

## ESTABLISHING A SUPPORT OBLIGATION

### Establishing a Notice and Order for Medical Support Without Financial Obligation

CS 402.1

#### SUPERSEDES

CS 402.1 Establishing a Notice and Order for Medical Support Without Financial Obligation  
August 22, 2008

#### REFERENCES

45 CFR 303.4, 303.31-32, 303.101; MCA §§ 40-5-1008, 208, 231 & 40-5-225-227, 40-5-801 et seq.

#### Policy

The CSED establishes a Medical Support Order by requiring parents to provide medical support for the children named in a case. One medical support order is generally used to establish the obligations of both parents. If the custodian is not a parent but is a third-party custodian, the medical support order applies to the noncustodial parent only.

#### Conditions for Establishing a Medical Support Order

The CSED may enter a medical support order against a parent or parents when either condition applies:

- 1) The CSED is providing medical support services only. This applies when the child's custodian is currently receiving Medicaid benefits and is *not* on TANF.
- 2) There is a pre-existing support order that does not include a medical support order and modification is not otherwise necessary.

#### Pre-existing Support Order

The Notice and Order for Medical Support (NOMS) process should not be used for a pre-existing support order *that requires a change to the support obligation*, see CS 408.3 Review and Modification of Support Order.

#### Montana District Court Order

When there is no medical language in a Montana District Court Order the NOMS process should be used. When a Montana District Court Order contains medical language or language regarding medical costs, modification is appropriate. If necessary, consult the regional legal staff.

#### Case Changes from Medical Only to Full Services

The NOMS process can be amended to a full services process (financial and medical support). After service of the NOMS has occurred on at least one parent, but prior to the final medical support order, the CSED may amend to a Notice and Order Concerning Support if there is no pre-existing support order. Should the case change to full services after the final medical support order is entered the CSED can establish a financial obligation, according to the procedures in CS 401.3 Notice and Order Concerning Support.

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#### Jurisdiction over Out-of-State Custodial Parent

The CSED cannot establish a medical support obligation against a custodial parent living out of state unless personal jurisdiction over that parent is established under MCA §§ 40-5-231 and 40-5-145, either by consent of the parent or by long-arm authority. Jurisdiction by consent is established if any of the following conditions applies:

- 1) The parent submits a direct application for services to the CSED.
- 2) The parent is the custodial parent in a IV-D interstate case referred to Montana **and** the parent has consented to the jurisdiction of the initiating state by applying for IV-D services with that state or failing to refuse continued services after becoming ineligible for TANF.

**NOTE:**

**Public Assistance, Noncustodial Applicant Cases Not Included.** The custodial parent's receipt of public assistance benefits in the initiating state is not necessarily consent to the personal jurisdiction of that state. In cases where the noncustodial parent (not the custodial parent) is the applicant and the custodial parent resides in another state or on a reservation, the CSED may not have jurisdiction over the custodial parent. In these cases, the CSED has personal jurisdiction only if the parent consents or long-arm jurisdiction as described below applies.

- 3) The parent signs a document waiving any contest to personal jurisdiction.

**NOTE:**

**Waiver Required in Public Assistance Cases.** In the case of an incoming interstate TANF or Medicaid only referral, the CSED notifies the initiating state at the time of case opening that the required waiver in (3) must be signed by the custodial parent, and until the waiver is received, the CSED cannot proceed with the case. The initiating state has 30 days to respond to the CSED's request for the waiver, or case closure proceedings may begin.

Jurisdiction by long-arm authority is established if the parent has sufficient contacts with Montana under MCA §§40-5-231(1) and 40-5-145. For example, the parent previously resided with the children in Montana. In questionable cases, a determination by the CSED regional legal unit may be required.

#### Party Status of Custodial Parent

If personal jurisdiction is established over a custodial parent, the CSED includes that parent as a party to the medical establishment action by serving him or her with notice under this section. The custodial parent is not a party to subsequent enforcement actions against the noncustodial parent.

