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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

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Rule Report for Legislative Review

Proposed Rules Relating to Medical Support and Child Support Guidelines Review

DCF 150
CR 09-036

Basis and Purpose of the Proposed Rules

The proposed rules will adopt provisions of a new federal regulation on medical support in child support cases. The proposed rules will also extend the application of the special provisions for low-income payers with income below 125% of the federal poverty guidelines to payers with income below 150% of the federal poverty guidelines. In addition, the proposed rules will establish a new method for determining the child support obligations of split-placement parents.

Changes to Analysis Prepared under Section 227.14 (2), Stats.

- Added the requirement that the plan would cover hospitalization and other medical costs without large out-of-pocket deductibles or copayments to the determination of whether a private health insurance plan is available at a reasonable cost.
- In response to Legislative Council comment 5.c., clarified that the circumstance in which a court may determine whether to order a parent to enroll a child in a private health insurance plan is when a person other than a parent has already enrolled the child. The person other than a parent who would have enrolled the child would generally be a step-parent.
- Corrected typo in statutory reference regarding deviation from the child support standards.

Public Hearing Summary

Public hearings were held in Milwaukee and Madison on June 2-3, 2009. Carol Medaris of the Center for Family Policy and Practice in Madison commented on the proposed rules:

1. Fathers with incomes below 150% of the federal poverty guidelines should not be liable for birth costs.

Department response: CFFP argues, based upon the findings of the National Medical Child Support Working Group, that the establishment of birth costs for fathers with incomes below 150% of the federal poverty guidelines is a deterrent to the establishment of paternity and the mother's willingness to seek prenatal care. However, the findings of that group were never adopted by the federal Office of Child Support Enforcement. Nor has a clear link been

established in Wisconsin that shows that setting birth cost orders is either a deterrent to the establishment of paternity or the mother's willingness to seek prenatal care.

The number of non-marital births continues to rise and it is important for non-marital fathers to accept financial responsibility for the costs associated with the births of their children. Recent rule amendments revised the calculation of birth cost orders to more closely reflect the father's ability to pay and, as such, are likely in the vast majority of cases to significantly reduce the amount owed. Both birth cost orders and child support orders are now calculated with a graduated scale of lower amounts for parents with income below 125% of the federal poverty guidelines. The proposed amendment increases the low-income standard from 125% to 150%.

2. The Milwaukee project in which child support orders are suspended during incarceration if the custodial parent agrees should be applied throughout the state.

Department response: The Department is committed to reviewing the issues raised surrounding incarceration. We anticipate receiving a research report from the Institute for Research on Poverty in late fall that will address issues related to whether suspending child support during periods of incarceration might increase compliance with child support orders and enhance the father's relationship with the children upon release. We have already invited representatives from the Milwaukee Fatherhood Collaborative to participate in discussions related to this issue and welcome participation from the Center for Family Policy and Practice as we move forward to address this issue.

Response to Legislative Council Staff Recommendations

All comments were accepted.

Final Regulatory Flexibility Analysis

The rule does not affect small businesses as defined in s. 227.114 (1), Stats.

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State of Wisconsin
Department of Children and Families

DCF 150

Medical Support and Child Support Guidelines Review

The Wisconsin Department of Children and Families proposes to amend DCF 150.01(1), 150.02(25), 150.02(26), 150.04(1), 150.04(1)(note), 150.04(2)(b)1., 150.04(3)(a), 150.04(4)(note), and 150.05(2)(b)2.; to repeal and recreate DCF 150.04(3)(b) and 150.04(3)(note), 150 Appendix C, and 150 Appendix D; and to create DCF 150.02(25m), 150.04(3)(b)(note), 150.04(6), and 150.05(1)(a) to (f), relating to medical support and child support guidelines review.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.22 (9) and 227.11 (2) (a), Stats.

Statutes interpreted: Sections 49.22 (9) and 767.513, Stats.

Related statutes or rules: Sections 767.225, 767.34, 767.501, 767.511, 767.59, and 767.89, Stats.

Explanation of agency authority

Section 49.22 (9), Stats., provides that the department shall promulgate rules that provide a standard for courts to use in determining a child support obligation based upon a percentage of the gross income and assets of either or both parents. According to the federal Office of Child Support Enforcement, medical support is a subset of child support.

Summary of the proposed rule

The proposed rules will adopt provisions of a new federal regulation on medical support in child support cases, recommendations of the Department's child support guidelines review, and recommendations by the Child Support Policy Advisory Committee.

Medical Support

Under s. 767.513, Stats., the court shall specifically assign responsibility for and direct the manner of payment for the child's health expenses in addition to ordering child support for a child. The court must consider the availability of health insurance to each

parent, the extent of coverage available to a child, and the cost to the parent for the coverage.

Under the proposed rules, the court may order either or both parents to enroll a child in a private health insurance plan that is accessible to the child and available at a reasonable cost.

