworker

1. Identifying a Case. Identifies a case appropriate for replacement action in this section by applying the criteria in (1) through (5) below. If the case meets **all** of the criteria, proceeds to step 3. If not, proceeds in step 2.
 - 1) Existing order. There is a financial support order in effect that was established by the CSED and that is not a modification order. The support order may be the result of a Notice and Order Concerning Support, a Subsequent Notice and Order Concerning Support, a Motion and Order Replacing Support Order, a Notice of Financial Responsibility (with or without a Notice of Medical Responsibility), or a Notice of Intent to Vacate.
 - 2) Additional child. There is an additional child of the same parents (or the same alleged parents) as the children in the existing order, and the following conditions apply:
 - a. The CSED is providing services in the case for the additional child.
 - b. Paternity has been established for the additional child (or the CSED is proceeding with a paternity action).

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- c. There is no existing financial support order, and no support action pending in district court, against the obligor in the case for the additional child. For purposes of these requirements a support order is "for the child" when the child is named in the order, or when the child is the subject of the guidelines calculation underlying the ordered amount.
 - 3) Replacement conditions. It is possible to replace the existing order with a new order that includes the additional child and satisfies the following requirements (the new order is referred to in these PROCEDURES as the "replacement order"):
 - a. Custodian. The custodian of the additional child must be the obligee in the replacement order; the replacement order must include the additional child plus all of the children in the case who are connected on SEARCHS (via open accounts for current support) to that obligee.
 - b. Obligee party. If the obligee in the existing order was a party to the establishment action, that person must be the obligee in the replacement order. This requirement applies even when the obligee was a party for purposes of medical support only.
 - c. Children's coverage. When the replacement order is entered, each unemancipated child in the case, including the additional child, must be named in one and only one order for current financial support against the obligor.

Examples applying conditions (a), (b), and (c) above are given in the tables at the end of this section.
 - 4) Jurisdiction. The CSED has personal jurisdiction for purposes of support order establishment over the obligor and over any obligee parent who will be a party in the replacement action. (In most cases an obligee parent will be a party; see section 401.3 for exceptions.)
 - 5) Assistance status. Either the obligor or the obligee in the replacement action is not receiving public assistance money.
2. Cases Not Appropriate for Replacement Action. If a case fails to qualify for replacement action in this section, reviews other means for gaining an enforcement status for the child against the obligor, and takes action as appropriate.

Note that the "other means" identified in this step will generally involve either modification under section CS 408.3 or 408.5, or initial establishment under section CS 401.3, depending on the facts of the case. In some cases no action is possible until the facts change.

IMPORTANT:

Federal establishment time frames apply regardless of whether the CSED uses the modification process or the Notice and Order Concerning Support (NOCS) to establish a support obligation for the additional child. If paternity must be established, the modification option becomes impractical, as CSED policy requires that any action to establish support for the child be initiated at the same time as the paternity action.

Procedures for Caseworker

3. Gathering Financial Information; Calculating Support. Gathers information in preparation for a guidelines calculation as in section CS 401.3 Notice and Order Concerning Support. Information should include the most current data from the following sources:
 - a. The financial information used to determine the existing support obligation.
 - b. Any financial information submitted by the parents or discovered by the CSED since the determination.

Also, when appropriate, at the discretion of the caseworker, prepares, and sends to the obligee form CS-401.3 H Letter to Obligee Requesting Financial Affidavits. The letter asks the obligee to complete a Financial Affidavit, and also requests the obligee's assistance in providing information about the obligor in a separate Financial Affidavit. (Note that this letter is generally used in the absence any financial or wage information about the obligor; however, it also may be used to increase or confirm existing information.)

Performs a guidelines calculation as in section CS 401.3 **for all of the children in the replacement order** (and any additional "split custody" children required in section CS 404.1). Note that in most cases the monthly support amount payable per child will differ from the per-child amount in the existing support order. Proceeds to step 4

EXCEPTION:

Insufficient Information. If the amount in the existing order was not based on a guidelines calculation, and if the assembled information is not sufficient to reasonably approximate or impute the obligor's income, the CSED will determine support based on the public assistance grant amount, as in section CS 401.3.

4. Subsequent Notice and Order Concerning Support. Prepares form CS-401.6A Subsequent Notice and Order Concerning Support (SNOCS) listing the support amount from step 3 and the date and cause number of the existing order; selects text and printing options as in section CS 401.3 or, for exceptions to income withholding, as in sub-step 4a below. In special cases also proceeds according to sub-steps 4b through 4e below.
 - a. Exception to Income Withholding. If an exception to income withholding is currently in place in the case, determines whether the exception still applies based on the criteria in section CS 401.3. If so, selects the appropriate option for the SNOCS (exception for good cause, or exception for an alternative arrangement), and prepares a new form CS-401.3E, Exception to Income Withholding, to re-authorize the exception.
 - b. Multiple Existing Support Orders. In a case with more than one support order, determines which support order(s) should be replaced by applying the requirements listed in step 1, item (3). (Note that a SNOCS action can replace one, some, or all of the existing orders.) If the new order must replace more than one existing support order in the case, adjusts the language in the SNOCS to identify and refer to all of the orders being replaced. See the tables at the end of this section for examples of replacement in multiple-order cases.

