

ENFORCING A SUPPORT ORDER

Enforcing Health Insurance Orders—Penalty Actions

CS 520.10

SUPERSEDES

CS 520.10 Enforcing Health Insurance Orders--Penalty Actions, April 8, 2007

REFERENCES

MCA §§ 40-5-226(13) through (18) and 40-5-821

Definitions

Employer/Payor: For purposes of this section an employer/payor means either a business that pays income to the parent but is not owned or operated by the parent, or the parent's business that is registered with the Montana Secretary of State as a DBA (Doing Business As) or as a corporation.

EMPLOYMENT RELATED INSURANCE: The CSSD considers employer related insurance from Unions or TRICARE* to be employer insurance, references to employer or employer insurance should be read to include the employer related insurances mentioned above. In cases where the enforcement parent refuses to obtain health insurance from either of these, the CSSD can enforce the insurance requirement through a contempt or medical penalty action. Hardship determinations for employer related insurance should be treated in the same manner as those for ordinary employer insurance.

*TRICARE, formerly known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), provides civilian health benefits for military personnel, military retirees, and their dependents. Included under the TRICARE name is a number of options such as TRICARE Standard, TRICARE Prime and TRICARE Reserve Select (TRS). In addition, dental is offered through the TRICARE Dental Program (TDP). Details on all the TRICARE options can be found on the [TRICARE website](#).

Policy

Applicability

The CSSD takes action in this section to enforce employer related, and in rare instances, private insurance when all the following conditions apply:

- 1) The subject of the action is the enforcement parent identified in CS 520.3 Reviewing Health Insurance Orders, or later identified in CS 520.7 Enforcing Health Insurance Orders.
- 2) Health insurance is not available to the enforcement parent through the parent's employment Order to Enroll (OTE), or is self-employed* *and* the support order includes a requirement for private insurance.
- 3) The enforcement parent is not providing, and has not made application to provide, health insurance coverage for the children.
- 4) The CSSD is aware of employer dependent health insurance that is available to the enforcement parent at a reasonable cost.
- 5) The CSSD has notified the enforcement parent that employer/private insurance is available at a reasonable cost, and has informed the enforcement parent of the consequences of failure to provide the coverage.

*For the purpose of enforcing private health insurance, self-employed means that the CSSD is able to verify the enforcement parent's financial circumstances, specifically income and deductions for the last twelve months, or within the previous calendar year.

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Enforcement by Medical Penalty--Daily Penalty

The CSSD may take penalty action against the enforcement parent under MCA § 40-5-821. This statute provides for a special medical penalty of up to \$25 for each day that an enforcement parent knowingly violates a medical support order by failing to provide health insurance when it is available at a reasonable cost. To assess the penalty the CSSD must hold a show-cause hearing on the alleged failure.

Procedures for the required penalty hearing are given in this section. Once assessed, penalties may be collected by any means available for the collection of child support, such as income withholding, seizure of bank accounts, etc. Medical penalties previously assessed in conjunction with the old Notice of Intent to Enroll and Assess Health Insurance Penalty (NOIEH--used prior to July 2001, now obsolete) are still valid unless dismissed.

Enforcement by Contempt Action--Monthly Penalty

Montana law also allows for enforcement of employer insurance by contempt action. The resulting contempt penalty is not considered a medical penalty for purposes of this section. See CS 503.5 Administrative Civil Contempt for procedures pursuing a contempt. For purposes of medical support enforcement, the CSSD generally allows one count of contempt for each month the parent fails to provide insurance.

CSSD policy permits assessment of either the medical penalty or the contempt penalty, but not both, for a given period of time. When both could apply, the CSSD selects the one that is more likely to produce compliance based on the facts of the case.

Enforcement by Case Closure or Non-Cooperation Action

In cases where the parent is the non-public assistance obligee or the applicant, Non-Custodial Parent (NCP) for CSSD services, the CSSD enforces employer insurance by initiating case closure procedures. If the parent is the public assistance obligee, the CSSD enforces the insurance by citing the parent for non-cooperation with child support requirements. Case closure and non-cooperation actions are taken in lieu of monetary penalty actions.

