DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970–AB97

National Medical Support Notice

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION Final rule.

SUMMARY: This rule implements provisions of the Child Support Performance and Incentives Act of 1998 (CSPIA), Public Law 105–200, that require State child support enforcement agencies, under title IV–D of the Social Security Act (the Act), to enforce the health care coverage provision in a child support order through the use of the National Medical Support Notice (NMSN).

A proposed rule was published in the **Federal Register** on November 15, 1999 (64 FR 62074). After consideration of the written comments received, changes have been made in this final regulation, including changes to the NMSN found in the Appendix.

DATES: This regulation is effective January 26, 2001.

FOR FURTHER INFORMATION CONTACT: Elizabeth Matheson, Director, Division of Policy, Office of Child Support Enforcement (OCSE), (202) 401–9386.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final rule is published under the authority of sections 452(f) and 466(a)(19) of the Social Security Act (the Act), 42 U.S.C. 652(f) and 666(a)(19), as amended by section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA), Public Law 105–200, and technical amendments in section 4(b) of the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Public Law 105–306.

Also being published in the **Federal Register** today is a parallel final regulation developed by the Department of Labor (DOL) under section 609(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C.1169(a)), adopting the NMSN. Under ERISA section 609(a)(5)(C), if the NMSN is appropriately completed, and satisfies the conditions of ERISA section 609(a)(3) and (4), the NMSN is deemed to be a ''qualified medical child support order'' as defined in section 609(a) of ERISA.

In this regulation, OCSE is implementing the provisions of CSPIA that require States to have in effect laws that require procedures to enforce the health care coverage provisions in child support orders through the use of the NMSN. The NMSN notifies the noncustodial parent's employer of the provision for health care coverage of the child in a IV–D case.

Background

The enactment of the Child Support Enforcement Amendments of 1984, Pub. L. 98–378, added a new section 452(f) to the Act that required the Secretary to issue regulations to require State IV–D agencies to secure medical support information, and to secure and enforce medical support obligations whenever health care coverage is available to the noncustodial parent at a reasonable cost. Initially, these regulations were placed in Subpart B at 45 CFR 306.50 and 51. Subsequently, they were redesignated and placed where they appear now at 45 CFR 303.30 and 31. Since the enactment of this legislation and the implementing regulations, States have been making efforts to establish and enforce medical support for children with limited success.

The Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. 103–66, was a significant piece of legislation that contained provisions intended to remove some of the impediments to State IV–D agency attempts to secure and enforce medical coverage for children in IV–D cases. OBRA contained many improvements that facilitated obtaining and enforcing medical coverage, including: prohibiting discriminatory health care coverage practices; creating ''qualified medical child support orders'' (QMCSOs) to obtain coverage from group health plans subject to ERISA; and allowing employers to deduct the costs of health insurance premiums from the employee/obligor's income. Some of the medical support provisions of OBRA were included as Medicaid State plan requirements under section 1908 of the Act [42 U.S.C. 1396g–1] and required States to enact laws governing employer and insurer compliance with health care provisions of support orders. The QMCSO provisions are contained in section 609 of ERISA (29 U.S.C. 1169).

Section 382 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, added a new paragraph 19 to section 466(a) of the Act (466(a)(19)) that requires a provision for health care coverage in all child support orders established or enforced by IV–D agencies. Prior to enactment of PRWORA, IV–D agencies were required to petition for inclusion of medical support in all new and modified IV–D child support orders for cases with an assignment of medical support rights for public assistance cases under titles IV–A, XIX, and IV–E. Individuals not receiving public assistance could choose not to seek medical support. Despite improved medical support requirements (such as procedures for including health care coverage in all child support orders under title IV–D) and a focus on enforcement of medical support by OCSE and the State IV–D programs, the enforcement of medical support coverage for children under the IV–D program has remained problematic.

Extensive consultations with State IV–D agencies, employers, HHS, DOL, and advocates of medical support coverage, resulted in an array of medical support provisions in CSPIA. These provisions were enacted in order to further eliminate barriers that prevent meaningful establishment and enforcement of medical child support coverage.

In addition to the requirements that are contained in this regulation, CSPIA provided for the establishment of a Medical Child Support Working Group. The Working Group was charged with submitting a report to the Secretaries of Health and Human Services and Labor containing recommendations regarding appropriate measures to address impediments to the effective enforcement of medical support by IV–D agencies. The Working Group held a series of meetings beginning in March, 1999. At its final meeting in June, 2000, the MCSWG approved its report to the Secretary of Health and Human Services and the Secretary of Labor. The Working Group's report contains seventy-six recommendations for expansion of health coverage for children eligible for child support enforcement services. The Working Group also submitted comments on the Notice of Proposed Rulemaking published in the **Federal Register** on November 15, 1999 (64 FR 62074). The Working Group included thirty members representing: HHS and DOL, State child support directors, State Medicaid directors, employers (including payroll professionals), sponsors and administrators of group health plans (as defined in section 607(1) of ERISA), organizations representing children potentially eligible for medical support, State medical child support programs, and organizations representing State child support programs.

Section 401 of CSPIA strengthens the enforcement of medical support coverage for children by requiring HHS

and DOL to jointly develop a NMSN to be issued by States to enforce the medical support obligations of a non-custodial parent. The NMSN must comply with requirements of section 609(a)(3) and (4) of ERISA, which pertain to informational requirements and restrictions against requiring new types or forms of benefits. In addition to complying with ERISA requirements and all title IV–D requirements, the NMSN must include a severable employer withholding notice informing the employer of: (1) Applicable provisions of State law requiring the employer to withhold any employee contributions due under any group health plan in connection with coverage required to be provided; (2) the duration of the withholding requirement; (3) the applicability of limitations on any such withholding under title III of the Consumer Credit Protection Act; (4) the applicability of any prioritization required under State law between amounts to be withheld for purposes of cash support and amounts to be withheld for purposes of medical support, in cases where available funds are insufficient for full withholding for both purposes; and (5) the name and telephone number of the appropriate unit or division to contact at the State agency regarding the NMSN.

We believe that employers will welcome the use of a standard form that will be used by all State IV–D agencies as required in these regulations. This will simplify processing for all concerned and most importantly enhance health care coverage for children who are excluded from their noncustodial parent's group health plan.

Section 466(a)(19) of the Act, as amended by section 401(c)(3) of CSPIA, requires States to have in effect laws requiring the use of procedures providing for IV–D agencies to use the NMSN to enforce child support orders which include a provision for the health care coverage of the child. Section 466(a)(19)(B) of the Act requires the use of the NMSN in all cases where the noncustodial parent is required to provide health care coverage for the child pursuant to the order and the noncustodial parent's employer is known to the State agency. The statute provides an exception, under section 466(a)(19)(B), to using the NMSN if a court or administrative order stipulates alternative health care coverage to the noncustodial parent's employment-based coverage.

Under section 466(a)(19)(B)(i), States must use the NMSN to transfer notice of the provision for health care coverage of the child to employers, including State or local governments and churches. Section 466(a)(19)(B)(ii) requires the employer to transfer the NMSN within 20 business days after the date of the NMSN, without the employer withholding notice, to the appropriate plan which provides health care coverage for which the child is eligible. The plan administrator then determines if the Notice is qualified under section 609(a) of ERISA in the case of an ERISA-covered plan, or, in the case of a church plan, section 401(f) of CSPIA.

Upon notification by the plan administrator(s) that enrollment may occur and the amount of employee contribution to withhold, the employer implements the withholding from the employee's income. The employer withholds employee contributions within the limitations on withholding in accordance with the amounts allowed by the State of the employee's principal place of employment (which may equal or be less than that allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b)), or the amounts allowed for health insurance premiums by the child support order, whichever is less. If the amount for the premium cannot be withheld due to such limitations on withholding, the child may not be enrolled. The employer also observes the State law of the employee's principal place of employment for prioritization purposes if withholding is required for both cash and medical support payments.

Section 466(a)(19)(B)(iii) of the Act requires, in cases where the noncustodial parent is a newly hired employee, that the State agency send the NMSN, together with the income withholding notice pursuant to section 466(b) of the Act, within two business days after the date the newly hired employee is entered into the State Directory of New Hires, pursuant to section 453A of the Act.

Under section 466(a)(19)(B)(iv) of the Act, when the employment of a noncustodial parent with any employer who has received an NMSN is terminated, the employer is required to notify the State IV–D agency of this termination. Finally, under paragraph (C), any liability of a noncustodial parent employee to a group health plan for contributions necessary for enrollment of a child is subject to appropriate enforcement, unless the employee contests such enforcement based on a mistake of fact.

This section is effective October 1, 2001, or, if later, the effective date of State laws requiring the use of the MSN. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session. This deadline provides States ample opportunity to enact implementing State legislation after publication of final regulations.

Description of Regulatory Provisions and Changes Made in Response to Comments

We are implementing the statutory requirement for the development and use of the NMSN by adding a new section, 45 CFR 303.32, ''National Medical Support Notice,'' to existing rules governing the Child Support Enforcement program under title IV–D of the Act. This section restates statutory requirements and includes requirements in paragraphs (c)(5), (7) and (8) in response to comments received on the proposed regulations. These new paragraphs address employee contests to withholding of health plan contributions based on a mistake of fact, procedures for notifying employers to terminate such withholding and procedures for the IV–D agency to select from available options for health care coverage when notified by plan administrators of those options.