#### Confidentiality of Personal Information

The CSED routinely lists the mailing addresses of parents and custodians on the NOMS. If a parent or custodian has asked to have the address or other reported personal information protected claiming risk of physical or emotional harm to the requestor or the child, the CSED will honor the request.

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#### Time Frames for Establishing a Medical Support Order

Federal timeframes apply to the procedures in this section:

- Within 90 calendar days of locating a noncustodial parent the CSED must serve the NOMS.
- Within 6 months of serving the notice in period (1) on obligated parents, the CSED must enter the NOMS or dismiss the action.

To ensure compliance with the timeframe the CSED serves the NOMS at the same time as any notice of a paternity action.

The total time allowed includes any time used to establish paternity, issue amended notices, schedule and hold a hearing, and obtain the signature of the Administrative Law Judge (ALJ).

#### DEFINITIONS

**Obligated Parent:** For purposes of this section the term, obligated parent, means noncustodial parent *and* custodial parent both parties are obligated in a medical support order. A third-party custodian is not an obligated parent.

**Medical Support Order:** Any court or administrative order that requires either or both parents to provide health insurance coverage for the children and payment for medical expenses incurred on behalf of the children. An order that requires a parent to provide insurance through a particular employer--whether the employer is identified by name or by some other reference--is a medical support order only if the parent is currently employed by that employer. In questionable circumstances, the caseworker should consult with regional legal staff to determine whether the language in the support order qualifies as a medical support order.

#### Procedures for Caseworker

1. Initial Review. Upon determining that conditions for establishing a Medical Support Order proceed as follows:
  - Determine whether the CSED has personal jurisdiction over the noncustodial parent as defined in MCA §§40-5-231 and 40-5-145. If not, initiate an interstate referral or proceed as appropriate in CS 250.1 Native American Jurisdiction.
  - Determine whether the CSED has personal jurisdiction over the custodial parent as defined in MCA §§40-5-231 and 40-5-145. If not, proceed as appropriate in this section or as appropriate in CS 250.1.

**If the custodial parent is under 18 years of age**, the CSED may establish a NOMS against both parents. In this instance, the noncustodial parent is required to pay 100% of the uncovered medical expenses.

**If both parents are under 18 years of age**, the CSED may establish a NOMS against both parents. However, neither parent is ordered to pay a percentage of uncovered medical expenses. If both parents are under 18 years of age, and the case needs both a financial and medical support order, do not proceed with the NOMS process.

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#### **Out-of-State Custodial Parent/Noncustodial Parent Applicant.**

At the time of case opening the CSED attempts to identify or obtain jurisdiction over the custodial parent when the noncustodial parent is the applicant for services. In this limited instance if the CSED cannot get jurisdiction over the custodial parent the CSED proceeds against the noncustodial parent and issues the NOMS, third-party version, as in step 2(a)(1) below.

#### **Existence of a Foreign Support Order.**

The existence of a foreign support order does not preclude use of the NOMS process, providing that there is personal jurisdiction over the parents. However, consulting with the regional legal unit before establishing a NOMS for this type of case will avoid unforeseen complications.

2. Prepares the First Notice and Order for Medical Support. Prepares CS 402-1A Notice and Order for Medical Support (NOMS), as in steps 2a through 2c below:

Selects options for the NOMS according to the facts of the case:

- 1) Select the third-party version if the CSED does not have jurisdiction over the custodial parent and the noncustodial parent is the applicant for services. Do not issue a third-party version if the custodial parent is the applicant for services.
  - 2) Select a third-party version if custodian is not a parent.
  - 3) Enter a judgment for genetic testing fees if applicable.
3. Enter the amount of the uncovered medical expenses for which each party responsible. When both parties are adults, uncovered medical expenses are shared 50/50. When the noncustodial parent is the only adult, uncovered medical expenses are paid 100% by the noncustodial parent.
  4. If there is a domestic violence indicator in the system for the NOMS subcase (obligated parents) makes sure the certificate of mailing does not include an address for the person who is listed as the alleged victim.
  5. Provide abstract information if applicable. An abstract of a final order is necessary only when there is a pre-existing Montana district court support order. Enter the county and cause number of the district court support order. Notify the Office of Fair Hearings (OFH) of the need to abstract by marking the check box to abstract, located on the NOMS.
3. Generates and signs the original NOMS. Prepare a copy of NOMS for each obligated parent. Make an extra set of stuffers for the NOMS; retain the extra stuffers and the original signed NOMS for later use.