- The court may consider a private health insurance plan to be accessible to the child if the plan's service providers are located within a reasonable distance from the child's home. In general, service providers may be considered within a reasonable distance if they are located within 30 minutes or 30 miles of the child's residence, with a greater distance allowed in some rural areas.
- The court may consider a private health insurance plan to be available at a reasonable cost if the cost to enroll the child or children does not exceed 5% of the insuring parent's monthly income available for child support and would cover hospitalization and other medical costs without large out-of-pocket deductibles or copayments. In applying this 5% standard, the cost to enroll the child or children in a private health insurance plan is the cost to add the child or children to existing coverage or the difference between the cost of self-only coverage and the cost to that parent after adding the child or children.
- The court may order the non-insuring parent to contribute to the cost to enroll the children in a private health insurance plan in an amount that does not exceed 5% of the non-insuring parent's monthly income available for child support.

The court may not order a parent whose income is below 150% of the federal poverty level to enroll a child in a private health insurance plan or contribute to the cost of private health insurance unless there is no cost to the parent.

If there is no private health insurance plan available that is accessible to the child and reasonable in cost, the court may order enrollment in a private health insurance plan as a deviation under s. 767.511 (1m), Stats.; responsibility for a contribution to the cost of the other parent's premium for the BadgerCare Plus program, unless the parent's income is below 150% of the federal poverty level; and enrollment in a private health insurance plan if a plan that meets these requirements becomes available to the parent in the future.

If a person other than a parent has enrolled a child in an accessible private health insurance plan that covers hospitalization and other medical costs without large out-of-pocket deductibles or copayments, the court may determine whether to order a parent to enroll the child in a private health insurance plan. The person other than a parent who has enrolled a child in a private health insurance plan would generally be a step-parent.

The court shall also establish an order for medical expenses that are not covered by insurance. The court shall consider each parent's ability to pay these medical expenses.

Guidelines Review

45 CFR 302.56(e) requires states to review, and revise, if appropriate, the state's child support guidelines at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts. The Department submitted the latest review of the Wisconsin child support guidelines to the federal Office of Child Support Enforcement in January 2008. This review included the following 2 recommendations for changes to the child support guidelines in DCF 150:

- Extend the application of the special provision for low-income payers in s. DCF 150.04 (4) and Appendix C from below 125% of the federal poverty guidelines to below 150% of the federal poverty guidelines. The current rule provides a schedule with reduced percentage rates to be used to determine the child support obligation for payers with an income below approximately 125% of the federal poverty guidelines if the court determines that the payer's total economic circumstances limit his or her ability to pay support at the level determined using the full percentage rates. For income between approximately 75% and 125% of the federal poverty guidelines, the percentage rates gradually increase as income increases. The proposed rule will extend use of the reduced percentages to payers with an income below 150% of the federal poverty guidelines.
- Change the term "serial-family payer" to "serial-family parent" to conform the rule to the intent for serial-family cases with a previous shared-placement obligation. The concept behind the special provision for shared-placement parents is that the order is smaller than a full percentage order because the parent has significant placement and is covering the child's basic support expenses while with that parent. The concept behind the special provision for serial families is to give credit for the amount spent on the first family before determining the order for children in the next family. The current serial-family provision refers to the "payer" in a shared-placement order in giving credit for the amount spent on the earlier children. The Department proposes to change "payer" to "parent" so a parent who did not owe child support under the shared-placement provision will clearly still be entitled to credit for pre-existing obligations in the determination of support under the serial-family provision.

Other Recommendation by the Child Support Policy Advisory Committee

When parents have 2 or more children and each parent has placement of one or more but not all of the children, the parents have split placement. Under the current rule, the child support obligation for split-placement parents may be determined by multiplying each parent's monthly income available for child support by the appropriate percentage standard for the number of children placed with the other parent and offsetting the resulting amounts against each other.

If each parent has placement of one child, the support obligation would be determined by multiplying each parent's income by 17%, the percentage standard for one child, and offsetting the results. If one parent had placement of both children, the other parent's child support obligation would be determined by multiplying that parent's income by 25%, the percentage standard for 2 children. Some parents with split placement believe

that they are unfairly being required to pay a higher level of support under the current rule on split placement since the total support paid for 2 children would be 34% of the parents' income.

The proposed rule provides a new method for determining the child support obligations of split-placement parents. Under the proposed rule, each parent's income will be multiplied by the pro rata percentage standard for the number of children in split placement who are placed with the other parent. The pro rata percentage standard is calculated by determining the appropriate percentage standard for the total number of children, dividing by the total number of children, and adding together the percentages for the children in split placement who are placed with the other parent. If each parent has placement of one child, the support obligation would be determined by multiplying each parent's income by 12.5% (25% percentage standard for 2 children ÷ 2) and offsetting the results.