Section 303.32(a) requires the State to have laws requiring procedures for the mandatory use of the NMSN in accordance with section 466(a)(19) of the Act.

Section 303.32(b) provides for an exception to the use of the NMSN. The exception applies to cases with court or administrative orders that stipulate alternative health care coverage.

Section 303.32(c) includes the mandatory procedures for enforcement of health care coverage for the child through the use of the NMSN.

Section 303.32(c)(1) requires State IV–D agencies to use the NMSN to provide notice of the provision for health care coverage of the child(ren) to employers.

Section 303.32(c)(2) requires State IV–D agencies to send the NMSN to the employer within two business days after the date of entry into the State Directory of New Hires of an employee who is an obligor in a IV–D case.

Section 303.32(c)(3) requires employers to transfer the NMSN to the appropriate group health care plan providing any such health care coverage for which the child(ren) is eligible (excluding the severable employer withholding notice directing the employer to withhold any mandatory contributions to the plan) within twenty business days after the date of the NMSN.

Section 303.32(c)(4) requires employers to withhold any mandatory employee contributions to the plan and send any employee contributions withheld directly to the plan. Employers are specifically directed to transfer contributions to the plan because employers may also be directed by a separate child support withholding notice to forward support payments withheld from the employee's wages to a State IV–D agency.

Section 303.32(c)(5) was a part of proposed paragraph (c)(4) in the NPRM. Based on comments received on the NPRM, under paragraph (c)(5), employees may contest the withholding based on a mistake of fact. However, the employer must initiate the withholding until such time as the employer receives notice that the contest is resolved.

Section 303.32(c)(6) requires employers to notify the State agency promptly whenever the employment of a noncustodial parent for whom the employer received an NMSN is terminated. This is consistent with the requirement for notification of termination in income withholding cases pursuant to 45 CFR 303.100(e)(1)(x).

Section 303.32(c)(7) was added in response to comments to require the State agency to promptly notify the employer when there is no longer a current order for medical support in effect for which the IV–D agency is responsible.

Section 303.32(c)(8) was added as a result of comments on a provision pertaining to Part B, ''Plan Administrator Response'' portion of the NMSN. Under section 303.32(c)(8), the IV–D agency must select from available options when the plan administrator returns ''Part B'' of the NMSN and under item 3 informs the IV–D agency that there is more than one option available under the plan. The IV–D agency must select an option and notify the plan administrator of this selection. This provision will ensure that children are enrolled when a decision must be made if there is more than one option for health care coverage.

To comply with statutory requirements, section 303.32(d) requires enactment of State laws requiring the use of the NMSN. The requirements for using the NMSN must be effective the later of October 1, 2001 or the effective date of implementing State law. Such State laws must be effective no later than the first day of the first calendar quarter beginning after the first regular session of the State legislature that begins after October 1, 2001. For States that have two year legislative sessions, each year of such session would be regarded as a separate regular session.

Description of the National Medical Support Notice and Changes Made in Response to Comments

A State IV–D agency will issue a two-part NMSN, Parts A & B, to an employer who maintains or contributes to a group health plan and who employs a noncustodial parent who is obligated by a court or administrative child support order to provide health coverage for a child(ren). Part A of the NMSN, the Notice to Withhold for Health Care Coverage, is modeled on the federally-approved standardized income withholding form that was issued to State IV–D agencies by action transmittal (OCSE-AT–98–03) on January 27, 1998. Employers have voiced approval of this form indicating that the standardized uniform withholding form has greatly facilitated the processing of child support income attachments.

Part A, Notice To Withhold for Health Care Coverage

Part A, the Notice to Withhold for Health Care Coverage, includes information for, and responsibilities of the employer. In response to comments received on page one of the Notice to Withhold for Health Care Coverage, we clarified that the NMSN applies to State and local government and church health plans. We added the Issuing Agency's fax number. We also replaced ''alternate recipient(s)/child(ren)'' with ''child(ren)'', and ''employee/obligor'' with ''employee.'' We replaced ''Court Name'' with ''Court or Administrative Authority.'' With respect to the various types of health coverage available, we deleted ''under your plan'' and replaced ''Basic'' with ''Medical.''

On page one of the Notice to Withhold for Health Care Coverage, the issuing agency provides information starting with the name and address of the issuing agency, date of the notice, case number, telephone and fax numbers of the issuing agency, name of court or administrative authority, date of the support order, and the support order number. The issuing agency provides pertinent information with respect to the employer, the employee, the custodial parent, and the child or children. The issuing agency provides the employer's Federal EIN number (if known) and the employer's name and address. Information on the employee is also provided including the employee's name, social security number, and mailing address. Information is provided on the custodial parent, and the child or children, including their names and addresses. If there is a danger of domestic violence and abuse to the custodial parent and/or the children, the IV–D agency may substitute the name of an official as well as its address for the address of the custodial parent and children. Finally, page one includes a provision for the type of family group health care coverage that is required by the order, *i.e.,* any available or medical, dental, vision, prescription drug, mental health, and other. If no option is specified, the employer should send Part B to the administrator of each group health plan for which the child may be eligible.

Throughout the remainder of this preamble, the first page of the Notice to Withhold for Health Care Coverage, Part A, will be referred to as the ''case identification data section.''

Employer Response

The ''Employer Response'', attached to Part A, is to be completed by the employer. Under the heading for ''Employer Response,'' we clarified that the employer has twenty business days to forward Part B to the plan administrator if none of the response situations described in boxes 1, 2, and 3 apply. If any one of the three response situations in boxes 1, 2, or 3 apply, the employer must return Part A to the IV–D agency within twenty business days after the date of the notice. If the plan administrator informs the employer that the child(ren) is/are enrolled in an option under the plan for which the employer determines that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization, the employer must check box 4 and return Part A to the IV–D agency.

The response situations on the ''Employer Response'' have been clarified and revised. The previous response number 1 has been split into two responses. Response number 1 now reads, ''Employer does not maintain or contribute to plans providing dependent or family health coverage.'' Response number 2 now reads, ''The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes.'' Responses 2 and 3 have been redesignated 3 and 4 respectively. In the newly designated response number 3, ''Health care coverage is not available because the employee is no longer employed by the employer,'' we added a new line for the ''date of termination'' of the employee.

Response number 4, previously designated number 3, was not changed and says, ''State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.'' On the bottom of the ''Employer Response,'' we added a new line for the employer to provide the ''employer identification number'' (EIN), if it was not provided by the Issuing Agency in the case identification data section.

Instructions to Employer

In response to comments on the ''Instructions to Employer,'' we made the following changes. We deleted the word ''also'' from the first sentence in the first paragraph under the heading, ''Instructions to Employer''. Under the subheading of ''Employer Responsibilities,'' we deleted the opening clause ''As the employer of the employee, you are required to:'' since it is clear from the heading to this section, ''Instructions to Employer,'' that the instructions apply to the employer. Under subparagraph 2.b.2, we deleted ''and the parties'' to clarify that if enrollment cannot be completed because of prioritization or limitations on withholding, the employer should complete item 4 of the Employer Response to notify the Issuing Agency. Also, under the subheading of ''Employer Responsibilities,'' we added a new subparagraph 2.c. that instructs the employer, after the plan administrator notifies the employer that the employee is subject to a waiting period that expires more than ninety days from the date of receipt of the Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), to notify the plan administrator when the employee is eligible to enroll in the plan and that the Notice requires the enrollment of the child(ren) named in the Notice in the plan.

Under the subheading of ''Limitations on Withholding,'' we clarified that the maximum Consumer Credit Protection Act limit applies to the combined amount withheld for both cash support and for medical support coverage. We clarified that under the National Medical Support Notice, the employer may not withhold, for health insurance premiums, more than the least of: (1) The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. section 1673(b)); (2) the amounts allowed by the State of the employee's principal place of employment; or (3) the amounts allowed for health insurance premiums by the child support order. In the NPRM, item three previously read, ''The amounts allowed for medical support by the child support order.'' As noted above, we revised item three. The purpose of this change is to differentiate between employee contributions, or premiums, for health coverage paid to the plan administrator, and cash medical support collected by the IV–D agency under a separate income withholding order which is paid to the custodial parent. (The income withholding form, rather than the NMSN, is used to withhold cash medical support when specifically designated in an order).

Under the subheading of ''Priority of Withholding'' in this section, we added space for the IV–D agency to provide State specific information regarding the prioritization of withholding payment.

Under the subheading of ''Notice of Termination of Employment,'' we made minor changes by eliminating unnecessary words.