In a third-party case, send a copy of the NOMS to the custodian by regular mail with the hearing request removed. The NOMS is served on the obligated parent(s) in step 5 Service and Response Time.

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4. Paternity Coordination. If paternity is established or not at issue, proceeds with service on the obligated parent as in step 5.

If paternity is not established combine service of the NOMS and service of the Notice of Parental Responsibility (NPR) to the alleged father. See CS 605.2 Notice of Parental Responsibility (NPR) Single Allegation Cases or 605.3 NPR Multiple Allegation Cases to coordinate a resolution.

5. Service and Response Time. For each obligated parent, serve the NOMS and monitor for responses as in (1), (2) or (3) below. Upon obtaining successful service, proceed to step 7 Dismissing and Not Dismissing the Notice or 8 Preparing and Issuing an Amended NOMS as appropriate.
  - 1) Sends the NOMS to the obligated parents by certified mail, return receipt requested, restricted delivery. Monitor for responses within 3 mailing days plus 20 calendar days after mailing, or 20 days after the date the parent signs the return receipt, whichever allows for later response.
  - 2) Arranges for personal service of the NOMS through the sheriff or a civil process server. Monitor for responses within 20 calendar days of the date on the return of service.
  - 3) Prepares CS 405-1 Notice and Acknowledgment of Receipt of Administrative Notice. Enclose with the NOMS the original acknowledgment form along with a self-addressed stamped envelope; send the package by regular mail.

If a signed acknowledgment is not returned within 20 calendar days after the mailing date, immediately arrange for service by sheriff or civil process server in sub step (2) above.

**NOTE:**

**In addition to sending the Notice and Acknowledgment** form to each obligated parent retain copies of the form in the case file. Replace the copies of the acknowledgment form with the *signed* originals upon their return.

If in response to service of the NOMS, an obligated parent contacts the CSED objecting to or questioning the proposed health insurance requirement, explain how the requirement will be enforced. If appropriate, perform a preliminary medical hardship determination using information available from the case file or provided by that obligated parent.

**Interstate Case** In an interstate case where the CSED has personal jurisdiction over the out-of-state custodial parent serve the NOMS directly on the parent. If direct service is not successful, obtain service through the initiating state. At the completion of the medical establishment action notify the initiating state according to regular interstate procedures.

**Special requirements for service on minors** Service of the NOMS on a parent who is under the age of 18 has special requirements, which includes notification of the minor's parents. Consult the CSED staff attorney before taking any action against or making any contact with a minor.

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#### Procedures for Caseworker