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Note that multiple orders may exist for different obligees, or for separate financial and medical obligations owed to the same obligee. During a period in 1996 and 1997 the CSED entered medical consent and default orders separately from the corresponding financial support orders, even though the financial order incorporated the medical order by reference. In these cases the CSED must replace both the financial and the medical order, naming each separately.

- c. Change in Obligee. If the obligee listed in the SNOCS will be different from the obligee named in the existing order, proceeds in steps 4c(i) and 4c(ii) below.
 - i. Ensures both names are listed in the heading of the SNOCS--the custodian of the additional child as the "obligee," and the obligee from the existing order as the "former obligee." Also ensures the former obligee is included in the certificate of mailing for a copy of the final order.
 - ii. Manually adjusts all other documents issued in the replacement action to reflect the heading and, if applicable, the certificate of mailing in the SNOCS. Other documents may include the Entry of Support Order, the Sheriff's Praecipe, the Acknowledgment of Receipt of Notice and Waiver of Service, the Exception to Income Withholding, the Notice of Default, or any motions or other documents required to complete the replacement action.

NOTE:

Former Obligee Role in SNOCS. The former obligee is not a party to the SNOCS action, but is listed in the SNOCS document for purposes of continuity in the district court filing. The CSED provides a copy of the notice and the final order to the former obligee as a courtesy in connection with the original action.

- d. Suppression of Address for Domestic Violence. If there is a domestic violence indicator on SEARCHS for the subcase with the SNOCS obligee and obligor, checks to make sure the certificate of mailing does not list an address for the person who is listed as the alleged victim.
 - e. Emancipation of a Child. If any child listed in the heading of the order that is being replaced has emancipated (is no longer a "child" under the definition in 40-5-201, MCA), does not include the emancipated child in the SNOCS, but adds a statement about the emancipation to the notice portion of the SNOCS. (For example, "The child Timmy Martin named in the existing order is not named above; he is not included in the SUPPORT ORDER because he is no longer recognized as a "child" under 40-5-201, MCA.")
5. Notice Package. Attaches to the SNOCS document a copy of the order that is being replaced. Prepares a notice package as in section CS 401.3 for each parent who has a support obligation in the SNOCS. If applicable, coordinates service and resolution of a Notice of Parental Responsibility as in section CS 401.3 for the additional child.

Sends copies of the SNOCS (hearing request removed), guidelines worksheets, and existing order by regular mail to any third-party obligee and any former obligee listed in the SNOCS.

Procedures for Caseworker

6. Obtaining Service. Obtains service of the SNOCS package as in section CS 401.3 on each parent who has a support obligation in the SNOCS. If service cannot be obtained on an obligee who has a support obligation because the obligee's whereabouts are unknown, begins case closure procedures against the obligee and, if the SNOCS has already been served on the obligor, dismisses the SNOCS as in section CS 401.3.
7. Change in Case Facts. If before resolution of the SNOCS the CSED receives information from an obligated parent or another source proving that
 - any of the conditions in step 1 do not apply, dismisses the SNOCS as in section CS 401.3.
 - any of the case facts reflected in the SNOCS is incorrect, but an SNOCS still applies under the conditions in step 1, amends the SNOCS and proceeds as in section CS 401.3 for the amended notice.
 - the conditions in section CS 401.3 for an exception to immediate withholding now apply, amends the SNOCS to include an exception to income withholding, and prepares form CS-401.3E as in step 4a; proceeds as in section CS 401.3 for the amended notice.
8. Resolving the SNOCS; Supervisor Approval. Completes any notification requirements, and obtains resolution of the SNOCS by consent, default, or hearing, as in section CS 401.3. Obtains the supervisor's approval of any consent or default package before forwarding the package to the Office of Fair Hearings (OFH) for processing of the order.

Procedure for OALJ/Administrative Law Judge

9. Entry of Order; Hearing; Supplemental Abstract. Processes any consent or default support order or any request for hearing resulting from the SNOCS as in section CS 401.3. In a hearing, excludes any issues the parent could have contested in the action establishing the existing order. Upon entry of a final order, prepares a supplemental abstract and files it with the district court. The supplemental abstract is required in all cases where a child is being added to the support obligation.

Procedure for Caseworker

10. SOD Screen; Enforcement. Updates the SEARCHS SOD screen to add the new support order and to revise the status of each support order being replaced. Adjusts accounts, and proceeds to enforce the support obligation for the additional child.