Under the subheading of ''Employee Liability for Contribution to Plan,'' we clarified the language regarding contests. We added clarifying language to the second, third and fourth sentences to indicate that the employee may contest the withholding under this Notice based on a mistake of fact. The second sentence reads, ''The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor).'' In the third sentence, we added the language, ''by the Issuing Agency''. The third sentence says, ''Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding.'' In order to clarify who the employee should contact in order to contest enforcement, we added the fourth sentence: ''To contest withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice.'' Finally, we added a sentence to make clear that if an employee wishes to contest a determination that the NMSN is a qualified medical child support order with respect to an ERISA covered plan, DOL has taken the position that the contest must be made in Federal court. The last sentence under the subheading, ''Employee Liability for Contribution to Plan,'' says, ''With respect to ERISA covered group health plans, it is the view of the Department of Labor that Federal courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.''

We made no changes to the following subheadings in this section, ''Duration of Withholding,'' ''Possible Sanctions,'' and ''Contact for Questions.''

Under the final DOL regulation published today in the **Federal Register**, Part B of the NMSN, the ''Medical Support Notice to Plan Administrator,'' notifies the administrator of the group health plan in which the named employee is enrolled or eligible for enrollment that the employee is obligated by a court or administrative child support order to provide medical support coverage for the named child(ren). Part B provides the information necessary for the plan administrator to treat the NMSN as a ''qualified medical child support order'' under section 609(a) of ERISA, and to enroll the child(ren) as dependents of the participant in the group health plan. Part B of the NMSN was also developed to comply with the requirements placed on group health plans under State laws described in section 1908 of the Act, and to accommodate the requirements on State agencies to use automated processing of medical child support orders as well. Part B also includes a ''Plan Administrator Response'' that is used by the plan administrator to inform the Issuing Agency that either the child has been enrolled or that there are multiple options from which the Issuing Agency must select coverage, that the employee is subject to certain types of waiting periods, or that the order is not qualified. The specific contents of Part B are explained in detail in the DOL regulation published today.

We have attached the final NMSN (including instructions) as an Appendix in the **Federal Register**. However, the NMSN will not be codified in the Code of Federal Regulations.

Response to Comments

We received twenty-six comments in response to the notice of proposed rulemaking published in the **Federal Register** on November 15, 1999. The commenters included State and local governments, national organizations, law firms, private citizens, and the Medical Child Support Working Group (MCSWG).

The MCSWG had a congressional mandate in accordance with CSPIA to make recommendations based on an assessment of the form and content of the NMSN. The MCSWG provided input into the development of the proposed NMSN and submitted extensive comments in response to the NPRM. Many of the MCSWG's comments on the NPRM were consistent with comments received from State IV–D agencies and other commenters on the NMSN. We

were able to incorporate most of the comments provided by the MCSWG with minor exceptions.

We took these comments into consideration in the development of the final rule. Our responses are limited to comments made with respect to the requirements and responsibilities imposed on the State IV–D agencies and the employers of noncustodial parents of children with child support judicial or administrative orders that include a provision for health care coverage. These responses are also limited to comments on Part A of the NMSN.

Also being published in the **Federal Register** today, the Department of Labor (DOL), in a parallel final regulation, has responded to comments focused on the responsibilities and requirements imposed on group health plan administrators in accordance with section 609(a) of ERISA.

Comments on Part 303.32 National Medical Support Notice

Comments to Section 303.32(a) and (b)

1. *Comment:* Three commenters noted that language was unclear in the first sentence of paragraph (a).

Response: We agree and have clarified the first sentence to require that, ''States must have laws * * * for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce * * *.''

2. *Comment:* Seven commenters recommended that section 303.32 should indicate throughout it that State IV–D agencies use the NMSN ''where appropriate'' in accordance with section 466(a)(19)(A) of the Act.

Response: We agree in part. For consistency with section 466(a)(19)(A) of the Act, we added the words ''where appropriate'' in paragraph (a) of this section. Paragraph (a) requires States to have laws pertaining to the use of the NMSN. The sentence reads, ''States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN) * * *.'' Given this change to paragraph(a), we do not believe it is necessary to add the language, ''where appropriate'' to other subsections of section 303.32.

3. *Comment:* Two commenters asked for additional clarification on what constitutes ''alternate'' coverage in section 303.32(b). Three commenters requested that we provide a list of exceptions that can be construed as alternative coverage and some indication of how much flexibility States have on the use of alternative coverage.

Response: Section 466(a)(19)(B) provides an exception to the requirement that the noncustodial parent provide coverage through his or her employment-related health plan. Section 466(a)(19)(B) says, ''unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order) * * *'' Because the statute allows for alternative coverage if stipulated in the order, we believe it is inappropriate to develop a Federal list of exceptions. However, an example of alternative coverage that might be stipulated in an order could be cash contributions for premiums for health insurance coverage provided through the custodial parent's employment. Another example of alternative coverage that might be stipulated in an order could be private coverage, unrelated to the noncustodial parent's employment, such as California's ''IV–D Kids Medical Program.'' States have flexibility to define and allow alternative coverage that meets the health care needs of the child.

4. *Comment:* One commenter suggested that it be made clear that alternative coverage is an alternative to the noncustodial parent's employer-based coverage.

Response: We believe the language is clear on this point. The statute specifically references, in sections 466(a)(19)(B), (B)(iii), and (C) of the Act, the noncustodial parent's obligation to provide medical support and the use of the NMSN to enroll the child(ren) in the noncustodial parent's employment-related health plan. This regulation implements the statutory requirement. As previously noted, however, section 466(a)(19)(B) allows alternative coverage if stipulated in the order, which could be coverage other than the noncustodial parent's employer-based coverage.

5. *Comment:* Two commenters asked whether the Medicaid program under title XIX and the State Children's Health Insurance Program (SCHIP) under title XXI should be excluded from consideration as alternative coverage.

Response: Section 466(a)(19)(B) of the Act refers to alternative coverage as coverage allowed for in a judicial or administrative order. The statute does not preclude medical support under Medicaid or SCHIP from being stipulated in the order as alternative coverage. However, provisions at 45 CFR 303.31(b)(1) preclude IV–D agencies from considering Medicaid as satisfactory health insurance. The Medical Child Support Working Group addressed this issue during its deliberations and recommendations published in June, 2000. We are examining the Working Group's recommendations on this issue.

6. *Comment:* One commenter recommended an expansion of alternative coverage to include any definition of reasonable coverage as defined by State laws and which is not through an employer.

Response: We are bound by section 466(a)(19)(B) of the Act that limits alternative coverage to coverage allowed for in a court or administrative order.

Comments to Section 303.32(c)(1) and (2)

1. *Comment:* One commenter recommended using ''send'' rather than ''transfer'' the NMSN to the employer. The commenter indicated that by using the word ''transfer'' an implication is made that this section only applies to situations in which there is a new employer identified in a case with a known previous employer.

Response: In order to be consistent with the statute at section 466(a)(19)(B)(i), we are retaining the word ''transfer'' whenever conveyance of the Notice is required. Section 303.32(c)(1) applies in all appropriate cases pursuant to section 303.32(a) regardless of whether or not there is a known previous employer. We are also replacing ''send'' with ''transfer'' in section 303.32(c)(2). This provision requires the State agency to transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV–D case in the State Directory of New Hires.

2. *Comment:* One commenter recommended that when a noncustodial parent provides medical coverage that is not employer-related, the NMSN should not be required to be used as a result of information derived from the State Directory of New Hires (SDNH).

Response: As noted at 45 CFR 303.32(a), the NMSN is used to enforce the provision of health care coverage for children of noncustodial parents who are required to provide health care coverage through an employment-related group health plan in accordance with a child support order. If the order specifies coverage that is not employer-related, and the noncustodial parent is providing such coverage, the IV–D agency would not be required to send an NMSN to the employer within two business days as a result of information derived from the SDNH.

3. *Comment:* One commenter indicated that it is unclear whether the obligor must have a child support order in effect at the time the IV–D agency sends the NMSN to the employer.

Response: Yes, there must be an order in effect at the time the IV–D agency sends the NMSN to the employer. The statute at sections 466(a)(19)(A) and (B) of the Act limits the use of the NMSN to enforcement of child support *orders.*

4. *Comment:* One commenter inquired whether the two business day requirement for sending the NMSN to the employer also applies to employment information obtained from other sources.

Response: Section 466(a)(19)(B)(iii) of the Act specifies that in any case in which the noncustodial parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 453A(e) of the Act, the State agency provides, where appropriate, the NMSN, together with the income withholding notice issued pursuant to section 466(b), within two days after the date of entry of such employee in such Directory. The statute does not impose the two day requirement for sending the NMSN when employment information is obtained from other sources.

5. *Comment:* One commenter recommended that enhanced funding be made available to State IV–D agencies to meet the two business day requirement to send the NMSN to the employer after the date of entry in the SDNH.

Response: Section 455(a)(3)(B) of the Act provides States with enhanced (80 percent) Federal financial participation (FFP) to meet the new developmental requirements of PRWORA and the Family Support Act of 1988. States may use funds from their allocation of enhanced FFP to pay for developmental costs of enhancing the Statewide automated system to generate the NMSN. However, the ongoing maintenance costs of the system for actually transferring the NMSN to the employer is considered a regular program administrative cost that is eligible for FFP at the 66 percent matching rate pursuant to 45 CFR 307.35. The use of enhanced funds would require the submittal of an advance planning document (APD) to the Federal Office of Child Support Enforcement in accordance with 45 CFR 307.15.