6. Failed Service on a Parent. If service is obtained on the noncustodial parent, but cannot be obtained by any method on the custodial parent dismisses the notice as in step 7 *at the time of closure*. If service cannot be obtained on the noncustodial parent, take the necessary steps to locate, which include but are not limited to monitoring the automatic interfaces. If within one year of the date the NOMS was issued the noncustodial parent is located serve the original NOMS. If within the one-year time frame the noncustodial parent is not located, dismisses the NOMS, see step 7. If the noncustodial parent is located *after*, the one year time period a new NOMS must be issued. The one-year period for serving the original NOMS may be adjusted at the discretion of a regional supervisor.
7. Dismissing and Not Dismissing the Notice. If in response to service of the NOMS, an obligated parent timely contacts the CSED and proves that a medical support order for the child(ren) already exists, prepare CS 401-3F, Motion and Order to Dismiss Administrative Notice, and forward the motion to the Office of Fair Hearings (OFH) for execution and notification of the parties. If an obligated parent claims non-paternity, and CSED records show paternity has been established or was never at issue, explain the CSED will proceed with establishment of the medical support order. At this point, the parent may request a hearing on the NOMS and contest the existence of a paternity presumption or order at that time, and/or may petition the district court for relief on the paternity issue.
8. Prepares and Issues an Amended NOMS. If necessary to correct an error, in case information or if information is provided that changes the NOMS, prepares an amended NOMS as in step 2 Preparing the First Notice and Order for Medical Support, selects amended notice language. Sends the amended NOMS to the obligated parents by regular mail; enters a case note for the type of service. Monitors for responses within 3 mailing days plus 20 calendar days after mailing. In a third-party case, sends a copy of the amended NOMS to the third-party custodian with the hearing request removed.
  - Do not amend the NOMS solely to add a judgment for genetic testing fees.
  - If the above changes apply, but the original NOMS has not been served on any obligated parent, recall the original notice and begin again at step 2.
  - If the custodial parent was successfully served with the original NOMS, but now cannot be located do not amend the notice to the third-party version, instead proceed as in step 6 Failed Service on a Parent.
  - Provide abstract information if applicable. An abstract of a final order is necessary only when there is a pre-existing Montana District Court Support Order.
  - Enter the county and cause number of the district court support order into the Amended NOMS. Notify the OFH of the need to abstract the NOMS by marking the check box to abstract, located on the NOMS.

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9. Resolves the NOMS Proceeds in this step as applicable:
  - **No hearing request, No information provided, No amendment required.** If a hearing is not timely requested by an obligated parent and no information is received proceed to step 11 Finalizing the NOMS.
  - **No hearing request, information provided, amendment required.** If a hearing is not timely requested by any obligated parent, and an obligated parent or other person timely provides information that changes the NOMS an amendment is required, refers to step 8 above.
  - **Hearing request.** If any obligated parent timely requests a hearing, proceeds to step 13 Immediate Steps up Receiving a Hearing Request.
10. Resolves an Amended NOMS. If no hearing is requested by any obligated parent (and no hearing is pending on the original NOMS), resolves the notice as in step 11.  
If a hearing was requested on the first NOMS and the requestor has not withdrawn the request or consented to the amended NOMS, at the discretion of the caseworker contact the obligated parents; informs the parents the hearing will proceed and explain the possible consequences as in NOTE 2, step 18 Vacating the Hearing.
11. Finalizes the NOMS. Where no obligated parent has timely requested a hearing, finalizes the NOMS. Retrieve stuffers from case file, and at regional discretion submits the NOMS to a supervisor for expedited review; upon approval, immediately sends to the OFH, retains a copy for the case file. Enters a case note in the system.  
A NOMS consists of:
  - a. Consent Only All obligated parents have returned signed consents, the original NOMS and the consents containing the parents' signatures, or in a third party case the NOMS containing the signature of the obligated parent.
  - b. Default Only No obligated parent has returned a signed consent, retrieves the original NOMS from the case file and completes the certificate of service and response.
  - c. Consent and Default One obligated parent has returned a signed consent, and one obligated parent has not, uses the document containing the original signature of the consenting parent completes the certificate of service and response.
12. Entry of the Notice and Order for Medical Support. Follows submission of NOMS as in step 11 above, or as in step 15 Hearing Participation, monitors for receipt of a copy of the final order signed by the ALJ as in step 21 Processing Proposed and Final Decision and Order.  
Immediately upon receipt of the final order, take action to:
  - 1) Review the terms of the NOMS.
  - 2) Update the Support Order Detail (SOD) screen, *see instructions for entering a medical order at the end of this section.*
  - 3) Set-up genetic testing fee account on the system if applicable.
  - 4) Begin enforcement the first of the month following the signature of the ALJ.

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- 5) Notify the initiating state according to regular interstate procedures in an interstate responding case.

If contacted by a person dissatisfied with the order, explains the applicable remedy(ies) below, and takes the described action at the request of the contacting party:

- **Judicial review.** For an order entered as the result of a hearing, upon timely request to the district court. Sends a pro-se judicial review packet and enters a case note in system; continues to enforcement regardless of any petition for judicial review, unless the ALJ or the district court stays the CSED order.
- **Order entered by default.** Sets-aside for an order entered by default, upon written motion to the OFH showing good cause for the default. Provides the address of the OFH.