Other proposed rule changes are for clarification and are not substantive.

Summary of related federal requirements

Background on Medical Support

The first federal requirement that medical support be addressed in child support cases was in the Child Support Amendments of 1984. States were required to petition for medical child support in cases enforced under Section IV-D of the Social Security Act (IV-D cases) if health care coverage was available to the noncustodial parent at a reasonable cost. Reasonable cost was defined as coverage available through the noncustodial parent's employment. The IV-D cases included custodial parents receiving AFDC or Medicaid and non-AFDC cases with the custodial parent's consent.

In 1989, a change to 45 CFR 302.56 required states to establish one set of guidelines for setting and modifying child support award amounts within the state with a rebuttable presumption that the guidelines would apply in all child support cases. Among other things, the regulation required that the guidelines must, at a minimum, provide for the child's health care needs through health insurance coverage or other means. It did not specify how health care needs should be addressed.

The Child Support Performance and Incentive Act of 1998 required health care coverage in IV-D cases, while previous law merely required States to petition for inclusion of health care coverage. This Act also directed the Secretaries of the Department of Labor and the Department of Health and Human Services to establish a Medical Child Support Working Group to identify impediments to the effective enforcement of medical support and to make recommendations to eliminate them. The Working Group released their report, *21 Million Children's Health: Our Shared Responsibility*, in August 2000. The report is available at <http://www.acf.hhs.gov/programs/cse/pubs/2000/reports/medrpt/>.

New Medical Support Provisions

Several of the key recommendations of the Working Group were adopted in the Deficit Reduction Act of 2005 and new medical support regulations issued on July 21, 2008. (*Child Support Enforcement Program; Medical Support; Final Regulation*, 73 Federal Register 42416). As amended, 42 USC 666(a)(19) provides that all IV-D child support orders shall include a provision for medical support for the child to be provided by either or both parents. State IV-D agencies now have the option of enforcing medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost.

The new regulation on securing and enforcing medical support obligations at 45 CFR 303.31 is more specific than the previous medical support section. It provides that the State IV-D agency must petition the court to include private health insurance that is accessible to the child, as defined by the State, and is available to the parent responsible for providing medical support at a reasonable cost in new or modified court orders for support.

If private health insurance is not available at the time the order is entered or modified, the State must petition to include cash medical support in new or modified orders until health insurance that is accessible and reasonable in cost becomes available. In appropriate cases, as defined by the State, cash medical support may be sought in addition to health insurance coverage.

Cash medical support or the cost of private health insurance is considered “reasonable in cost” if the cost to the parent responsible for providing medical support does not exceed 5% of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in the state child support guidelines. In applying the 5% or alternative state standard for the cost of private health insurance, the cost is the cost of adding the child or children to the existing coverage or the difference between self-only and family coverage.

“Health insurance” includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage that are available to either parent, under which medical services could be provided to a dependent child.

“Cash medical support” means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.

On pages 42423-42424 of the preamble to the rule, commenters requested clarification on including unfixed, unreimbursed medical expenses in the definition of cash medical support subject to the reasonable cost limitations because this would unfairly place the burden for these costs on the custodial parent. The Administration for Children and Families responded that they agree it would not be appropriate at the time an order is established to include the cost of future, uncertain, and unspecified medical costs when applying the 5% cost-reasonableness standard. They further state that they do not agree that responsibility for extraordinary medical costs set in a subsequent medical support order should be ordered without any consideration of the obligated parent’s ability to pay at the time the cost is incurred or reimbursement is sought.

New Medical Support Provision Affects All Child Support Awards

The new medical support regulations affect all child support awards, not just IV-D cases. The amended 45 CFR 302.56 requires that state guidelines for setting and modifying all child support amounts within the state address how the parents will provide for a child's health care needs through health insurance coverage or cash medical support, or both, in accordance with 45 CFR 303.31, the new medical support regulation.

Comparison with rules in adjacent states

All states are required to comply with the new federal regulation affecting medical support.

Summary of factual data and analytical methodologies

The proposed rules will adopt provisions of a new federal regulation on medical support in child support cases, recommendations of the Department's child support guidelines review, and a recommendation by the Child Support Policy Advisory Committee.

Effect on small businesses

The proposed rule does not affect small businesses as defined in s. 227.114 (1), Stats.

Agency contact person

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Place where comments are to be submitted and deadline for submission

Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or elaine.pridgen@wisconsin.gov. The comment deadline is June 5, 2009.

SECTION 1. DCF 150.01 (1) and 150. 02 (25) are amended to read:

DCF 150.01 Introduction. (1) AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of s. 49.22 (9), Stats., for the purpose of establishing a standard to be used in determining child support under ss. 767.225, 767.34, 767.501, 767.511, 767.513, 767.59, and 767.89, Stats.

DCF 150.02 (25) “Serial-family payer parent” means a payer parent with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a court order.