Comments to Section 303.32(c)(3)

1. *Comment:* Two States believe that the twenty business day time frame for employers to send Part B of the NMSN to the plan administrators is too long. Recommendations were made for a shorter time frame of ten business days.

Response: We are bound by the statute at section 466(a)(19)(B)(ii) that prescribes the twenty business day timeframe as the limit that employers have to send the NMSN to plan administrators. It reads, ''within twenty business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice * * *'' Employers may send the notice sooner since the statute indicates ''within 20 business days * * *''

2. *Comment:* One commenter inquired what penalties would be imposed on an employer for failing to transfer the NMSN to the plan administrator within the twenty business day timeframe.

Response: The employer is subject to applicable State laws since these requirements will be incorporated into State law in accordance with sections 466(a)(19) and 454(20) of the Act. State laws should address penalties or consequences to employers for failing to meet the prescribed statutory time frame.

3. *Comment:* One State noted that this paragraph addresses the twenty business day time frame for the employer to transfer the NMSN to the plan administrator, but is silent on the forty business day time frame that plan administrators have to respond to the Notice.

Response: Requirements related to the forty business day time frame are included in the Department of Labor regulation published today.

Comments to Section 303.32(c)(4)

1. *Comment:* One State asked whether the NMSN could be used for income withholding of cash medical support as specified in an order.

Response: No. The NMSN is used to enforce the provision of health care coverage in an order and to enroll children in the noncustodial parent's employer-related health plan. Section 452(f) of the Act requires the Secretary of HHS to issue regulations that require IV–D agencies to include medical support as part of any child support order. The income withholding form, rather than the NMSN, is used to withhold cash medical support if specifically designated in an order. Instructions on the income withholding form (see OCSE Action Transmittal–98–03, number 17a) indicate, ''Dollar amount to be withheld for payment of medical support, as appropriate, based on the underlying order.''

2. *Comment:* One commenter suggested that the Medicaid program be given the option to pay for health insurance premiums when the Federal or State withholding limitations have been reached.

Response: A State may be able to do this if it elects the option under section 1906 of the Act to enroll individuals under title XIX in cost effective group health plans.

3. *Comment:* One commenter recommended that the IV–D agency not be held liable for IV–D actions taken on medical support in instances where the noncustodial parent makes changes to the medical support provisions of an order without notifying the IV–D agency of such actions.

Response: We are unaware of any circumstances in a IV–D case where an order can be modified without notice to the IV–D agency or to the custodial parent. However, an employee has the opportunity to contest the withholding of employee contributions based on a mistake of fact which would bring errors to the IV–D agency's attention and ensure that withholding is appropriate.

4. *Comment:* Three commenters questioned the provision that requires immediate withholding even though an employee contests such withholding. One State indicated that this is inconsistent with income withholding for child support. The noncustodial parent has a right to contest adverse actions as well as the right to be heard prior to action being taken.

Response: The notice provision in this regulation is consistent with the statutory language regarding income withholding under which income withholding for cash support commences pending resolution of any contest in favor of the employee. Section 466(b)(4)(A) of the Act states, ''Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent * * *. (i) that the withholding has commenced; and (ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.''

5. *Comment:* Two commenters suggested that the regulations should provide that the only basis for contesting the withholding should be mistake of fact or identity of the employee.

Response: We agree and added a new paragraph (c)(5) indicating that employees may contest the withholding based on a mistake of fact. We removed the last sentence in proposed (c)(4) regarding the initiation of withholding until such time that the contest is resolved, and inserted it into the new paragraph (c)(5) pertaining to contests. We also added similar language to the ''Instructions to Employer,'' subheading ''Employee Liability for Contribution to Plan,'' to clarify that an employee may contest the withholding under this Notice based on a mistake of fact.

6. *Comment:* One commenter asked for the contest rules for medical support and income withholding.

Response: Provisions at 45 CFR 303.32(c)(5) limit the circumstance for an employee to contest the withholding to a mistake of fact, such as the identity of the obligor. The procedural rules for hearing contests are determined under State law.

7. *Comment:* Three commenters requested Federal procedures for a contest when an employee's contribution to a medical plan has been inappropriately withheld.

Response: We believe it is more appropriate for States to develop their own specific administrative and operational procedures for contests. Procedures for addressing contests should include procedures for return of inappropriately held funds.

Comments to Former Section 303.32(c)(5)—Now Section 303.32(c)(6)

1. *Comment:* One commenter recommended changing the timeframe for an employer to notify the IV-D agency whenever the noncustodial parent's employment is terminated from ''promptly'' to a twenty day timeframe.

Response: We are using ''promptly'' in order to be consistent with the procedures in place for income withholding cases (see 45 CFR 303.100(e)(1)(x)).

Additional Comments on Mandatory Procedures

1. *Comment:* One commenter recommended that the regulation indicate that States must have laws to require employers to follow all of the procedures outlined at 45 CFR 302.32.

Response: We have already done so at 45 CFR 303.32(a) under which States must have laws in accordance with section 466(a)(19) of the Act requiring procedures that are specified under section 303.32(c) for the use of the NMSN. These State laws and procedures are applicable to all paragraphs of this subsection.

2. *Comment:* A commenter recommended that an additional mandatory procedure be added to ensure that the NMSN is binding on the employer and, if applicable, on the plan administrator without regard to the date when the underlying support order was issued.

Response: Under the heading of ''Instructions to Employer'' in the NMSN, we noted that the NMSN replaces any previous notice that the IV-D agency has sent with respect to the employee and the children listed on the NMSN. We also noted earlier in the preamble that if the NMSN is appropriately completed and satisfies the conditions of ERISA under section 609(a)(3) and (4), the NMSN is deemed to be a qualified medical child support order as defined in section 609(a) of ERISA and binding on all parties concerned. The date the underlying support order was issued, therefore, does not affect the binding nature of the NMSN.

3. *Comment:* One commenter suggested adding additional subsections under paragraph (c), ''Mandatory procedures'', that would allow the State to amend or terminate the NMSN for the following reasons: as a result of a successful contest by the employee; upon emancipation of any of the children named in the NMSN; upon modification or termination of the medical support order; to add other children to the required coverage; upon determining that the children have other satisfactory health insurance; to correct any mistakes of fact contained in the NMSN; and, upon case closure.

Response: State IV–D agencies have the authority to reissue the NMSN or to terminate the NMSN when appropriate. We do not think it is appropriate to list in the regulatory language every circumstance that may result in amending or terminating the NMSN. However, with respect to notifying the employer when there is no longer a current order for medical support in effect, we have added subparagraph (c)(7) in this regulation. This provision requires the State to have procedures for promptly notifying the employer when there is no longer a current order for medical support in effect.

In response to the commenter's concerns with amending or terminating the NMSN, the IV–D agency could take the following actions:

(a) Result of a successful contest by the employee-Inform the employer that the NMSN is no longer in effect;

(b) Emancipation of child(ren) named in the NMSN-Coverage of the child(ren) named in the NMSN would terminate pursuant to State law;

(c) Modification or termination of the medical support order-Reissue the NMSN if appropriate;

(d) Need to add other children to the required coverage-Reissue the NMSN to add the child(ren);

(e) Upon determining that the children have comparable coverage—the NMSN (Part A) provides notification that the employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless the employer is provided satisfactory written evidence that the child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan; and

(f) To correct any mistakes of fact contained in the NMSN-Reissue the NMSN in order to make the correction(s).

4. *Comment:* One commenter suggested that a separate section be added to this regulation to provide for a Federal prescription on allocation of withholding in instances where the combined income and medical support withholding would exceed the maximum Consumer Credit Protection Act (CCPA) limits. This should include allocating in accordance with specified priorities between the income withholding for cash child support and for employee contribution premium payments for enrolling the child(ren) through the use of the NMSN.

Response: The Medical Child Support Working Group (MCSWG) made recommendations in its June, 2000 Report on priorities of allocation when there are cases where the combined income withholding for cash child support and employee contributions for premium payments to health administrators for health coverage exceeds the maximum CCPA limits. In response to this comment, we plan to consider the recommendations from the MCSWG before determining whether a Federal allocation standard should be established. In the meantime, the employer must follow the required prioritization on withholding in accordance with the State law of the employee's principal place of employment. We have added additional blank lines to the NMSN (see ''Instructions to Employer'' under the subheading, ''Priority of Withholding'') where States may include State specific information regarding prioritization between cash and medical support.

5. *Comment:* One commenter recommended changing the effective date of this regulation to read, ''If a change in State law is not required, this section is effective October 1, 2001; if a change in State law is required, this section is effective on the effective date of State laws described in paragraph (a) of this section. Such State laws must * * * separate regular session.''

Response: Section 303.32(d) is consistent with section 401(c)(3) of CSPIA, as amended by section 4(b) of Public Law 105–306. The statute requires the effective date to be the later of ''(A)October 1, 2001; or (B) the effective date of laws enacted by the legislature of such State implementing such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the

first regular session of the State legislature that begins after the date specified in subparagraph (A). For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Comments on Part A of the NMSN

Case Identification Data Section

1. *Comment:* Eight commenters recommended changing the title from ''Employer Withholding Notice'' to ''Notice to Enroll.''