13. Immediate Steps upon Receiving a Hearing Request. If an obligated parent requests a hearing, proceeds as applicable in step. If the hearing request is received first in the regional office, immediately faxes the request (and mails the original) to the OFH; enters a case note in system for the request received and forwarded.

In an interstate responding case where the CSED has personal jurisdiction over the out-of-state custodial parent, proceeds as for a Montana custodial parent to conduct the pre-hearing contact, exchanges hearing exhibits, and ensures the notice of hearing and scheduling order is sent. Adjusts these procedures as necessary if the CSED needs the assistance of the initiating state with the hearing.

#### **Responding to the OALJ**

Upon receipt of a copy of the hearing request from the OFH, within 3 working days informs the OFH of any dates the caseworker will be unable to attend a hearing. In a case involving two obligated parents, if the CSED has not yet obtained service on the non-requesting parent, monitors for service and if applicable, proceeds to step 14 Hearing Preparation.

#### **Contacting the Obligated Parents**

As soon as, possible without waiting to receive the notice and order for hearing from the OFH, researches the issues raised in the hearing request and contacts all obligated parents. In cases with two obligated parents, the contacts may be combined in a single interview at the discretion of the caseworker.

In the course of the discussion with each parent identifies and attempts to resolve any issues cited in the hearing request or raised separately. Specifically, conduct the interview(s) as outlined in the defenses below, regardless of which parent requested the hearing.

**Defenses** If a parent claims an absolute or affirmative defense elicit the parent's reasons or supporting facts and continue with either a or b below **before** proceeding to Contested Elements in this step.

- a. If the defense is proved to the satisfaction of the caseworker, dismisses the action as in step 7; include in the motion to dismiss a request to vacate the hearing as well.



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- b. If the defense is not proved, or if further information will be required to determine the validity, request the parent provide any information still needed as soon as possible. Consult with the CSED staff attorney on all questionable cases.

#### **Absolute Defenses defined**

Absolute defenses are defenses that need no further proof and, if true, prevent the CSED from proceeding with the NOMS action. Absolute defenses may include:

- The CSED served the NOMS on the person by mistake, intending to serve another person.
- There is a current court order or irrebuttable presumption establishing another man as the father.
- The CSED does not have subject matter jurisdiction to establish a medical support order.

#### **Affirmative Defenses defined**

Affirmative defenses are defenses that, if not raised before the hearing, cannot be raised at a later time. Affirmative defenses to the NOMS action may include:

- A court has declared the children emancipated.
- A medical support order for the children already exists against both obligated parents.
- The CSED lacks personal jurisdiction over the parent to establish an order.

#### **Contested Elements**

Review the elements of the case with the parent, and identify any elements the parent intends to contest at hearing. Where necessary explain specific CSED procedures, confirm the CSED's authority to act, and give or obtain any other information relating to issues raised.

#### **Case with two obligated parents**

In a case involving two obligated parents, either parent can contest the establishment of a medical support order--any element of the case, regardless of whether the medical support order applies to the contesting parent or the other parent. For example, the noncustodial parent can contest the CSED's jurisdiction over the custodial parent. In identifying elements that may be contested, the caseworker must be sure to address specifically all possible combinations.

#### **Results of Contact**

If the requesting parent is satisfied with the explanation and no longer wishes to contest the notice, explains the procedures for withdrawing the hearing request or (if applicable) consenting to the notice. Emphasize any withdrawal must be in writing and signed by the requesting parent; if the request is not properly withdrawn the hearing proceeds.

Upon completion of the required interview(s), take an appropriate action listed below:

- 1) Withdrawal--If applicable, explain the rights of the non-requesting parent as in step 18 Vacating the Hearing.
- 2) Amended Notice--If a contacted parent provides information that changes the NOMS proceeds to step 8 Preparing and Issuing an Amended NOMS.