SECTION 2. DCF 150.02 (25m) is created to read:

DCF 150.02 (25m) “Shared-placement parent” means a parent who has a court-ordered period of placement of at least 25% and is ordered by the court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child.

SECTION 3. DCF 150.02 (26) is amended to read:

DCF 150.02 (26) “Shared-placement payer” means ~~a parent who has a court-ordered period of placement of at least 25%, is ordered by the court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child, and is~~ the shared-placement parent who is determined to owe a greater support amount than the other parent under the calculation in s. DCF 150.04 (2) (b).

SECTION 4. DCF 150.04 (1) and (note) are amended to read:

DCF 150.04 (1) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SERIAL-FAMILY PAYER PARENT. (a) *Applicability.* This subsection applies only if

the additional child support obligation incurred by a ~~payer~~ parent is a result of a court order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. A ~~payer~~ parent may not use the provisions of this subsection as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) *Determination.* For a serial-family ~~payer~~ parent, the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a court order may be determined as follows:

1. Determine the ~~payer's~~ parent's monthly income available for child support under s. DCF 150.03 (1) (intro.);

2. Determine the order of the ~~payer's~~ parent's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a nonmarital child, the father's legal obligation for child support is incurred on the date ~~of the court order~~ that paternity is legally established. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date ~~of the filing of an acknowledgement of paternity~~ that paternity is legally established. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth;

3. Determine the first child support obligation as follows:

a. If the ~~payer~~ parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.04 (2), the support for that obligation is the monthly amount of that order; ~~or~~.

b. If the payer parent is in an intact family or is subject to a shared-placement order under s. DCF 150.04 (2), the support is determined by multiplying the appropriate percentage under s. DCF 150.03 (1) for that number of children by the payer's parent's monthly income available for child support; or, if applicable, determine support under subs. (2), (3), (4), or (5).

4. Adjust the monthly income available for child support by subtracting the support for the first legal obligation under subd. 3. from the payer's parent's monthly income available for child support under subd. 1.;

5. Determine the second child support obligation as follows:

a. If the payer parent is subject to an existing support order for that legal obligation, except a shared-placement order under s. DCF 150.04 (2), the support for that obligation is the monthly amount of that order; ~~or,~~

b. If the payer parent is in an intact family or is subject to a shared-placement order under s. DCF 150.04 (2), the support is determined by multiplying the appropriate percentage under s. DCF 150.03 (1) for that number of children by the payer's parent's monthly income available for child support; or, if applicable, determine support under subs. (2), (3), (4), or (5).

6. Adjust the monthly income available for child support a second time by subtracting the support for the second legal obligation determined under subd. 5. from the first adjusted monthly income available for child support determined under subd. 4.;

7. Repeat the procedure under subds. 5. and 6. for each additional legal obligation for child support the serial-family payer parent has incurred;.

8. Multiply the appropriate percentage under s. DCF 150.03 (1) for the number of children subject to the new order by the final adjusted monthly income available for child support determined in either subd. 6. or 7. to determine the new child support obligation or if applicable, determine the new child support obligation under subs. (2), (3), (4), or (5).

Note: The following example shows how the child support obligation is determined for a serial-family payer parent whose additional child support obligation has been incurred for a subsequent family.

Assumptions

Parent A's current monthly income available for child support is \$3000.

Parent A and Parent B were married, had a child in ~~1990~~ 2000 and divorced in ~~1991~~ 2001. Parent A is subject to an existing support order of \$450 per month.

Parent A remarries and has two children, one born in ~~1996~~ 2006 and the other in ~~1997~~ 2007, and remains an intact family.

Parent A was adjudicated the father in ~~1998~~ 2008 for a child born in ~~1995~~ 2005. Child support needs to be established for this child.

Order of parent A's legal obligation for child support.

First legal obligation: one child (~~1990~~ 2000) (divorce)

Second legal obligation: 2 children (~~1996~~ 2006 and ~~1997~~ 2007) (intact family)

Third legal obligation: one child (~~1998~~ 2008) (paternity)

Calculation

Parent A's current monthly income available for child support	\$3000
The first legal obligation is subject to an existing monthly support order (divorce)	\$450
Adjust the monthly income available for child support	\$3000
	<u>- 450</u>
First adjusted monthly income available for child support	\$2550
Determine support for the second legal obligation (intact family)	\$2550
	<u>x .25</u>
	\$637.50
Adjust the first adjusted monthly income available for child support	\$2550
	<u>- 637.50</u>
Second adjusted monthly income available for child support	\$1912.50
Determine support for the third legal obligation (paternity)	\$1912.50
	<u>x .17</u>
	\$325.12

SECTION 5. DCF 150.04 (2) (b) 1. is amended to read:

DCF 150.04 (2) (b) 1. Determine each parent's monthly income available for child support under s. DCF 150.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DCF 150.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more. If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in sub. (1).

