

QUALIFIED MEDICAL CHILD SUPPORT ORDERS ("QMCSO"):  
FEDERAL PROTECTION FOR THE HEALTH OF CHILDREN OF DIVORCE

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President Clinton's Budget Reconciliation Act, which became effective on August 10, 1993, amends the Employee Retirement Income Security Act ("ERISA"), by imposing guidelines for virtually all private sector group health plans -- including self-insuring employers -- respecting a new form of child support order, known as a Qualified Medical Child Support Order ("QMCSO").

A QMCSO is a medical child support order<sup>1</sup>, which "creates or recognizes the existence of an alternative recipient's<sup>2</sup> right to ... receive benefits for which a participant or beneficiary<sup>3</sup> is eligible under a group health plan" and which specifies the name and last known mailing address of the parent participant and of each alternate recipient; a description of the type of coverage to

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<sup>1</sup> Defined as any judgment, decree or order (including any approved settlement agreement) -- made under a state domestic relations law -- and which provides for child support for a child under a parent's group health plan, or which provide's for health benefit coverage to a child, or which enforces a law relating to medical child support set out in 42 U.S.C. § 1396(g). 29 U.S.C. § 1169(a) (B).

<sup>2</sup> Defined as any child of a participant who is recognized under a medical support order as having a right to enrollment under a group health plan with respect to such participant (hereinafter "child"). 29 U.S.C. § 1169(a) (2) (C).

<sup>3</sup> A "participant or beneficiary" may be either parent of the alternative recipient child.

be provided to the child, or the manner by which the type of coverage is to be determined; the period to which such order applies; and an itemization of each plan to which the order applies. 29 U.S.C. § 1169(a)(2)(A) and (a)(3).<sup>4</sup>

It is important to note that the QMCSO may not order continued coverage of benefits not normally available under a particular plan, so that a QMCSO must provide for continued coverage on the same terms as for other dependents covered under the plan.<sup>5</sup>

A QMCSO, in effect, mandates continued medical coverage for dependent children under a parent's health insurance plan. Indeed, once a medical order qualifies as a QMCSO, all named alternative recipient children are to be treated as beneficiaries under a plan.<sup>6</sup> This is a major advantage for the children of parents who are going through a divorce. Another major advantage for children under the new law is the protection they are afforded by having the group health plan not only responsible to the participating parent and the child, but also to the Court.

The new law mandates that when a health care plan receives a medical child support order, it must: (a) notify the parent and the child of its receipt of such order; (b) give the plan's

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<sup>4</sup> A copy of the relevant statutory provisions follows this article.

<sup>5</sup> BNA Pension and Benefits Reporter, Health Care & Benefits (August 16, 1993).

<sup>6</sup> 29 U.S.C. (a)(7)(A).

written procedures for determining how an order qualifies as a QMCSO to the parent and child; (c) within a reasonable time, notify the parent and child whether such submitted plan qualifies as a QMCSO; and (d) allow a child to designate a representative for the receipt of copies of notices with respect to such order.<sup>7</sup>

Another notable advantage of QMCSOs, are that they eliminate the collection problem that was created when a person other than the plan participant paid for a child's medical expenses, because under the old system, only the plan participant could be reimbursed for the claim, and they were then obligated to repay the person who had initially paid the medical expenses. The complications that arose from this scenario in divorce situations were numerous. Now, a health insurance plan is required to directly reimburse whoever actually paid the child's medical expense, even if it is not the plan participant.<sup>8</sup>

Additionally, under a QMCSO, a person's eligibility for Medicaid may not be considered, although the law establishes rules for coordination between the benefit plan and Medicaid.<sup>9</sup>

Another important change under the law is that it requires health insurance plans to treat adopted children as if they were biological children for the purposes of the insurance plan.<sup>10</sup>

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<sup>7</sup> 29 U.S.C. § 1169(a)(5).

<sup>8</sup> 29 U.S.C. § 1169(a)(8).

<sup>9</sup> 29 U.S.C. § 1169(b)(2).

<sup>10</sup> 29 U.S.C. §1169(c)(1)-(3).

Very simply, the new provisions mandate that the health plan cover an adopted child from the time a plan participant assumes a legal duty to support the child, irrespective of whether the adoption is final.<sup>11</sup> As long as a child is placed with a participant, while the participant's health plan is in effect, the plan may not restrict coverage to the child based upon a preexisting condition.<sup>12</sup>

The QMCSO is sure to generate many questions, and it should be interesting in the upcoming months to watch the evolution of this new provision, and to see if it is successful in its goal of protecting the rights of children to medical coverage during and after a divorce. For those practitioners dealing with these issues -- be aware, and look into how your state is complying with the Federal guidelines.

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<sup>11</sup> 29 U.S.C. §1169(c)(3)(b).

<sup>12</sup> 29 U.S.C. §1169(c)(2).