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- 3) Hearing Checklist--If a contacted parent maintains or timely initiates a request for hearing, prepare CS-402.1J Hearing Checklist documenting the contact(s) and results, and specifying any issues the caseworker expects to be contested at hearing. If both parents were contacted, enter the information for both parents on a single copy of the form. Before the date of the hearing, send a copy of the form to each obligated parent and the OFH, maintaining a copy for the case file.

#### **Failed Attempts to Contact**

If unable to contact an obligated parent before the hearing date despite repeated attempts, document the attempts on the Hearing Checklist and send copies of the completed checklist to the parties and the OFH.

14. Hearing Preparation. Prepares evidence and arrange testimony as follows:

#### **Exhibits and Witnesses**

Identifies and arranges for the appearance of witnesses. Prepares the state's exhibits and CS-405.11A Witness and Exhibit List, and make the necessary copies.

IMPORTANT: The Witness and Exhibit List must include name, addresses and telephone numbers for all of the witnesses, **including the CSED and caseworker**. If the CSED is aware that a witness or a child in the witness' custody is an alleged victim of domestic violence related to the NOMS subcase, replace the address and telephone number for the witness with the words, "in care of the Child Support Enforcement Division".

Mails the list and exhibits directly to each obligated parent (copies) and the OFH (originals), to be received on or before the timeframes in scheduling order; retain one copy for the case file. Sends copies of exhibits and witness list to other parties.

In an interstate responding case where the CSED has personal jurisdiction over the out-of-state custodial parent, proceeds as for a Montana custodial parent to conduct the pre-hearing contact, exchanges hearing exhibits, and ensures the notice of hearing and scheduling order is sent. Adjusts these procedures as necessary if the CSED needs the assistance of the initiating state with the hearing.

#### **Caseworker Testimony**

Prepares caseworker testimony under the general direction of the CSED staff attorney. Prepares to provide information about the prima facie case including, at a minimum, the CSED's authority to proceed, the lack of any existing medical support order, the existence of a paternity presumption or order, the service of the administrative notice, and the CSED's jurisdiction over the subject matter.

The caseworker must prepare to discuss why the NOMS process is being used rather than the NOCS or modification process, and to discuss each element of the NOMS regardless of any expectation that a party will stipulate to one or more of these elements at the hearing.

IMPORTANT: For purposes of evidence of paternity, the caseworker should prepare testimony stating by what method paternity was established or presumed, rather than introducing actual paternity documents, which may be subject to strict confidentiality regulations.

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#### Continuances or Delays

Except in unusual situations or as noted below, does not request a continuance of the hearing, or a delay in submitting the exhibits, once the respective dates are set. If a continuance does apply, prepares CS 405-7A, Motion for Continuance, obtain the approval of the supervisor, and send the form to the OFH; monitors for the rescheduled date.

#### Continuance for service on a party

In a case where the hearing date is approaching and an obligated parent has yet to be served, but efforts to serve the parent are continuing and are likely to be successful, within 5 days prior to hearing, request a continuance of the hearing as needed.

15. Hearing Participation. Participate in the hearing as a witness. Provides prepared testimony as needed to prove the elements of the case; proof is not needed where the parties stipulate to an element during the status conference prior to the hearing.

Except in unusual situations do not request the hearing record be held open. In special situations involving unfamiliar points of law, requests the ALJ set a briefing schedule as needed (due dates for briefs will not be subject to the CSED time frames for the hearing process).

Upon receiving a copy of the proposed decision and order from the OFH (step 20), reviews the proposed order carefully for accuracy and general conformance with CSED medical support practices and checks the judgment amount due for genetic testing fees if applicable.

If the above or any other elements of the proposed order are inconsistent with CSED data reliability requirements or with the evidence and discussion of the hearing, consult the CSED staff attorney concerning a possible motion to review. Does not set up fee accounts or begin enforcement of the proposed decision and order. Upon receipt of the final order signed by the ALJ, refers to step 12 Entry of the Notice and Order for Medical Support.