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I. Basic Case

Case#	Existing Order (Obligee + Child)	Current CP with Child on SEARCHS	Additional Child +Obligee	Obligee + Children for SNOCS	SNOCS OKAY?	Reasons
1	Mom + A	(same)	B + Mom	Mom + A + B	Yes	BASIC CASE: Two-obligation SNOCS
2	Grandma + A	(same)	B + Grandma	Grandma + A + B	Yes	BASIC CASE: Third-party SNOCS
3	Mom + A; Grandma +B	(same)	C+ Mom	Mom +A + C	Yes	BASIC CASE: Replace Mom's order, retain Grandma's (Grandma's order has no effect on SNOCS)
4	Mom + A + B	Mom + A (B emancipated)	C + Mom	Mom + A+ C	Yes*	BASIC CASE: Okay to leave B out of SNOCS Mom's rights for arrears still continue
5	Grandma + A	(same)	B + Mom	Mom + B	No	Leaves A with no order

"Mom" means any parent obligee

"Grandma" means any third-party obligee (including IV-E foster care)

*Customize the SNOCS text to explain B is emancipated; do not include B in the SNOCS headings.

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II. Change in CP since order entered

Case#	Existing Order(s) (Obligee + Child)	Current CP with Child on SEARCHS	Additional Child +Obligee	Obligee + Children for SNOCS	SNOCS OKAY?	Reasons
1	Any Mom + A	Grandma + A	B + Mom	Mom + B	No	Leaves A without an order
2	Any Mom + A + B	Mom +B Grandma +A	C + Mom	Mom + B + C	No	Leaves A without an order
3	Nonparty Mom + A	Grandma + A	B + Grandma	Grandma + A +B	Yes	All Children have orders
4	Party Mom + A	Grandma + A	B + Grandma	Grandma + A +B	No	Mom loses party rights for A
5	Grandma + A	Mom + A	B + Mom	Mom + A+B	Yes	All children have orders; Grandma never had party rights
6	Grandma + A	Aunt + A	B + Grandma	Grandma + B	No	Leaves A without an order (two third-party obligees still treated separately)
7	Any Mom + A; Grandma + B	Mom +A +B	C + Mom	Mom + A + B + C	Yes—replacing both orders	Must replace both to avoid having A or B in tow orders
8	Any Mom + A; Grandma + B	Mom + B Grandma + A	C + Mom	Mom + B + C	Yes—replacing Grandma’s order	Must retain Mom’s existing order to avoid leaving A without order (money will follow A to Grandma)
9	Party Mom + A; Grandma + B	Grandma + A + B	C+ Grandma	Grandma + A+ B+ C	No	<ul style="list-style-type: none"> – Replace Mom’s order: Mom loses party rights for A; also, B in two orders – Replace Grandma’s order” A in two orders – Replace both orders: Mom loses party rights for A
10	Any Mom + A; Grandma + B	Grandma + A + B	C + Mom	Mom + C	No	Replacing either or both leaves child without an order

“Any Mom” means any parent obligee; “Nonparty Mom” means a parent obligee who is not a party to the order; “Party Mom” means a parent obligee who is a party to the order’ “Grandma” means any third-party obligee (including IV-E foster care).

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III. Children with Obligor

Case#	Existing Order: Obligee + Child	Custody at Time of Order and Now	Additional Child +Obligee	Obligee + Children for SNOCS (G/L for calc.*)	SNOCS OKAY?	Reasons/Comments
1	Mom + A (G/L for A + B)	Mom + A Dad + B (no case)	C + Mom	Mom + A + C (G/L for A +B +C)	Yes**	BASIC CASE; sp cust G/L → sp cust G/L
2	Mom + A (G/L for A)	Mom + A Dad + B (no case)	C + Mom	Mom + A + C (G/L got A + B + C)	Yes**	BASIC CASE; regular G/L → sp cust G/L
3	Mom + A (G/L for A) ----- Dad + B (G/L for B)	Mom + A ----- Dad + B	C + Mom	Mom + A + C (G/L for A + C)	Yes	BASIC CASE; SNOCS cannot replace orders in 2 cases at once
4	Mom + A (G/L for A) ----- Grandma + B (against Mom) (G/L for B)	Mom + A ----- Grandma + B	C + Mom	Mom + A + C (G/L for A + C)	Yes— Replacing Mom’s order	BASIC CASE; third-party case treated separately
5	Grandma + A (against Mom) (G/L for A) ----- Mom + B (G/L for B + C)	Grandma + A ----- Mom + B Dad + C (no case)	D + Grandma	Grandma + A + D (G/L for A + D)	Yes— Replacing Grandma’s order	BASIC CASE; third-party case treated separately
6	Mom + A (G/L for A + B)	Mom + A Dad + B (no case)	(What if B comes to live with Mom?)	Mom + A + B??	No	B is not an “additional child” (B is subject of G/L in order against Dad); Mom can seek modification for change/custody

* A two-parent guidelines calculation must include all the children of the biological relationship who live with either parent, except those already named in another order.

** If the SNOCS guidelines calculation produces a transfer payment in the opposite direction, determine whether establishment is appropriate; if so, consult the staff attorney for a custom draft.