Response: The statute at section 466(a)(19)(B)(ii) of the Act specifies a ''withholding notice'' that is severable and retained by the employer. The employer sends the ''Part B'' portion of the notice to the plan administrator. In response to the comment and for clarity, we have revised the title to read, ''Notice to Withhold for Health Care Coverage''.

2. *Comment:* One commenter suggested adding a statement that the employer is required by law to enroll the children.

Response: Unless the employer is also his/her plan administrator, the employer does not enroll children into the plan. The plan administrator enrolls children into the plan.

3. *Comment:* Several commenters suggested that the Notice, pursuant to section 401(e) and (f) of CSPIA, should contain language clarifying that the Notice applies to State and local government and church plans. These commenters expressed concern that because the Notice refers specifically to ERISA, it may be misinterpreted as applicable to only ERISA-covered plans.

Response: We agree. We added clarifying language to the case identification data section regarding the use of the NMSN with respect to State and local government and church plans.

4. *Comment:* One commenter recommended adding ''administrative authority'' to the line in the case identification data section where only ''court name'' appeared in the NPRM. The commenter made this suggestion to recognize cases in which the order has been issued by an administrative authority other than by a court.

Response: We agree. We added ''administrative authority'' to this line so that it now says, ''Court or Administrative Authority.''.

5. *Comment:* Six commenters suggested deleting the term ''alternate recipient(s)'' from ''alternate recipient(s)/child(ren)'' and ''obligor'' from ''employee/obligor.''

Response: We agree, and for clarity and simplicity, we deleted ''alternate recipient(s)'' and ''obligor'' throughout the NMSN so that only ''child(ren)'' and ''employee'' will remain.

6. *Comment:* Three commenters expressed concern regarding the confidentiality of the custodial parent's address appearing in the case identification data sections of the NMSN. They recommended that the employer be informed to keep the custodial parent's address confidential and not to disclose that information to the employee.

Response: Information on the children's address is required under section 609(a) of the Employee Retirement Income Security Act of 1974 (ERISA). If a State makes a determination that the custodial parent's or child's address must be safeguarded, the State may substitute the address of the IV–D agency for that of the custodial parent and children.

7. *Comment:* Four commenters recommended adding a line for the IV–D agency fax number to the case identification data section of the NMSN.

Response: We agree. We added a line for the IV–D agency's fax number accordingly.

8. *Comment:* One commenter indicated a problem with understanding the term ''basic'' type of family group health care coverage listed on the bottom of the NMSN, Part A, and suggested replacing ''basic'' with ''basic/medical'' or ''major medical.''

Response: We replaced ''basic'' coverage with ''medical'' coverage. The language on types of coverage noted on the bottom of the case identification data section now reads: ''Any health coverages available'' or ''medical''; ''dental''; ''vision''; ''prescription drug''; ''mental health''; and ''other.

Employer Response

9. *Comment:* Two commenters indicated that the instructions under the ''Employer Response'' do not address under what circumstances the employer should complete item 3. Item 3 in the notice of proposed rulemaking said that, ''State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.''

Response: We agree that this section needs clarification. In the revised NMSN, we changed number 3 to number 4. We revised the introductory language under ''Employer Response'' to read, ''Check number 4 and return this Part A to the Issuing Agency if the Plan Administrator informs you that the child(ren) is/are enrolled in an option under the plan for which the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization.''

10. *Comment:* One commenter suggested removing the parenthetical just below the ''Employer Response'' heading that in the proposed rule read,'' (To be completed by Employer, as appropriate)''. The commenter suggested that we replace the parenthetical with language regarding the twenty business day timeframe for employers to send the Notice to the plan administrator if none of the situations reflected in responses listed in this section apply. If any one of the situations reflected in the responses listed apply, the commenter recommended that the same twenty business day timeframe be used by the employer to inform the IV–D agency which situation exists as reflected in the list of responses that precludes enrollment of the child(ren) in the health plan.

Response: We agree. We revised the paragraph under the ''Employer Response'' section to return this part to the IV–D agency within twenty business days after the date of the Notice, or sooner, when any one of the following responses apply: (1) ''Employer does not maintain or contribute to plans providing dependent or family health care coverage'', or (2) ''The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health care coverage under any group health plan maintained by the employer or to which the employer contributes'', or (3) ''Health care coverage is not available because the employee is no longer employed by the employer.''

11. *Comment:* One commenter recommended adding space for the employer's EIN or employer identification number at the bottom of the ''Employer Response'' section. This is needed if the EIN is not provided by the Issuing Agency on the Employer Withholding Notice.

Response: We agree. We added space for the EIN in the ''Employer Response'' section.

12. *Comment:* One commenter asked that the employer be required to provide the cost of the employee's contribution on the ''Employer Response'' form when the employer returns the response indicating that the withholding limitations have been exceeded.

Response: We are not requiring employers to do so because of the inherent differences involved in each case. We encourage States to contact employers when it may be necessary to have this information.

13. *Comment:* One commenter noted that when coverage is not available, a copy of Part A, that is sent back to the IV–D agency, should not be sent to the custodial parent as instructed in the introductory paragraph under ''Employer Response.''

Response: We agree. The IV–D agency is responsible for dealing with the custodial parent in a IV–D case, and is therefore responsible for notifying the custodial parent when the IV–D agency is notified that coverage is not available. Requiring employers to also send a copy of Part A to the custodial parent would place an additional burden on employers. We have revised the introductory paragraph of the ''Employer Response'' to clarify that Part A should not be sent to the custodial parent when coverage is not available. The first sentence in the introductory paragraph now reads, ''If either 1, 2, or 3 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner as reasonable.'' Similarly, in the new explanatory language regarding box 4 in the introductory paragraph of the ''Employer Response,'' the employer is required to return Part A to the Issuing Agency only. Under ''Instructions to Employer,'' we made a conforming change to subparagraph 2.b.2 under the subheading, ''Employer Responsibilities.'' We deleted ''and the parties.'' Subparagraph 2.b.2. now reads: ''Upon notification from the plan administrator(s) that the child(ren) is/are enrolled, either (1) * * * or (2) complete item 4 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.''

14. *Comment:* A commenter requested that we add a line for ''date of termination'' under response 2 on the ''Employer Response.'' A commenter also suggested that, when an employee terminates employment, the form should instruct employers to use box 2 under the ''Employer Response'' section of Part A of the NMSN that indicates, ''Health care coverage is not available because the employee is no longer employed by the employer * * *.''

Response: Under ''Employer'' Response we renumbered Response 2 in the proposed rule to response 3 in the revised form that pertains to the fact that the employee is no longer employed by the employer. We also added a line for ''date of termination'' under the new response 3.

The new response 3 under the ''Employer Response'' section of the NMSN is intended to inform the IV–D agency that the employee is no longer employed by the employer *at the time* that the employer receives the NMSN. The requirement for employers to promptly notify the IV–D agency when an employee terminates employment is consistent with the current procedure for income withholding cases.

Instructions to the Employer

15. *Comment:* One commenter suggested having the ''Instructions to the Employer'' precede the ''Employer Response'' section because the instructions should be read first before attempting to complete the form. Another commenter requested that Part A and Part B should be placed together at the beginning, followed by the instructions for both Parts.

Response: We decided to maintain the format used in the NPRM. We believe that the current sequence and format of the Notice provides specific clarifying instructions for employers and plan administrators. Part A includes the Notice to Withhold for Health Care Coverage, the Employer Response and the Instructions to Employer. Part B includes the Medical Support Notice to Plan Administrator, the Plan Administrator Response, and the Instructions to Plan Administrator.

16. *Comment:* Three commenters recommended an indication of what actions should be taken when it is known that there is an enrollment waiting period in instances of recent employment. One commenter recommended adding an explanation on the form regarding the employer's role when the plan calls for a waiting period. A waiting period may exist before enrollment can take place because the employee is a new employee or until some other criterion is fulfilled, such as a requirement to complete a certain number of hours worked. The commenter recommended that the employer notify the plan administrator when enrollment can take place upon receipt of notification from the plan administrator that the waiting period will be in effect for a period of more than 90 days from the date of receipt of the Notice or the waiting period's duration is determined by another criterion.

Response: We agree that clarification is needed. We added subparagraph 2.c. under the heading of ''Employer Responsibilities'' in the ''Instructions to Employer'' to read: ''If the plan administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), notify the plan administrator when the employee is eligible to enroll in the plan and that this Notice requires the enrollment of child(ren) named in the Notice in the plan.''

17. *Comment:* One commenter suggested deleting the word ''also'' referring to children that appeared in the proposed notice in the first sentence under the section ''Instructions to Employer''. The sentence said, ''This document serves as notice that the employee identified above is obligated by a court or administrative child support order to provide health care coverage for the child(ren) also identified above.''

Response: We agree, and deleted ''also'' from the sentence. The sentence now reads, ''This document serves as notice that the employee identified on this Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice.''