Obtaining the Desired Result

The purpose of any penalty, contempt, closure, or non-cooperation action is to persuade the enforcement parent to provide insurance. If this is accomplished before the action is completed the CSSD may discontinue the action.

PROCEDURES

Procedures for Caseworker

1. **Determining appropriate action.** Upon identifying a case in CS 520.5 Medical Hardship Review where insurance is not available to the enforcement parent through employment; and employer insurance is included in the health insurance obligation and is reasonable in cost; and the enforcement parent has failed to provide the insurance after being notified of the employer insurance requirement, the reasonable cost determination, and the consequences of non-compliance, the caseworker may determine it is appropriate to send CS 520.10W Medical Penalty Action Warning Letter. It is appropriate to send this warning letter if it is likely to encourage the enforcement parent to provide private insurance.

Response time for this letter is 20 days. If in response to the Medical Penalty Action Warning Letter the enforcement parent provides insurance no further action is necessary. Enters the insurance information on the MID screen, and follows procedures as in CS 520.7, step 14., Processing enrollment information.

At caseworker discretion, it may be determined that the warning letter is *not* appropriate. If sending the warning letter is inappropriate determines the appropriate action in 1.a through 1.d below, and proceeds accordingly.

- a. **Medical penalty.** If the parent is the enforcement parent in the case and is not the applicant, and the support order was not entered by the CSSD, or the support order was entered by the CSSD and the daily medical penalty would be more effective in obtaining coverage of the children than the monthly contempt penalty in step 1.b, proceeds to step 2. to initiate the medical penalty action.
- b. **Contempt.** If the parent is the enforcement parent in the case and is not the applicant, and the support order was entered by the CSSD, and the monthly contempt penalty would be more effective in obtaining coverage of the children than the daily medical penalty in step 1.a, proceeds to CS 503.5 Administrative Civil Contempt, to initiate the contempt action.
Proceeds under the general guidance of the regional legal unit in preparing the required documents, participating in the contempt hearing as a witness, and if applicable, identifying collection options. If a penalty is ordered, enters the penalty into the system as in step 13.a. If the contempt does not result in coverage, proceeds to step 16.
Discontinues the contempt action if the enforcement parent obtains coverage of the children.
- c. **Case closure.** If the enforcement parent is the non-public assistance obligee, or is the NCP parent applicant for CSSD services, initiates case closure procedures. Discontinues the closure action if the enforcement parent obtains coverage of the children. Note: In unusual cases where the monetary penalty in step 1.a would be more effective than case closure in gaining coverage, the CSSD may choose to enforce the obligation through the penalty process.
- d. **Non-cooperation.** If the enforcement parent is the public assistance obligee, initiates action to cite the enforcement parent for non-cooperation with child support enforcement requirements. If the non-cooperation does not result in coverage, proceeds to step 16. Discontinues the non-cooperation action if the parent obtains coverage for the children.

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- 2. Motion and order--penalty amount.** Prepares and signs CS 520.10B Motion and Order for Medical Penalty Hearing and determines the penalty amount as described below.

Sets the amount of the penalty at \$25 times the number of days that the enforcement parent failed to provide health insurance as ordered, through the current date. The penalty period may begin with the first payment date of the support order requiring the insurance or with any significant event after that. For example, the penalty may begin with the date that the NIE was resolved, the enforcement parent failed to respond to the Confirmation of Health Insurance Status, the employer responded to the OTE stating no insurance was available, the enforcement parent left employment where insurance was available, the enforcement parent allowed employer insurance to lapse, the enforcement parent was notified of the employer insurance requirement and the consequences of failing to obtain the insurance, or a medical hardship for the employer insurance was denied.

Regardless of the reason for the penalty start date, in no case sets the date earlier than one year before the current date.

- 3. Sending Motion and Order to Office of the Administrative Law Judge (OALJ).** Mails the original OALJ, retaining a copy for the file. Advises the OALJ of the caseworker's telephone number and any dates the caseworker is not available during the time the hearing will be scheduled. Monitors for a response from the OALJ within 20 days.

Procedure for OALJ

- 4. OALJ intake.** Upon receipt of the motion mailed in step 3., enters a case note in system and forwards the motion to the Administrative Law Judge (ALJ).