SECTION 6. DCF 150.04 (3) (a) is amended to read:

DCF 150.04 (3) (a) Determine each parent's monthly income available for child support under s. DCF 150.03 (1). If a parent has one or more previous child support obligations, determine the parent's monthly income available for child support adjusted for the previous obligations as provided in sub. (1).

SECTION 7. DCF 150.04 (3) (b) is repealed and recreated to read:

DCF 150.04 (3) (b) Multiply the amount determined in par. (a) by the pro rata percentage standard for the number of children in split placement who are placed with the other parent. The pro rata percentage standard for the number of children in split placement who are placed with the other parent is calculated by determining the appropriate percentage standard under s. DCF 150.03 (1) for the total number of children,

dividing by the total number of children, and adding together the percentages for the children in split-placement who are placed with the other parent.

SECTION 8. DCF 150.04 (3) (b) (note) is created to read:

DCF 150.04 (3) (b) Note: The pro-rata percentage standards for the number of children for whom support is being established are as follows:

2 children	12.5% for each child	(25% ÷ 2)
3 children	9.67% for each child	(29% ÷ 3)
4 children	7.75% for each child	(31% ÷ 4)
5 children	6.8% for each child	(34% ÷ 5)

SECTION 9. DCF 150.04 (3) (note) is repealed and recreated to read:

Note: The following example shows how to calculate the amount of child support for split-placement parents.

Assumptions:

Parent A and B have 3 children.

Parent A has placement of 2 children and Parent B has placement of one child.

Parent A's monthly income available for child support is \$2,000.

Parent B's monthly income available for child support is \$3,000.

Calculation:

Applicable percentage: 29%. Pro rata percentage is 9.67% per child.

Parent A: 2,000 X 9.67% (income x applicable pro rata % for one child placed with Parent B) = 193.40

Parent B: 3,000 X 19.34% (income x sum of pro rata % for 2 children placed with Parent A) = 580.20

Parent B is the payer. Obligation following offset = 386.80

SECTION 10. DCF 150.04 (4) (note) is amended to read:

DCF 150.04 (4) Note: The schedule in Appendix C provides reduced percentage rates that may be used to determine the child support obligation for payers with an income below ~~approximately 125%~~ 150% of the federal poverty guidelines. If a payer's monthly income available for child support is below ~~approximately 75%~~ of the federal poverty guidelines, the court may order an amount appropriate for the payer's total economic circumstances. For monthly income amount for child support between ~~approximately 75% and 125%~~ 150% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in s. DCF 150.03 (1) apply to payers with income greater than or equal to ~~approximately 125%~~ 150% of the federal poverty guidelines.

SECTION 11. DCF 150.04 (6) is created to read:

DCF 150.04 (6) COMBINATION OF SPECIAL CIRCUMSTANCES. (a) *General.*

The court may apply any combination of special circumstance provisions under subs. (1)

to (5) to determine a child support obligation if the criteria apply and the combination of provisions is not specifically prohibited.

(b) *Shared and split placement.* If the parents have a combination of split-placement and shared-placement, the child support obligation may be determined as follows:

1. Determine the pro rata percentage standard for the total number of children for whom support is being established. The pro rata percentage standard for the total number of children for whom support is being established is calculated by determining the appropriate percentage standard under s. DCF 150.03 (1) for the total number of children and dividing by the total number of children.

Note: The pro-rata percentage standards for the number of children for whom support is being established are as follows:

2 children	12.5% for each child	(25% ÷ 2)
3 children	9.67% for each child	(29% ÷ 3)
4 children	7.75% for each child	(31% ÷ 4)
5 children	6.8% for each child	(34% ÷ 5)

2. Determine support for the children who are placed with the other parent full-time. First, add together the pro rata percentage standards for the number of children who are placed full-time with the other parent. Then, multiply the sum of the pro-rata percentage standards by the parent's monthly income available for child support, as adjusted for any previous child support obligations, for the parent whose child support obligation is being calculated.

3. Determine support for the children who are in shared-placement as follows:

a. Add together the pro rata percentage standards for the number of children who are in shared-placement.

b. Multiply the sum of the pro rata percentage standards by the parent's monthly income available for child support, adjusted for any previous child support obligations.

c. Multiply the amount determined under subd. 3.b. for each parent by 150%.

Note: The 150% accounts for household maintenance expenditures duplicated by both parents, such as a bedroom, clothes, and personal items.

d. Multiply each amount determined by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.

e. Offset resulting amounts under subd. 3. d. against each other.

4. Add or offset the child support obligation for children placed with the other parent full-time under subd. 2. with the child support obligation for children in shared-placement under subd. 3.e. The parent with a greater child support obligation is the payer. The payer shall pay the lesser of the amount determined under this par. or the amount determined using the appropriate percentage standard under s. DCF 150.03 (1). If the payer under this par. is also a low-income payer, the child support obligation may be the lesser of the amount determined under this par. or under sub. (4).