#### Procedures for OFH

16. Processing Non-Hearing Orders. Upon receipt of NOMS by the caseworker in step 11 Finalizing the NOMS, obtains the signature of the ALJ, enters a case note for the consent or default order signed, and proceeds to step 21 Processing Proposed and Final Decision and Order.
17. Hearing Scheduling. Upon receipt of a timely request for hearing from an obligated parent, immediately sends a copy of the request to the caseworker to identify any unavailable dates. Also, prepares and sends to the non-requesting parent a notice of requested hearing asking the parent to notify the OFH within 10 days of the dates and times the parent will be available for the hearing. Schedules the hearing and sets any appropriate due dates. Prepares and obtains the signature of the ALJ on, a notice of hearing and scheduling order. The notice and order must include the hearing date, hearing instructions, and due dates set by the OFH for witness and exhibits lists, exhibits, and requests for discovery. Mails copies to the caseworker, all obligated parents, and any third-party obligee; retains the original in the hearing file.  
**In an interstate responding case** where the CSED has personal jurisdiction over the out-of-state custodial parent proceeds as for a Montana custodial parent to ensure the notice of hearing and scheduling order is sent.

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18. Vacating the Hearing. If before the hearing, a requester withdraws the request in writing, proceeds to send copies of any order to vacate hearing in this step to the obligated parents, any third-party obligee, and the caseworker, retains the original in the hearing file.
- In a third-party case, prepares order to vacate hearing, obtain the ALJ's signature and issue the order.
  - In a case where both parents request a hearing, deems the request to withdraw denied, and proceeds with the hearing. The parent who withdraws the request does not receive written notification of the deemed denial; rather, the original notice of hearing and scheduling order continues to apply.
  - In a case where the requesting parent withdraws the request and the non-requesting parent has signed a consent, issues order vacating hearing and proceeds to step 16 Processing Non-Hearing Orders.
  - If the non-requesting parent has not signed the consent, the non-requesting parent is given the opportunity to request a hearing. Prepares and obtains the signature of the ALJ on, and sends to the non-requesting parent an order on the hearing request. This order notifies the non-requesting parent that the previous request for hearing has been withdrawn, and that the ALJ will vacate the hearing unless the non-requesting parent requests a hearing in writing within 10 days. If the hearing date is less than 10 days away, the OFH continues the hearing without date while awaiting the non-requesting parent's response.

If the non-requesting parent timely requests a hearing, proceeds as appropriate in this step or in step 19 below, reschedules the hearing date if necessary. If the non-requesting parent does not timely request a hearing, issues an order to vacate hearing.

**EXCEPTION:** If the parent requesting the hearing withdraws the request three days or fewer before the hearing date, the OFH will proceed with the hearing as ordered. At the hearing the ALJ will ask the other parent if he or she wants to request a hearing. If the other parent requests a hearing, the hearing will proceed. If a hearing is not requested, the ALJ orally vacates the hearing, signs the default order, and issues a written order vacating the hearing.

If the timing in the above exception applies, the non-requesting parent may *before the hearing date*, submit a written statement declining the new opportunity to request a hearing. Upon receipt of the statement, the OFH informs the requesting parent, issues a signed default order as in step 16, and issues an order vacating the hearing.

**NOTE 1: Consent Signed by Parent Requesting Hearing** If the parent requesting the hearing later signs the consent contained in the NOMS in a third-party case the CSED deems the hearing request withdrawn and issues a default order as in step 16, and vacates the hearing as in 19a above. In a two-obligation case, the CSED deems the hearing request withdrawn and vacates the hearing only if the other parent also signs a consent; otherwise, proceed as in 18b or 18d above.

**NOTE 2: Amended NOMS Issued After Request for Hearing.** If a parent requests a hearing in response to a NOMS and the NOMS is then amended, the request for hearing automatically applies to the amended NOMS. The hearing is not vacated unless, all obligated parents sign the consent contained in

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the amended NOMS; or the requesting parent withdraws the request or signs a consent to the amended NOMS, and the conditions for vacating in this step apply.

