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SENATE BILL NO. 402

INTRODUCED BY Eck

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; ENACTING FEDERAL LEGISLATION AS REQUIRED; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, it is necessary to draft a bill specifically enacting federally required legislation in order to maintain adequate levels of federal funding and to present proposed program improvements for medical support enforcement in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of social and rehabilitation services. The department should adopt rules for expedited procedures, appropriate fines and penalties, and methods by which to encourage cooperation from parents, employers, unions, and health benefit providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 25] may be known and cited as the "Medical Support Reform Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 25] is to promote the

1 health and medical care of children and to conserve the expenditure of public assistance funds by ensuring
2 that children have access to reasonable health insurance coverage or a health benefit plan provided by their
3 parents, who are primarily responsible for their support.

4
5 **NEW SECTION. Section 3. Scope.** [Sections 1 through 25] do not expand any coverage available
6 to any individual under any health insurance coverage or a health benefit plan required under federal law
7 or Title 33, chapter 22, though [sections 1 through 25] may expand the class of children who may be
8 eligible for individual insurance or health benefit plan coverage due to a duty of support owed to them by
9 their parents.

10
11 **NEW SECTION. Section 4. Definitions.** For purposes of [sections 1 through 25], the following
12 definitions apply:

13 (1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose
14 behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled
15 or eligible for enrollment under a health benefit plan or individual insurance policy.

16 (2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

17 (3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under
18 which dependent children of employees may continue to receive, for a limited time under specific
19 circumstances, health plan coverage after termination of employment.

20 (4) "Department" means the department of social and rehabilitation services as provided for in
21 2-15-2201.

22 (5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other
23 than public assistance programs, that provides medical care or benefits for a child. The term includes but
24 is not limited to a health maintenance organization, self-funded group, medical or health services
25 corporation, or similar plan.

26 (6) "Individual insurance" means health or medical insurance coverage other than a group health
27 benefit plan or public assistance that is or may be provided individually for a child.

28 (7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness,
29 or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose
30 of affecting any structure or function of the body.

1 (8) "Medical support order" means a judgment, decree, or order, including approval of a settlement
2 agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and
3 that complies with the requirements of [sections 1 through 25].

4 (9) "Obligated parent" means the parent who is required by a medical support order to provide for
5 the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

6 (10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker
7 having lawful charge of the child.

8 (11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer,
9 trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic
10 basis, who has or provides individual insurance or a health benefit plan, and who is subject to the
11 jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure.

12 (12) "Primary parent" means the parent with whom the child resides for the most 24-hour periods
13 in a plan year.

14 (13) "Qualified medical child support order" means an order that meets the requirements of 29
15 U.S.C. 1169.

16 (14) "Third-party custodian" means an agency or person other than a parent who:

17 (a) is authorized by legal process to have physical custody of a child;

18 (b) has actual physical custody of a child with the written consent of the parent or parents having
19 legal custody of the child; or

20 (c) has actual physical custody of a child because of the parents' neglect, failure, or inability to
21 provide for the child's support, medical care, and other needs.

22 (15) "Tribunal" means a court of competent jurisdiction or the department.

23
24 **NEW SECTION. Section 5. Establishing medical support orders.** (1) In an action or proceeding
25 to establish a child support order, whether temporary or final, or to modify an existing child support order,
26 the tribunal shall also establish a medical support order. In establishing a medical support order, a tribunal
27 shall consider:

28 (a) the best interests of the child;

29 (b) the child's present and anticipated needs for medical care;

30 (c) the financial ability of the parents to pay for individual insurance or a health benefit plan; and

1 (d) the extent to which an available health benefit plan or individual insurance coverage is
2 subsidized or reduced in cost by an employer or by participation in a plan on a group basis.

3 (2) Except as otherwise provided in [sections 1 through 25], a tribunal may not consider a child's
4 eligibility for a public assistance program as a factor in determining a parent's financial ability to afford
5 individual insurance or a health benefit plan.

6
7 **NEW SECTION. Section 6. Contents of medical support order.** (1) A medical support order may
8 specify terms for individual insurance coverage and, to the extent of options within an available health
9 benefit plan, the terms for plan coverage, including:

10 (a) minimum required policy limits;

11 (b) minimum required coverage;

12 (c) maximum terms for deductibles or required copayments; and

13 (d) other significant terms.

14 (2) If a child is already covered by individual insurance or a health benefit plan, if the child does
15 not have existing coverage but coverage can be obtained under a health benefit plan that is available to the
16 primary parent, or if the child does not have existing coverage and coverage for the child under a plan is
17 available to the other parent, then the medical support order must require participation in that plan unless:

18 (a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or
19 cost-beneficial; or

20 (b) another plan or individual insurance is available that will better serve the interests of the parties.