5. In addition to the child support obligation determined under subd. 4., the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

Note: Example of a combination of split-placement and shared-placement:

Assumptions:

3 children

Parent A:

2 children full time

1 child 30%

\$2,000/month income

Parent B:
1 child 70%
\$3,000/month income

Calculation:

Applicable percentage 29%. Pro rata percentage is 9.67% per child.

Parent A:
 $2,000 \times 9.67\%$ (income x applicable pro rata % for child shared with Parent B) = 193.40

$\times 1.5$ (150%) = 290.10

$\times 70\%$ (% of time child is with parent B) = 203.07

Parent B: $3,000 \times 19.34\%$ (income x sum of pro rata percentage standards for 2 children who are placed full-time with Parent A) = 580.20

$3,000 \times 9.67\%$ (income x applicable % for one child shared with parent A) = 290.10

$\times 1.5$ (150%) = 435.15

$\times 30\%$ (Child placed with parent A) = 130.55

Parent A's obligation = 203.07 (1 shared child)

Parent B's obligation = 130.55 (1 shared child) + 580.20 (2 children full-time with Parent A) = 710.75

Parent B is the payer. Total obligation following offset = \$507.68

SECTION 12. DCF 150.05 (1) (a) to (f) are created to read:

DCF 150.05 (1) (a) In this section, "private health insurance" does not include a medical program under subch. IV or V of ch. 49, Stats.

Note: The BadgerCare Plus program under s. 49.471, Stats., is in subch. IV of ch. 49, Stats.

(b) Except as provided in par. (e), the court may order either or both parents to enroll a child in a private health insurance plan that is accessible to the child and available at a reasonable cost, as follows:

1. The court may consider a private health insurance plan to be accessible to the child if the plan's service providers are located within a reasonable distance from the child's home. In general, service providers may be considered within a reasonable distance if

they are located within 30 minutes or 30 miles of the child's residence, with a greater distance allowed in some rural areas.

2. The court may consider a private health insurance plan to be available at a reasonable cost if the cost to enroll the child or children does not exceed 5% of the insuring parent's monthly income available for child support and would cover hospitalization and other medical costs without large out-of-pocket deductibles or copayments. In applying this 5% standard, the cost to enroll the child or children in a private health insurance plan is the cost to add the child or children to existing coverage or the difference between the cost of self-only coverage and the cost to that parent after adding the child or children.

3. The court may order the non-insuring parent to contribute to the cost to enroll the children in a private health insurance plan in an amount that does not exceed 5% of the non-insuring parent's monthly income available for child support.

4. The court may incorporate responsibility for a contribution to the cost of private health insurance as an upward or downward adjustment to a payer's child support obligation.

Note: The cost to enroll a child in a private health insurance plan and a contribution to the cost are in addition to a parent's responsibility for child support. The court would order an upward adjustment to a payer's child support order if the payee is the insuring parent and the payer is contributing to the cost. The court would order a downward adjustment to the payer's child support obligation if the payer is the insuring parent, the payee is contributing to the cost, and the payee's contribution is less than the payer's child support amount.

(c) The court may not order a parent whose income is below 150% of the federal poverty level to enroll a child in a private health insurance plan or contribute to the cost of a private health insurance plan unless there is no cost to the parent.

(d) If there is no private health insurance plan available that meets the requirements of par. (b), the court may order any of the following:

1. Enrollment in a private health insurance plan as a deviation under s. 767.511 (1m), Stats.

2. Responsibility for a contribution to the cost of the other parent's premium for the BadgerCare Plus program under s. 49.471, Stats., unless the parent's income is below 150% of the federal poverty level. The court may incorporate responsibility for a contribution to the cost of the premium as an upward or downward adjustment to a payer's child support obligation.

3. Enrollment in a private health insurance plan if a plan that meets the requirements of par. (b) becomes available to the parent in the future.

(e) If a person other than a parent has enrolled a child in an accessible private health insurance plan that covers hospitalization and other medical costs without large out-of-pocket deductibles or copayments, the court may determine whether to order a parent to enroll the child in a private health insurance plan.

(f) The court shall also establish an order for medical expenses that are not covered by insurance. The court shall consider each parent's ability to pay these medical expenses.

SECTION 13. DCF 150.05 (2) (b) 2. is amended to read:

DCF 150.05 (2) (b) 2. If the father's monthly income available for child support is between 75% and ~~125%~~ 150% of the federal poverty guidelines, an amount that does not exceed the maximum birth cost judgment amount provided in the schedule in Appendix D.

