

Qualified Medical Child Support Order

In General

The QMCSO came in with the Omnibus Budget Reconciliation Act of 1993. The law contemplates two kinds of QMCSO:

Domestic Relations Related. This QMCSO is a judgement, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction, that (1) provides for medical child support with respect to a participant under a group health plan, (2) is made pursuant to state domestic relations law, and (3) relates to benefits under the group health plan. A Domestic Relations QMCSO must be determined by the plan administrator to be *qualified* under the statute.

State Law Related. Section § 1908 of the Social Security Act requires that, as a condition of receiving federal Medicaid funding, pass legislation requiring plans (1) provide health coverage for a child, called *alternate recipient*, whose parent is eligible for such coverage, (2) provide information to the custodial parent, (3) allow the custodial parent to file claims for the child, and (4) pay the child's benefits directly to the custodial parent, the provider, or the state. Additionally, the law requires plans to recognize assignment rights of state Medicaid agencies, and allows employers to withhold employee wages to pay for coverage pursuant to a State law QMCSO of the State to garish employment income or withhold from tax refunds amounts necessary to reimburse state Medicaid agencies for the cost of goods and services provided for the medical care of children, where the insurer of the non-custodial parent has the primary payment obligation. These state laws are not preempted by ERISA. The Omnibus Budget Reconciliation Act of 1993 also amends ERISA's civil enforcement provisions to allow a state to enforce a plan's compliance with a QMCSO.

Purpose of QMCSO. The purpose is to force coverage for child(ren) at least one of whose parent is a participant in an employer sponsored group health plan, but who might not be covered under that plan because: (1) the custodial parent has not or cannot provide such coverage; (2) the custodial parent is providing coverage through state provided Medicaid benefits, (3) the non-custodial parent has neglected or refused to enroll the child in the employer group health plan; or (4) the child is not eligible for coverage under the terms of the group health plan.

Plan's Open-Ended Liability. The QMCSO requires the plan to provide to a child in circumstances when that child might otherwise not be enrolled or be eligible for benefits. For self-funded plans, coverage involves an open-ended liability of the welfare plan that arises upon the occurrence of an unanticipated event, i.e., injury or accident. Moreover, the self-funded plan's assets that will be used to satisfy this liability, if it

arises, belong to all the participants and beneficiaries of the plan. Therefore, the self-funded welfare plan is a vitally interested party whose assets are in peril.

Administrative Rules. To meet federal law requirements, the plan must have reasonable rules to see that the QMCSO is qualified. The process of qualifying the QMCSO is very complex and very important. The plan fiduciaries could have great exposure were they to let a child on the plan without a qualified order.

What Makes the Order Qualified? To take a MCSO and make it a QMCSO these steps or facts must be determined:

- Determine that the responsible party on the MCSO is the participant with correct name, address, etc.
- Be certain the coverage offered and the coverage expected by the MCSO match; e.g., HMO v. Indemnity option.
- Does the time period of the MCSO allow/require the child to be covered? The plan may not terminate coverage unless the plan is provided (1) written evidence the court or administrative QMCSO is no longer in force, (2) the child is or will be enrolled in comparable health coverage as of the effective date of the disenrollment, or (3) the employer eliminates family health coverage for all its employees.
- The plan affected and the MCSO must match. Also, does the term medical extend to vision, dental, cafeteria?
- The MCSO may not expand the scope off eligibility or benefits of the plan.

Where the MCSO meets the five criteria above-shown, it becomes QMCSO.

Effect on Participant Contributions. Usual payroll deduction rules apply with a child covered under a QMCSO as with any other child. Where a child is covered on an ongoing basis, but the participant has terminated, COBRA-type contribution rules should apply.

Custodial Parent. John, the father, works for Company A and Mary, the former spouse, has custody of the child. The MCSO is on John. Does the plan deal with John or Mary? The plan must provide whatever information is needed to the custodial parent for the child to obtain benefits; (1) permit the custodial parent to submit claims for the child without the approval of the parent participant; and (2) make payment directly to the custodial parent, the provider, or the state agency. The custodial parent should be named as the child's representative for plan notices under the plan's procedures so the first obligation should not be unduly burdensome.

Other Requirements

First. Any plan which provides benefits to dependent natural children of participants or beneficiaries must provide benefits to adopted children, irrespective of whether the adoption has become final and with no restrictions based on preexisting conditions at the time of adoption.

Second. Plan must provide for payment of benefits with respect to an assignment of rights under a state Medicaid program, and cannot take into account an individual's eligibility for Medicaid when enrolling or providing benefits. additionally, plans must

comply with their payment obligations when the state has acquired the participant's right to payment.

Third. Finally, a group health plan may not reduce its coverage for pediatric vaccinations below the level provided as of May 1, 1993.