21 (3) If health benefit plans are available to both parents at a combined cost that is reasonable or
22 cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage,
23 the medical support order must require both parents to provide coverage for the child.

24 (4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not
25 available to either parent, the parent other than the primary parent must be required to obtain individual
26 insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective:

27 (a) the parent other than the primary parent must be required to obtain individual insurance or a
28 health benefit plan at such time in the future that it becomes available to that parent at reasonable cost.

29 The requirements in this subsection (4) to obtain a plan are not enforceable if:

30 (b) the primary parent has obtained individual insurance or a health benefit plan for the child and

1 both parents have agreed in writing to share the costs of maintaining the coverage; or

2 (c) the other parent persuades the tribunal that the cost of available health benefit plans is not
3 reasonable or cost-beneficial.

4 (5) This section also applies when a child is placed with a third-party custodian, unless a parent
5 has obtained individual insurance or a plan for the child and both parents have agreed in writing to share
6 the costs of maintaining the coverage or a parent persuades the tribunal that the cost of available individual
7 insurance and plans is not reasonable or cost-beneficial. For purposes of this subsection, the primary
8 parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12
9 months prior to placement with the third-party custodian.

10 (6) The medical support order must also provide that the cost of individual insurance or the health
11 benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for
12 the child that are not covered by individual insurance or the plan must be shared between parents in
13 accordance with the child support guidelines. If the order fails to designate each parent's share, each
14 parent is liable for 50% of the costs and expenses.

15 (7) (a) Except as provided in subsection (7)(b), if the cost of individual insurance or a health benefit
16 plan is not reasonable or cost-beneficial or if a plan is not otherwise available and if the child is a recipient
17 of medical assistance under Title XIX of the federal Social Security Act or later becomes a recipient of
18 medical assistance:

19 (i) when the child is a recipient together with a parent, the medical support order must require the
20 other parent to pay \$50 per month;

21 (ii) when the child is not a recipient with a parent, the medical support order must require each
22 parent to pay \$50 per month; and

23 (iii) when the child is a recipient with both parents, neither parent has an obligation under this
24 subsection (7)(a).

25 (b) The tribunal may order the parent or parents to pay a greater or lesser amount each month as
26 the tribunal finds appropriate to the circumstances.

27 (c) The amounts ordered to be paid under this subsection (7) must be paid to the department for
28 return to the appropriate state treasury fund to help offset the costs of the medical assistance program.

29 (8) The costs of providing individual insurance or a health benefit plan may not be used as a direct
30 offset to the child support obligation. However, as provided by the child support guidelines, the costs may

1 be considered in making or modifying a child support order.

2 (9) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost
3 if:

4 (i) an amount payable for individual insurance or health benefit plan premiums does not exceed
5 25% of the obligated parent's total parental child support obligation when calculated under the child
6 support guidelines without credit for the medical support obligation; or

7 (ii) a health benefit plan is available through an employer or other group organization for which the
8 premium is partially or entirely paid by the employer or other group organization.

9 (b) The presumption under subsection (9)(a) may be rebutted by clear and convincing evidence and
10 the tribunal has the discretion to:

11 (i) order individual insurance or health benefit plan coverage when the amount of the premium may
12 be greater than the presumptive amount; or

13 (ii) not order coverage when the amount of the premium is less than the presumptive amount.
14

15 **NEW SECTION. Section 7. Mandatory provisions of medical support order.** (1) Unless the tribunal
16 expressly specifies otherwise, a medical support order must include terms directed toward the provisions
17 of [section 6(2) through (9)], even though a provision contained in those subsections may not apply to the
18 parent's circumstances at the time the order is entered. The terms may be established as alternatives or
19 contingencies that provide that if circumstances later change, the health needs of the child will continue
20 to be met under one of the subsections without need for modification of the medical support order or other
21 action by the tribunal that issued the order or any other tribunal of competent jurisdiction.

22 (2) If circumstances change and a parent believes that corresponding changes in costs are not
23 reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.

24 (3) If a health benefit plan is provided through an employer, union, or other group, the medical
25 support order must also include provisions necessary to entitle the order to recognition as a qualified
26 medical child support order.
27

28 **NEW SECTION. Section 8. Persistence and duration of obligation.** (1) A parent's obligation to
29 provide for medical care of a child ceases only when the parental obligation to support a child terminates
30 under law.

1 (2) The obligations to provide medical care for a child, provide financial child support, and provide
2 or comply with visitation and custody arrangements are independent of each other, and the failure or
3 inability to provide one or more does not reduce one of the others.