SECTION 14. DCF 150 Appendix C is repealed and recreated to read:

Chapter DCF 150

APPENDIX C

**Child Support Obligation of Low-Income Payers at 75%
to 150% of the 2009 Federal Poverty Guidelines**

Monthly Income Up To	One Child		Two Children		Three Children		Four Children		Five Children	
	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount	Percent	Child Support Amount
\$ 675.00	11.11%	\$ 75	16.44%	\$ 111	18.96%	\$ 128	20.30%	\$ 137	22.22%	\$ 150
\$ 700.00	11.33%	\$ 79	16.76%	\$ 117	19.33%	\$ 135	20.70%	\$ 145	22.66%	\$ 159
\$ 725.00	11.55%	\$ 84	17.07%	\$ 124	19.70%	\$ 143	21.09%	\$ 153	23.09%	\$ 167
\$ 750.00	11.76%	\$ 88	17.39%	\$ 130	20.08%	\$ 151	21.49%	\$ 161	23.53%	\$ 176
\$ 775.00	11.98%	\$ 93	17.71%	\$ 137	20.45%	\$ 158	21.89%	\$ 170	23.97%	\$ 186
\$ 800.00	12.20%	\$ 98	18.03%	\$ 144	20.82%	\$ 167	22.28%	\$ 178	24.40%	\$ 195
\$ 825.00	12.42%	\$ 102	18.34%	\$ 151	21.19%	\$ 175	22.68%	\$ 187	24.84%	\$ 205
\$ 850.00	12.64%	\$ 107	18.66%	\$ 159	21.56%	\$ 183	23.07%	\$ 196	25.27%	\$ 215
\$ 875.00	12.85%	\$ 112	18.98%	\$ 166	21.94%	\$ 192	23.47%	\$ 205	25.71%	\$ 225
\$ 900.00	13.07%	\$ 118	19.29%	\$ 174	22.31%	\$ 201	23.87%	\$ 215	26.15%	\$ 235
\$ 925.00	13.29%	\$ 123	19.61%	\$ 181	22.68%	\$ 210	24.26%	\$ 224	26.58%	\$ 246
\$ 950.00	13.51%	\$ 128	19.93%	\$ 189	23.05%	\$ 219	24.66%	\$ 234	27.12%	\$ 258
\$ 975.00	13.73%	\$ 134	20.24%	\$ 197	23.42%	\$ 228	25.06%	\$ 244	27.46%	\$ 268
\$1,000.00	13.95%	\$ 140	20.56%	\$ 206	23.79%	\$ 238	25.45%	\$ 255	27.89%	\$ 279
\$1,025.00	14.16%	\$ 145	20.88%	\$ 214	24.17%	\$ 248	25.85%	\$ 265	28.33%	\$ 290
\$1,050.00	14.38%	\$ 151	21.20%	\$ 223	24.54%	\$ 258	26.24%	\$ 276	28.76%	\$ 302
\$1,075.00	14.60%	\$ 157	21.51%	\$ 231	24.91%	\$ 268	26.64%	\$ 286	29.20%	\$ 314
\$1,100.00	14.82%	\$ 163	21.83%	\$ 240	25.28%	\$ 278	27.04%	\$ 297	29.64%	\$ 326
\$1,125.00	15.04%	\$ 169	22.15%	\$ 249	25.65%	\$ 289	27.43%	\$ 309	30.07%	\$ 338
\$1,150.00	15.25%	\$ 175	22.46%	\$ 258	26.03%	\$ 299	27.83%	\$ 320	30.51%	\$ 351
\$1,175.00	15.47%	\$ 182	22.78%	\$ 268	26.40%	\$ 310	28.23%	\$ 332	30.95%	\$ 364
\$1,200.00	15.69%	\$ 188	23.10%	\$ 277	26.77%	\$ 321	28.62%	\$ 343	31.38%	\$ 377
\$1,225.00	15.91%	\$ 195	23.41%	\$ 287	27.14%	\$ 332	29.02%	\$ 355	31.82%	\$ 390
\$1,250.00	16.13%	\$ 202	23.73%	\$ 297	27.51%	\$ 344	29.41%	\$ 368	32.25%	\$ 403
\$1,275.00	16.34%	\$ 208	24.05%	\$ 307	27.89%	\$ 356	29.81%	\$ 380	32.69%	\$ 417
\$1,300.00	16.56%	\$ 215	24.37%	\$ 317	28.26%	\$ 367	30.21%	\$ 393	33.13%	\$ 431
\$1,325.00	16.78%	\$ 222	24.68%	\$ 327	28.63%	\$ 379	30.60%	\$ 405	33.56%	\$ 445
\$1,350.00	17.00%	\$ 230	25.00%	\$ 338	29.00%	\$ 392	31.00%	\$ 419	34.00%	\$ 459

Appendix C will be adjusted based on the 2010 federal poverty guidelines effective March 1, 2010.