18. *Comment:* One commenter recommended deleting the clause, ''As the employer of the employee, you are required to:'' that appeared in the proposed Notice in the first sentence under the subheading ''Employer Responsibilities'' in the ''Instructions to Employer'' section of Part A. The commenter indicated that it is evident that the employer is the employee's employer since this is under the subheading of ''Employer Responsibilities'' and therefore unnecessary to use this clause.

Response: We agree, and deleted the clause ''As the employer of the employee, you are required to:'' We listed the employer's responsibilities directly without the previous opening clause.

19. *Comment:* Two commenters recommended adding ''medical support'' to identify the ''Notice'' in the second sentence under the section ''Instructions to Employer'' so that the sentence would read, ''This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice.''

Response: We agree and added ''Medical Support'' before ''Notice.''

20. *Comment:* Three commenters recommended that additional language be added under the subheading of ''Limitations of Withholding'' in the ''Instructions to Employer'' section of Part A to indicate that the Consumer Credit Protection Act (CCPA) limit

applies to the combined amounts withheld for cash and medical support.

Response: We agree and have added language so that it now reads, ''The total amount withheld for both cash and medical support cannot exceed _____% of the employee's aggregate disposable weekly earnings.'' We also clarified that under the National Medical Support Notice, the employer may not withhold more than the least of: (1) The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. section 1673(b)); (2) the amounts allowed by the State of the employee's principal place of employment; or (3) the amounts allowed for health insurance premiums by the child support order.

21. *Comment:* One commenter suggested changing the subsection title from ''Limitations on Withholding'' to ''Limitations on Premiums'' in the ''Instructions to Employer'' section in order to avoid confusion for employers who are more accustomed to receiving income withholding notices for cash support.

Response: The limitations on withholding apply to both the amount of cash child support or medical support, whether in the form of cash amounts for medical support or employee contributions to health insurance coverage. Therefore, we have not changed the subheading ''Limitations on Withholding'' to ''Limitations on Premiums.''

22. *Comment:* In the ''Instructions to Employer'', two commenters suggested adding a line under the ''Limitations of Withholding'' subheading so that the IV–D agency could indicate the amount of cash medical support that may be included in the order.

Response: If cash medical support is included in the order, it is unlikely that the same order would include a provision for health insurance coverage. If required by an income withholding order, an employer sends cash medical support to the IV–D agency. Cash medical support payments, specified in an order, are used for example, to reimburse the custodial parent for medical costs incurred by the custodial parent. The NMSN is used for a different purpose, that is, to enroll children in their noncustodial parent's employment-related health plan. The employer withholds the employee's contribution, or payment of the premium, and sends it to the plan administrator and not to the IV–D agency.

Limitations on withholding are set as a percentage of aggregate earnings. If support is being withheld under a separate income withholding notice, the amount of support being withheld would be specified on that notice and available to the employer. For clarity, we are changing the reference to line 3 under the heading of ''Limitations on Withholding'', that is in the ''Instructions to Employer'' section of the NMSN, to read, ''The amounts allowed for health insurance premiums by the child support order, as indicated here: ____.'' This will clarify that the withholding is for employee contributions rather than for cash medical support.

23. *Comment:* Two commenters recommended that additional space be provided under the subheading of ''Priority of Withholding'' in the ''Instructions to Employer'' section of the NMSN that appeared in Part A, for the IV–D agency to provide a description of priorities between cash and medical support under State law.

Response: We agree and added additional space under this subheading for that purpose.

24. *Comment:* One commenter asked for a definition of ''comparable'' coverage under the subheading of ''Duration of Withholding at subparagraph 1.b. that allows for disenrollment of a child because the child will be enrolled in comparable coverage.

Response: Comparable coverage means coverage that is similar in scope to the current coverage and that would provide approximately the same type and extent of coverage to the child or children. Although the term ''comparable'' coverage appears in section 1908(a)(3)(C)(i)(II) of the Act, the term is not explicitly defined. The Health Care Financing Administration is responsible for interpretations of title XIX and intends to promulgate regulations which will include discussion of the term ''comparable.''

25. *Comment:* One commenter suggested that a State have the option of tailoring the provisions under the subheadings of ''Limitations on Withholding'' and ''Priority of Withholding'' portions in the ''Instructions to Employer'' section of Part A in the NMSN in accordance with its State law.

Response: The Consumer Credit Protection Act (CCPA) allows States to specify limits for amounts withheld which may be less than the maximum amounts allowed for by the CCPA. With respect to prioritization, we added space under the subheading ''Priority of Withholding'' in the ''Instructions to Employer'' section of Part A in the NMSN. The additional space is intended for States to provide information on how they prioritize between cash and medical support.

26. *Comment:* One commenter suggested changing the subtitle ''Duration of Withholding'' in the ''Instruction to Employer'' section of Part A to that of ''Duration of Enrollment.''

Response: We believe that the subtitle ''Duration of Withholding'' should not be changed. The section ''Duration of Withholding,'' in the ''Instruction to Employer'' addresses withholding in the context of withholding employee contributions, rather than coverage or enrollment. Since the employer is responsible for withholding employee contributions for health plan premium payments, we believe it is important to list the circumstances that would allow the employer to discontinue withholding. They are as follows: the court or administrative child support order noted in the NMSN is no longer in effect, or the child(ren) is or will be enrolled in comparable coverage effective upon disenrollment, or the employer eliminates family health coverage for all of its employees.

27. *Comment:* One commenter suggested revising the language under the subsection of ''Notice of Termination of Employment,'' in the ''Instructions to Employer'' section of Part A to eliminate unnecessary words. The language in the proposed rule read as follows: ''In any case in which the above employee's employment with the above employer terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency named above a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.''

The commenter suggested the following revised language, ''In any case in which the employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending the Issuing Agency a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.''

Response: We agree and incorporated the revised language accordingly.

28. *Comment:* One commenter recommended changing the heading of ''Notice of Termination of Employment'' to ''Notice of Termination of Employment or Disenrollment of Children.'' The commenter further recommended that the employer be required to notify the State if the

children are disenrolled for any reason other than termination or amendment of the NMSN by the IV–D agency.

Response: This recommendation would impose an additional reporting requirement on the employer. The plan administrator is responsible for notifying all parties concerned, including the IV–D agency, whether the NMSN is a qualified medical child support order and whether enrollment of the child(ren) occurs, or if the NMSN does not meet the criteria and enrollment does not occur.

29. *Comment:* Three commenters recommended that a sentence be added under the subheading of ''Employee Liability for Contribution to Plan'' in the ''Instruction to Employer'' section of Part A of the NMSN indicating that in an event the employee contests withholding of the employee's contribution required by the health plan, the employee should contact the IV–D agency at the address listed on the NMSN.

Response: We agree. We added the following sentence under this heading, ''To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice.''

30. *Comment:* A commenter requested clarification regarding how an employee could challenge certain aspects of the Notice qualification process.

Response: Although the issue of the Notice qualification process is more appropriately addressed in DOL's regulation, we concur with the commenter that clarification is needed in Part A. We added the following language under the ''Instructions to Employer'', subheading ''Employee Liability for Contribution to Plan': ''With respect to ERISA covered group health plans, it is the view of the Department of Labor that Federal courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.''

31. *Comment:* One commenter recommended that the NMSN be made available for universal use in all child support cases and not limited to cases under the title IV–D program. Another commenter recommended that the NMSN should only be used by State IV–D agencies.

Response: The statute at section 466(a)(19)(A) requires the use of the NMSN where appropriate in title IV–D cases.

32. *Comment:* One commenter inquired whether the Case Number and Support Order Number requested in both Parts A and B of the NMSN are the same.

Response: They are not the same. The case number identifies the number of the case in the IV–D agency's caseload. The support order number pertains to the judicial or administrative support order that exists with respect to the individuals associated with the IV–D case.

33. *Comment:* Several commenters objected to the provision in Part B of the NMSN in the ''Plan Administrator Response,'' section, (item 2.b.) that requires the IV–D agency to make a selection from an array of multiple options available under the health plan or plans. These commenters expressed concerns that there may be inadequate staff to make the selection, that such interaction may cause delays in enrollment, and that such interaction may hinder automation of the child support enforcement system. Another commenter supported the provision that the plan administrator should notify the IV–D agency that a choice among more than one option is required. The commenter also suggested that if the IV–D agency does not respond within twenty business days after the plan administrator has returned the Plan Administrator Response informing the IV–D agency that a choice is required, and the plan has default option, the plan administrator should enroll the child(ren), and the participant if necessary, in the plan's default option.

Response: We believe that decisions regarding selection of coverage are very important. If the plan administrator notifies the IV–D Agency that the participant is not enrolled in the plan and that more than one coverage option is available, the decision as to which option should be selected rests with the IV–D agency, in consultation with the custodial parent. The IV–D agency has this responsibility on the basis that the IV–D agency initiated the enrollment process, is providing services to the custodial parent and child, and is in the best position to make such a selection, in consultation with the custodial parent. If the IV–D agency does not make this selection and reply to the plan administrator within twenty business days, and the plan has a default option, the plan administrator should enroll the child(ren) in the default option. If the plan does not have a default option, the plan administrator may wish to contact the IV–D agency to ensure that each child is placed in appropriate coverage as soon as reasonably possible.