Procedure for ALJ

- 5. ALJ determination--reviews the motion If sufficient cause exists, grants the motion, and signs the order portion of the document; if not, denies the motion.** Initials the document to indicate the disposition of the motion, and forwards the complete document to the hearing assistant.

Procedure for OALJ

- 6. OALJ returns to caseworker.** Processes the ALJ's response to the motion as follows: Enters the appropriate system case note for the response. If the motion has been granted, schedules the hearing according to regular OALJ hearing procedures, completes the order portion of the document, and attaches a Telephone Hearing Instructions sheet. If the motion has been denied, enters no further information on the document. In either case, makes a file copy and returns the original, signed or denied, complete Motion and Order for Medical Penalty Hearing to the caseworker; enters a case note in system for the Motion and Order sent.

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7. Service of Motion and Order. Upon receiving a Motion and Order for Medical Penalty Hearing signed by the ALJ, enters a case note in system, makes copies, sends one copy to any affected custodian by regular mail, and arranges for service of the document on the enforcement parent by one of the following:

- *CS- 405.1 Acknowledgment of Service
- CS-401.3C Sheriff's Praecepte or cover letter to private process server if it is believed acknowledgement

Service of the motion by certified mail is not permitted

*Special provision for service by acknowledgement. Send the original acknowledgment form and a self-addressed stamped envelope for the obligor's return. If the obligor does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure.

NOTE:

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

Monitors for successful service, and enters a case note in system when service is obtained.

If service is not obtained by one week before the hearing date, requests the hearing date be vacated by issuing CS 520.10V Motion to Vacate Hearing. Issues a new Motion and Order if and when it appears likely service can be obtained.

8. Exhibits Upon obtaining service in step 7, prepares exhibits for the CSSD's case at hearing. Sends the original exhibits along with CS-405.11A Witness and Exhibit List, to the OALJ by the exhibits due date; sends copies of the exhibits and list to the enforcement parent. Required exhibits are listed in 1) through 4) below:

- 1) The CSSD's authority to act (Assignment of Rights or Authorization to Act).
- 2) The CSSD's personal jurisdiction over the enforcement parent, under MCA § 40-5-231 or 40-5-145 e.g., proof of service in Montana, or a Montana support order.
- 3) Proof of service of the Motion and Order for Medical Penalty Hearing.
- 4) Exhibits to show the following:
 - The enforcement parent did not provide employer insurance as ordered.
 - The CSSD took reasonable steps to make that determination.
 - The CSSD took required action to enforce the obligation through the enforcement parent's employer/payor if applicable.

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Additional exhibits to support the statements in 4) above may include:

- The support order requiring the enforcement parent to provide insurance.
- The employer/payor response, if any, to the OTE stating employer/payor insurance is not available to the enforcement parent under an OTE.
- Evidence of the issuance of CS 520.3B Confirmation of Health Insurance Status and the enforcement parent's response or failure to respond, or--failing adequate response--the actions taken to determine the status of employment or insurance.
- A Medical Hardship Calculation showing the available employer insurance is reasonable in cost.

- 9. Enforcement Parent's compliance** If before the hearing the parent contacts the CSSD and provides proof of insurance coverage, obtains a medical hardship, or provides the name of a previously unknown employer/payor, takes action as indicated in CS 520.5, and proceeds in 9(a) or 9(b) below.
- a. In the case of new insurance coverage or a medical hardship granted, prepares CS 520.10V Motion to Vacate Hearing for the ALJ to vacate the hearing, documents the reason on system, and takes no further action in this section.
 - b. In the case of a new employer/payor, proceeds in 9(a) above only when an OTE is successful in obtaining coverage. If an OTE cannot be issued and resolved before the hearing date, requests a continuance. If an OTE is not successful in obtaining coverage, proceeds to step 10 below.

NOTE:

Maintaining Penalty Action for Pre-Compliance Period. At the caseworker's discretion in cases where the enforcement parent takes appropriate action after being served with the Motion and Order for Medical Penalty Hearing, it may be beneficial to maintain the penalty action, and proceed with the hearing to obtain a penalty for the period before compliance.