At the hearing, the ALJ will determine the order based on the evidence presented. If the evidence refutes any of the terms of the amended NOMS, the final order entered in the action will be different from the order in the amended notice.

#### Procedures for Administrative Law Judge

19. Conduct of the Hearing. Conducts the hearing as in ARM 37.62.941 through ARM 37.62.945, and MCA §40-5-226. **Limits the hearing to jurisdictional issues, or custom drafts** submitted in writing by the obligated parents prior to the hearing.

**Bench Ruling.** Following the close of testimony and any closing statements of the parties, the ALJ may at his discretion, issue a bench ruling on the record, orally announcing the proposed decision and order. The bench ruling is in lieu of a written order, and states that any motion for review of the proposed decision and order must be filed within 20 days after the announcement of the bench ruling. The ALJ enters a case note for a bench ruling issued, and responds to any motion to review or failure to file a motion to review as in step 20a or 20b below.

**Failure to Appear.** If the parent who requested the hearing fails to appear, the ALJ proceeds according to the number of obligated parents in the case. In a third-party case (one obligated parent), upon a showing of valid service the ALJ may enter a default decision and order declaring the medical order stated in the notice to be final. In a case involving both parents, the ALJ proceeds only if the other party wants a hearing. If not, the ALJ issues a default order. Determines the medical order based on the notice, information available to the CSED, and evidence provided at the hearing by the appearing parties.

20. Proposed Decision and Order; Final Decision and Order. Following the close of the hearing, issues and signs a proposed decision and order establishing the medical support order.

If within 20 days after service by mail of the proposed decision and order, an obligated parent files a motion to review the order setting out any of the grounds for review in ARM 37.62.951, considers the motion. Orders a briefing schedule, affirms, corrects, amends, or modifies the proposed order. Issues a final decision and order, or enacts the proposed decision and order as a final order.

If no obligated parent files a motion enact the proposed decision and order as a final CSED order.

Signs the final decision and order ensures the order is issued or enacted within 60 days after the close of the hearing record. Enters a case note for the signed final decision and order.

#### Procedures for OFH

21. Processes Proposed and Final Decision and Order. For any consent or default order signed in step 16, or any proposed or final decision and order signed in step 20, sends copies to the caseworker, the obligated parents, and any third-party obligee by regular mail. Enters a case note for the order mailed, and retains the original for the file.

In the case of a proposed decision and order, monitors for receipt of a motion to review within 3 mailing days plus 20 calendar days after the date the proposed decision and order is mailed.

Forwards the motion for review to the ALJ for a determination.

## ESTABLISHING A SUPPORT OBLIGATION

### Establishing a Notice and Order for Medical Support Without Financial Obligation

CS 402.1

22. Abstract. The NOMS must include the county and cause number of the district court order. Enters a case note and mails copies of the filed abstract to the parties who received copies of the final order.
- An abstract of a final order is necessary only when there is a pre-existing Montana District Court Order. The caseworker notifies the OFH of the need to abstract the NOMS by marking the check box to abstract, located on the NOMS.

#### Procedures for Caseworker

23. Monitor for a Judicial Review. For a final decision and order from a hearing, monitor for receipt of a petition for judicial review.

#### Procedures for Caseworker/Intake Worker

24. Final Decision and Order. Upon receipt, the following *applies to all* medical orders entered into the system:
- Create a new Support Order Detail (SOD) record, do not modify or supersede an existing SOD screen record.
  - Enter the caption and cause number for an abstracted NOMS.
  - Enter “NONE” as the cause number for a non-abstracted NOMS.
  - Enforcement begins the month following the date the ALJ signs the order.
  - Enter an “N” in the registration field regardless of the clerk of court information or registration of other support order(s).
  - Enter an “N” in the I/W exception field.
  - Enter the appropriate medical code in the MED INS field.
  - In the text field, include information declaring that the purpose of the order is for medical support only.

#### Do not enter into the system:

- The support order date from an existing support order.
- The amount of the support from an existing support order.
- The medical insurance code from an existing support order.