We have added paragraph (c)(8) to this final regulation at 45 CFR 303.32 to clarify the IV–D agency's responsibility if it receives a plan administrator response form indicating a choice of options is necessary before enrollment may proceed.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This regulation has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Public Law 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments. These regulations place requirements on IV–D agencies for the use of the NMSN. The NMSN itself will help small employers and small plan administrators who are required under State laws to comply with orders to enroll children in health care plans available to their employees.

Paperwork Reduction Act of 1995

Section 303.32(c)(1) contains an information collection requirement. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

- *Title:* National Medical Support Notice.
- *Summary:* The information collected by State title IV–D agencies will be used to complete the National Medical Support Notice (NMSN) which will be sent to employers of employee/obligors and used as a means of enforcing the health care coverage provision in a child support order. Primarily, the information State agencies will use to complete the NMSN will be the information regarding appropriate persons which is necessary for the enrollment of the child in employer related health care coverage, such as the employee (name, SSN, mailing address); employer's name/address; the name/address of the child(ren); and the custodial parent's name and address. The employer forwards the second part of the NMSN to the group health plan administrator which contains the same individual identifying information. The plan

administrator requires this information to determine whether to enroll the child(ren)in the group health plan. If necessary, the employer would also initiate wage withholding from the employee's wages for the purpose of paying premiums to the group health plan for enrollment of the child.

• *Description of the likely respondents:* State and local title IV–D agencies initiate the process of enforcing medical health care coverage for the child by completing and sending the NMSN to known employers of the noncustodial parents (employee/obligors). Employers and plan administrators are on the receiving end of the NMSN.

Information collection	(1)
Number of respondents	54
Responses per respondent	13,454
Average burden hours per response	1666
Total annual burden hours	123,507

[1] 45 CFR 303.32

The Office of Management and Budget (OMB) filed comments on this request for approval due to comments from one State. The State's first comment pertained to changing the timeframes that the employer and plan administrator have for processing the NMSN. The State wanted to change the timeframe that the employer has to forward the NMSN to the plan administrator from twenty business days from the date of the NMSN, to ten business days. The State also wanted to change the timeframe that the plan administrator has to enroll or deny enrollment from forty business days from the date of the NMSN, to twenty business days.

With respect to the twenty business days timeframe for employers, we are bound by the statute at section 466(a)(19)(B)(ii) of the Social Security Act that specifies this timeframe for employers. With respect to the forty business days timeframe for plan administrators, we are bound by the statute at section 609(a)(5)(C)(ii) of the Employment Retirement Income Security Act of 1974 (ERISA) that specifies this timeframe for plan administrators. We have no authority to change statutorily required timeframes.

As part of its second comment, the State indicated that it believes the NMSN is fine for ERISA employers but may be rejected by non-ERISA employers. Therefore the State recommended that the instructions and response sections in the NMSN should be modified and changed.

Historically, the IV–D program experienced difficulties in enforcing medical support coverage of children in ERISA covered health plans. ERISA preempts State law, under whose authority child support orders are established, and provides a basis for denying enrollment of children under the IV–D program in ERISA covered health plans. A primary objective of the NMSN is to meet the ERISA requirements for a qualified medical child support order to effect enrollment. The impediments to enrollment were in the ERISA covered health plans and not with the non-ERISA plans. The NMSN has been developed to apply to employer-related health plans. We have no reason to make any modifications to the NMSN as we are in agreement with the State that the NMSN will facilitate enrollment in ERISA covered health plans. We do not agree that there will be problems with non-ERISA plans.

The information collection requirements were approved by OMB under OMB number 0970–0222.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

We have determined that the rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government.'' While this rule does not have federalism implications for State or local governments as defined in the Executive Order, there were extensive consultations with State members of the Medical Child Support Work Group, as well as other State and local child support practitioners, on the content of the Notice and its requirements.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No 93.563, Child Support Enforcement Program.)

Dated: August 18, 2000.

Olivia A. Golden,

Assistant Secretary, Administration for Children and Families.

Approved: August 29, 2000.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed above, we are amending 45 CFR Chapter III as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. A new 303.32 is added to read as follows:

§ 303.32 National Medical Support Notice.

(a) *Mandatory State laws.* States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce the provision of health care coverage for children of noncustodial parents who are required to provide health care coverage through an employment-related group health plan pursuant to a child support order and for whom the employer is known to the State agency.

(b) *Exception.* States are not required to use the NMSN in cases with court or administrative orders that stipulate alternative health care coverage to employer-based coverage.

(c) *Mandatory procedures.* The State must have in effect and use procedures under which:

(1) The State agency must use the NMSN to transfer notice of the provision for health care coverage of the child(ren) to employers.

(2) The State agency must transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV–D case in the State Directory of New Hires.

(3) Employers must transfer the NMSN to the appropriate group health plan providing any such health care coverage for which the child(ren) is eligible (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after the date of the NMSN.

(4) Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan.

(5) Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

(6) Employers must notify the State agency promptly whenever the noncustodial parent's employment is terminated in the same manner as required for income withholding cases in accordance with § 303.100(e)(1)(x) of this part.

(7) The State agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV–D agency is responsible.

(8) The State agency, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

(d) *Effective date.* This section is effective October 1, 2001, or, if later, the effective date of State laws described in paragraph (a) of this section. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4184–01–P

APPENDIX

NATIONAL MEDICAL SUPPORT NOTICE

PART A

NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 (ERISA), and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

RE* _____
Employee's Name (Last, First, MI)

_____)
Employer/Withholder's Name

_____
Employee's Social Security Number

_____)
Employer/Withholder's Address

_____
Employee's Mailing Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____
Substituted Official/Agency Name and Address

_____)
Child(ren)'s Mailing Address (if different from Custodial Parent's)

_____)
_____)
_____)
Name, Mailing Address, and Telephone Number of a Representative of the Child(ren)

Child(ren)'s Name(s) SSN	DOB		Child(ren)'s Name(s) SSN	DOB	
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [ ] any health coverages available; or [] only the following coverage(s): __Medical; __Dental; __Vision; __Prescription drug; __Mental health; __Other (specify): _____

EMPLOYER RESPONSE

If either 1, 2, or 3 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner if reasonable. NO OTHER ACTION IS NECESSARY. If neither 1, 2, nor 3 applies, forward Part B to the appropriate plan administrator(s) within 20 business days after the date of the Notice, or sooner if reasonable. Check number 4 and return this Part A to the Issuing Agency if the Plan Administrator informs you that the child(ren) is/are enrolled in an option under the plan for which you have determined that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization.

□ 1. Employer does not maintain or contribute to plans providing dependent or family health care coverage.

□ 2. The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes.

□ 3. Health care coverage is not available because employee is no longer employed by the employer:

Date of termination: _____

Last known address: _____

Last known telephone number: _____

New employer (if known): _____

New employer address: _____

New employer telephone number: _____

□ 4. State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.

Employer Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

EIN (if not provided by Issuing Agency on Notice to Withhold for Health Care Coverage):_____

INSTRUCTIONS TO EMPLOYER

This document serves as notice that the employee identified on this National Medical Support Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice. This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice.

The document consists of **Part A - Notice to Withhold for Health Care Coverage** for the employer to withhold any employee contributions required by the group health plan(s) in which the child(ren) is/are enrolled; and **Part B - Medical Support Notice to the Plan Administrator**, which must be forwarded to the administrator of each group health plan identified by the employer to enroll the eligible child(ren).

EMPLOYER RESPONSIBILITIES

1. If the individual named above is not your employee, or if family health care coverage is not available, please complete item 1, 2, or 3 of the Employer Response as appropriate, and return it to the Issuing Agency. NO FURTHER ACTION IS NECESSARY.

2. If family health care coverage is available for which the child(ren) identified above may be eligible, you are required to:

   a. Transfer, not later than 20 business days after the date of this Notice, a copy of **Part B - Medical Support Notice to the Plan Administrator** to the administrator of each appropriate group health plan for which the child(ren) may be eligible, and

   b. Upon notification from the plan administrator(s) that the child(ren) is/are enrolled, either

      1) withhold from the employee's income any employee contributions required under each group health plan, in accordance with the applicable law of the employee's principal place of employment and transfer employee contributions to the appropriate plan(s), or

      2) complete item 4 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.

   c. If the plan administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of **Part B of** this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), notify the plan administrator when the employee is eligible to enroll in the plan and that this

Notice requires the enrollment of the child(ren) named in the Notice in the plan.

LIMITATIONS ON WITHHOLDING

The total amount withheld for both cash and medical support cannot exceed ___% of the employee's aggregate disposable weekly earnings. The employer may not withhold more under this National Medical Support Notice than the lesser of:

1. The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b));

2. The amounts allowed by the State of the employee's principal place of employment; or

3. The amounts allowed for health insurance premiums by the child support order, as indicated here:_____.

The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as State, Federal, local taxes; Social Security taxes; and Medicare taxes.