SECTION 15. DCF 150 Appendix D is repealed and recreated to read:

Chapter DCF 150

APPENDIX D

Maximum Birth Cost Judgment Amounts for Low-Income Payers at 75% to 150% of the 2009 Federal Poverty Guidelines

Monthly Income Up To:	Percent	Number of Months	Maximum Birth Cost Judgment Amount**
\$ 675	3.28%	36	\$ 797
\$ 700	3.34%	36	\$ 842
\$ 725	3.41%	36	\$ 890
\$ 750	3.47%	36	\$ 937
\$ 775	3.53%	36	\$ 985
\$ 800	3.60%	36	\$ 1,037
\$ 825	3.66%	36	\$ 1,087
\$ 850	3.73%	36	\$ 1,141
\$ 875	3.79%	36	\$ 1,194
\$ 900	3.85%	36	\$ 1,247
\$ 925	3.92%	36	\$ 1,305
\$ 950	3.98%	36	\$ 1,361
\$ 975	4.04%	36	\$ 1,418
\$ 1,000	4.11%	36	\$ 1,480
\$ 1,025	4.17%	36	\$ 1,539
\$ 1,050	4.24%	36	\$ 1,603
\$ 1,075	4.30%	36	\$ 1,664
\$ 1,100	4.36%	36	\$ 1,727
\$ 1,125	4.43%	36	\$ 1,794
\$ 1,150	4.49%	36	\$ 1,859
\$ 1,175	4.55%	36	\$ 1,925
\$ 1,200	4.62%	36	\$ 1,996
\$ 1,225	4.68%	36	\$ 2,064
\$ 1,250	4.75%	36	\$ 2,138
\$ 1,275	4.81%	36	\$ 2,208
\$ 1,300	4.87%	36	\$ 2,279
\$ 1,325	4.94%	36	\$ 2,356
\$ 1,350	5.00%	36	\$ 2,430

The maximum birth cost judgment amount may not exceed the identified percentage of the father's current monthly income available for child support multiplied by 36 months.

Appendix D will be adjusted based on the 2010 federal poverty guidelines effective March 1, 2010.

SECTION 16. EFFECTIVE DATE. This rule shall take effect on January 1, 2010, as provided in s. 227.22 (2) (b), Stats.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **09-036**

AN ORDER to amend DCF 150.01 (1), 150.02 (25) and (26), 150.04 (1) and (note), (2) (b) 1., (3) (a), and (4) (note), and 150.05 (2) (b) 2; to repeal and recreate DCF 150.04 (3) (b) and (note), 150 Appendix C, and 150 Appendix D; and to create DCF 150.02 (25m), 150.04 (3) (b) (note) and (6), and 150.05 (1) (a) to (f), relating to medical support and child support guidelines review.

Submitted by **DEPARTMENT OF CHILDREN AND FAMILIES**

05-01-2009 RECEIVED BY LEGISLATIVE COUNCIL.

05-26-2009 REPORT SENT TO AGENCY.

RNS:LR

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-036

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In SECTION 4 of the rule, part of the text of current s. DCF 150.04 (1) was not included in the rule. This should be added before the rules are in final form.
- b. In s. DCF 105.05 (1) (d) 1., the correct statutory reference is s. 767.511 (1m), Stats.
- c. It appears that the effective date provision should refer to s. 227.22 (2) (b), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the note to s. DCF 150.04 (6), under the Calculation for Parent A, "1.5" should be inserted before the 150%, and the percentage should be put in parentheses, similar to what is done for Parent B.
- b. In s. DCF 150.05 (1) (b) 2., does the amount the court may order a parent to contribute to the cost of a private health insurance plan that is accessible and available at a reasonable cost come out of the child support amount, or is the health insurance payment in addition to the child support payment? Does this need to be clarified, or will this be generally understood by readers of this rule?
- c. What is meant by s. DCF 150.05 (1) (e)? Does this allow a court to order a parent to enroll the child in a plan, even though the child is already enrolled? Is this provision necessary.

or are there situations where a court order is beneficial even if the required action is already being taken voluntarily by the parent?

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Section DCF 105.05 (1) (b) 2. defines a private health insurance plan to be available at a reasonable cost if the cost to enroll the child does not exceed 5% of the insuring parent's "monthly income available for child support." Although this appears to differ from the "5% of gross income standard" in 45 C.F.R. 303.31 (a) (3), it seems to comply with "a reasonable alternative income-based standard" that is permitted in that federal regulation.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. DCF 150
Amendment No. if Applicable

Subject
Medical support and child support guidelines

Fiscal Effect
State: No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

The proposed rule implements a federal regulation that is intended to increase enforcement of medical support obligations in child support orders. If there is an increase in parents who are enrolling their children in private-pay insurance, BadgerCare Plus enrollment may decrease.

Other changes to the child support guidelines in the proposed rule have no fiscal effect.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.) DCF/Elaine Pridgen 267-9403	Authorized Signature/Telephone No. <i>Nancy Wettersten 266-8695</i>	Date 5-1-2009
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