- 10. Hearing participation.** Prepares testimony and participates in the hearing as a witness; enters a case note in system for the testimony presented. At the caseworker's option, at the time of the penalty hearing moves the ALJ to extend the penalty period to include the days from the motion date through the hearing date.

Procedure for ALJ

- 11. Hearing conducted.** Conducts the medical penalty hearing according to the requirements of ARM 37.62.941 and 37.62.945. Issues a proposed decision and order, any applicable ruling on a motion to review, and a final decision and order according to ARM 37.62.949 and 37.62.951. Enters the appropriate case notes in system.

Procedure for OALJ

- 12. OALJ processing of Decision & Order.** Processes the proposed decision and order, any motion to review, and the final decision and order according to standard CSSD procedures, including mailing copies to the caseworker, the enforcement parent, and any affected obligee. Enters the appropriate case notes in system.

Procedures for Caseworker

13. Implementing the medical penalty. Enters the appropriate case notes in system for receipt of the proposed and final decisions and orders from the medical penalty hearing. Acts on the final decision and order as follows:

- a. Penalty ordered If a medical penalty is ordered for the enforcement parent, **enters the medical penalty order onto the SOD screen**, and sets up the necessary fine account on system. Pursues collection of the penalty through any appropriate enforcement action, including but not limited to income withholding, warrant for distraint, federal or state offset, or other seizure of assets.

In very rare cases where a medical penalty is ordered against the enforcement parent obligee, consults with regional legal staff and CSSD fiscal staff to adapt collection and distribution procedures, as necessary.

If the decision and order also finds that employer insurance is reasonable in cost, monitors for enrollment according to the procedures in CS 520.3. Returns to this section if and when necessary to achieve compliance. If coverage cannot be obtained despite diligent application of the penalty process, proceeds to step 16.

- b. Penalty not ordered If a medical penalty is not ordered, proceeds to step 16.

14. Subsequent medical penalty action. CSSD policy allows for caseworker discretion in pursuing a subsequent medical penalty action upon annual medical review. A subsequent medical penalty action is an action taken when the penalized enforcement parent in a case has not provided medical insurance, but has paid a portion of the medical penalty within the last twelve months.

If a subsequent medical penalty action is appropriate refers back to Step 2 **Motion and order; penalty amount**, of this section and takes action as indicated.

Subsequent medical penalty action is inappropriate. When a caseworker determines that a subsequent medical penalty action is inappropriate, a case note is required. The caseworker, together with a supervisor should provide details explaining why it is inappropriate to pursue a subsequent medical penalty action at that time.

Case does not qualify for a subsequent medical penalty action when no portion of the prior penalty has been collected within the previous twelve months, and the penalized parent qualifies for a medical hardship.

15. Medical penalty accounts and case closure. If the medical penalty account is the only account open on the case the case may be closed in accordance with the case closure criteria and procedures set out in CS 201.5 Identifying Closed Case Status.

NOTE:

A medical penalty is **not** child support and does not count towards the \$500 arrearage limit for case closure. For a medical penalty obtained in step 13, if the penalty has not been collected in full at the time of case closure, the medical penalty account can be closed with a balance and the case closed. The CSSD may collect the penalty if the case reopens, and the obligation is reinstated, or arrears are to be collected.

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16. Proceeding Against the Other Parent When the combined enforcement actions of this section and 520.5 and 520.7 do not result in coverage of the children in the case, and the conditions below apply, proceeds to enforce against the other parent to obtain health insurance for the children.

- 1) The other parent is an obligor or obligee in this case.
- 2) The other parent is required by the provisions of the support order to provide health insurance for the children.
- 3) If the other parent is an obligee in the case, restrictions in CS 520.3 concerning third-party cases do not prevent the CSSD from enforcing against the parent obligee for at least some of the children.
- 4) The other parent is not the parent identified by the most recent application of the CSSD's Enforcement Parent Decision Matrix in CS 520.3.

Proceeds against the other parent, who now becomes the enforcement parent) by returning to CS 520.7 and pursuing insurance through employment. If necessary, proceeds for the new enforcement parent to CS 520.5, and to this section if applicable, until coverage is obtained or all remedies are exhausted.