PRIORITY OF WITHHOLDING

If withholding is required for employee contributions to one or more plans under this notice and for a support obligation under a separate notice and available funds are insufficient for withholding for both cash and medical support contributions, the employer must withhold amounts for purposes of cash support and medical support contributions in accordance with the law, if any, of the State of the employee's principal place of employment requiring prioritization between cash and medical support, as described here:_____
_____.

DURATION OF WITHHOLDING

The child(ren) shall be treated as dependents under the terms of the plan. Coverage of a child as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA may entitle the child to continuation coverage under the plan. The employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless:

1. The employer is provided satisfactory written evidence that:

   a. The court or administrative child support order referred to above is no longer in effect; or
   b. The child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan; or

2. The employer eliminates family health coverage for all of its employees.

POSSIBLE SANCTIONS

An employer may be subject to sanctions or penalties imposed under State law and/or ERISA for discharging an employee from employment, refusing to employ, or taking disciplinary action against any employee because of medical child support withholding, or for failing to withhold income, or transmit such withheld amounts to the applicable plan(s) as the Notice directs.

NOTICE OF TERMINATION OF EMPLOYMENT

In any case in which the above employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.

EMPLOYEE LIABILITY FOR CONTRIBUTION TO PLAN

The employee is liable for any employee contributions that are required under the plan(s) for enrollment of the child(ren) and is subject to appropriate enforcement. The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor). Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding. To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice. With respect to plans subject to ERISA, it is the view of the Department of Labor that Federal Courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

NATIONAL MEDICAL SUPPORT NOTICE OMB NO. 1210-0113

PART B

MEDICAL SUPPORT NOTICE TO PLAN ADMINISTRATOR

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law. The rights of the parties and the duties of the plan administrator under this Notice are in addition to the existing rights and duties established under such law.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number:	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

RE* _____
Employee's Name (Last, First, MI)

_____)
Employer/Withholder's Name

_____
Employee's Social Security Number

_____)
Employer/Withholder's Address

_____
Employee's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____
Substituted Official/Agency Name and Address

_____)
Child(ren)'s Mailing Address (if Different from Custodial Parent's)

_____)
_____)
_____)
Name(s), Mailing Address, and Telephone Number of a Representative of the Child(ren)

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [] any health coverages available; or [] only the following coverage(s): __medical; __dental; __vision; __prescription drug; __mental health; __other (specify):_____

PLAN ADMINISTRATOR RESPONSE

(To be completed and returned to the Issuing Agency within 40 business days after the date of the Notice, or sooner if reasonable)

This Notice was received by the plan administrator on _____.

□ 1. This Notice was determined to be a "qualified medical child support order," on _____. Complete **Response 2 or 3, and 4**, if applicable.

2. The participant (employee) and alternate recipient(s) (child(ren)) are to be enrolled in the following family coverage.

□ a. The child(ren) is/are currently enrolled in the plan as a dependent of the participant.

□ b. There is only one type of coverage provided under the plan. The child(ren) is/are included as dependents of the participant under the plan.

□ c. The participant is enrolled in an option that is providing dependent coverage and the child(ren) will be enrolled in the same option.

□ d. The participant is enrolled in an option that permits dependent coverage that has not been elected; dependent coverage will be provided.

Coverage is effective as of __/__/____(includes waiting period of less than 90 days from date of receipt of this Notice). The child(ren) has/have been enrolled in the following option: _____. Any necessary withholding should commence if the employer determines that it is permitted under State and Federal withholding and/or prioritization limitations.

□ 3. There is more than one option available under the plan and the participant is not enrolled. The Issuing Agency must select from the available options. Each child is to be included as a dependent under one of the available options that provide family coverage. If the Issuing Agency does not reply within 20 business days of the date this Response is returned, the child(ren), and the participant if necessary, will be enrolled in the plan's default option, if any: _____.

□ 4. The participant is subject to a waiting period that expires __/__/____ (more than 90 days from the date of receipt of this Notice), or has not completed a waiting period which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: _____). At the completion of the waiting period, the plan administrator will process the enrollment.

□ 5. This Notice does not constitute a "qualified medical child support order" because:

□ The name of the □ child(ren) or □ participant is unavailable.

□ The mailing address of the □ child(ren) (or a substituted official) or □ participant is unavailable.

□ The following child(ren) is/are at or above the age at which dependents are no longer eligible for coverage under the plan _____ (insert name(s) of child(ren)).

Plan Administrator or Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

Address:_____

INSTRUCTIONS TO PLAN ADMINISTRATOR

This Notice has been forwarded from the employer identified above to you as the plan administrator of a group health plan maintained by the employer (or a group health plan to which the employer contributes) and in which the noncustodial parent/participant identified above is enrolled or is eligible for enrollment.

This Notice serves to inform you that the noncustodial parent/participant is obligated by an order issued by the court or agency identified above to provide health care coverage for the child(ren) under the group health plan(s) as described on **Part B**.

(A) If the participant and child(ren) and their mailing addresses (or that of a Substituted Official or Agency) are identified above, and if coverage for the child(ren) is or will become available, this Notice constitutes a "qualified medical child support order"(QMCSO) under ERISA or CSPIA, as applicable. (If any mailing address is not present, but it is reasonably accessible, this Notice will not fail to be a QMCSO on that basis.) You must, within 40 business days of the date of this Notice, or sooner if reasonable:

(1) Complete Part B - Plan Administrator Response - and send it to the Issuing Agency:

(a) if you checked Response 2:

(i) notify the noncustodial parent/participant named above, each named child, and the custodial parent that coverage of the child(ren) is or will become available (notification of the custodial parent will be deemed notification of the child(ren) if they reside at the same address);

(ii) furnish the custodial parent a description of the coverage available and the effective date of the coverage, including, if not already provided, a summary plan description and any forms, documents, or information necessary to effectuate such coverage, as well as information necessary to submit claims for benefits;

(b) if you checked Response 3:

(i) if you have not already done so, provide to the Issuing Agency copies of applicable summary plan descriptions or other documents that describe available coverage including the additional participant contribution necessary to obtain coverage for the child(ren) under each option and whether there is a limited service area for any option;

(ii) if the plan has a default option, you are to enroll the child(ren) in the default option if you have not received an election from the Issuing Agency within 20 business days of the date you returned the Response. If the plan does not have a default option, you are to enroll the child(ren) in the option selected by the Issuing Agency.

(c) if the participant is subject to a waiting period that expires more than 90 days from the

date of receipt of this Notice, or has not completed a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), complete Response 4 on the Plan Administrator Response and return to the employer and the Issuing Agency, and notify the participant and the custodial parent; and upon satisfaction of the period or requirement, complete enrollment under Response 2 or 3, and

(d) upon completion of the enrollment, transfer the applicable information on Part B - Plan Administrator Response to the employer for a determination that the necessary employee contributions are available. Inform the employer that the enrollment is pursuant to a National Medical Support Notice.

(B) If within 40 business days of the date of this Notice, or sooner if reasonable, you determine that this Notice does not constitute a QMCSO, you must complete Response 5 of Part B - Plan Administrator Response and send it to the Issuing Agency, and inform the noncustodial parent/participant, custodial parent, and child(ren) of the specific reasons for your determination.

(C) Any required notification of the custodial parent, child(ren) and/or participant that is required may be satisfied by sending the party a copy of the Plan Administrator Response, if appropriate.

UNLAWFUL REFUSAL TO ENROLL

Enrollment of a child may not be denied on the ground that: (1) the child was born out of wedlock; (2) the child is not claimed as a dependent on the participant's Federal income tax return; (3) the child does not reside with the participant or in the plan's service area; or (4) because the child is receiving benefits or is eligible to receive benefits under the State Medicaid plan. If the plan requires that the participant be enrolled in order for the child(ren) to be enrolled, and the participant is not currently enrolled, you must enroll both the participant and the child(ren). All enrollments are to be made without regard to open season restrictions.

PAYMENT OF CLAIMS

A child covered by a QMCSO, or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

PERIOD OF COVERAGE

The alternate recipient(s) shall be treated as dependents under the terms of the plan. Coverage of an alternate recipient as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA or other applicable law may entitle the alternate recipient to continue coverage under the plan. Once a child is enrolled in the plan as directed above, the alternate recipient may not be disenrolled unless:

(1) The plan administrator is provided satisfactory written evidence that either:

(a) the court or administrative child support order referred to above is no longer in effect, or

(b) the alternate recipient is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan;

(2) The employer eliminates family health coverage for all of its employees; or

(3) Any available continuation coverage is not elected, or the period of such coverage expires.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

Paperwork Reduction Act Notice

The Issuing Agency asks for the information on this form to carry out the law as specified in the Employee Retirement Income Security Act or the Child Support Performance and Incentive Act, as applicable. You are required to give the Issuing Agency the information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Issuing Agency needs the information to determine whether health care coverage is provided in accordance with the underlying child support order. The Average time needed to complete and file the form is estimated below. These times will vary depending on the individual circumstances.

	Learning about the law or the form	**Preparing the form**
First Notice	1 hr.	1 hr., 45 min.
Subsequent Notices	-----	35 min.

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