4 (3) A guardian or caretaker who is not the child's father or mother may not be compelled to
5 support the child or be held liable for the child's expenses, except to the extent that the guardian or
6 caretaker has voluntarily agreed in writing to assume the responsibility.

7
8 NEW SECTION. **Section 9. Effect of order on health benefit plans.** (1) The duties and
9 responsibilities under a plan pursuant to [sections 1 through 25] apply equally to a union or employer that
10 serves as the administrator of a plan for a parent who is a member or employee.

11 (2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may
12 be submitted to the plan administrator by either parent, by the department, or by a third-party custodian.
13 The party submitting the order shall submit the child's name and birth date and the names and mailing
14 addresses of the parents. If the child is a recipient of public assistance, the party submitting the order shall
15 also submit the address of the department. If there is a third-party custodian of the child, the address of
16 the third-party custodian must also be submitted.

17 (3) Presentation of the medical support order to the plan administrator authorizes each parent, the
18 department, if the department has interest, or the third-party custodian to receive pertinent notices from
19 the plan administrator and to freely communicate and generally interact with the plan administrator in all
20 respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so
21 personally.

22 (4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation
23 of the order to the plan administrator binds the plan to enroll the child in the plan as provided by [sections
24 1 through 25].

25 (5) If a health benefit plan is available through the obligated parent's employer or other payor of
26 income, presentation of the medical support order to the payor binds the payor to enrollment of the child
27 in the plan and to automatically deduct premium payments required by the plan from the obligated parent's
28 income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

29 (6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily
30 delay health benefit plan coverage for a child.

1 (b) If more than one plan is available to an obligated parent and the medical support order fails to
2 specify a plan or combination of benefits to be provided for a child or if there has been a change in plans
3 due to a change in employment of the obligated parent or for some other reason, the parties and the
4 department shall apply the medical support order so as to provide the child with coverage under a plan that
5 has a reasonable cost and that provides the child with benefits closest to those described in the order.
6

7 **NEW SECTION. Section 10. Authorization to enroll and participate in health benefit plan.** (1) A plan
8 administrator shall enroll a child when given a medical support order even if the obligated parent fails to execute
9 documents required by the plan. The parents, the department, and a third-party custodian may release to a plan
10 provider, employer, union, or other group any information necessary to obtain or enforce medical support or to
11 facilitate the preparation, submission, processing, verification, or payment of claims.

12 (2) The signature of either parent, of an authorized representative of the department, or of a third-party
13 custodian authorizes the plan to receive and process claims and exercise any available options for the
14 continuation or extension.
15

16 **NEW SECTION. Section 11. Authorization to cure nonpayment of health benefit plan premium.** In the
17 case of an actual or threatened adverse action that would reduce or terminate plan benefits because of
18 nonpayment of premium or insufficient payment of premium, the other parent, the department, or the third-party
19 custodian may advance the cost of necessary premiums and keep benefits continually in force for the child. The
20 advance may be entered as a judgment for unpaid child support in favor of the advancing party and against the
21 obligated parent.
22

23 **NEW SECTION. Section 12. Obligations of health benefit plan.** (1) Upon receipt of a medical support
24 order requiring a parent to provide coverage for a child, the administrator of a health benefit plan who receives
25 the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The health
26 benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

27 (2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance
28 is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to
29 freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively
30 as if done by the obligated parent.

1 (3) A copy of the medical support order must be accepted by the plan administrator as a request and
2 application of the eligible obligated parent requesting that new or continued benefits, including continuation
3 coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after
4 receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan
5 as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

6 (4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary
7 premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in
8 [section 13].

9 (5) Within 30 days after receipt of a copy of a medical support order, the health benefit plan shall give
10 written notice to both parents, to the department, and to any third-party custodian setting forth the status of
11 the child's enrollment in the plan and the addresses and telephone numbers of the offices where further
12 information can be obtained and where changes of address and other updated information should be submitted.

13 (6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide
14 written notice to both parents, to the department, whenever public assistance is paid for the child, or to the
15 third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone
16 numbers of the offices where further information can be obtained and where changes of address and other
17 updated information should be submitted.

18 (7) A plan administrator may not terminate a child's coverage unless:

19 (a) written evidence shows that the medical support order is no longer in effect, that the child will be
20 enrolled in another health benefit plan, or that individual insurance is provided;

21 (b) the employer, union, or other group eliminates coverage for all members or employees;

22 (c) the plan is available through the obligated parent's employer or other payor of income and the
23 obligated parent's employment or right to receive income from the payor is terminated and continued coverage
24 under COBRA is not available or the time for such coverage is expired; or

25 (d) the plan is available through the obligated parent's employer or other payor of income, the amount
26 of the premium or the premium together with child support exceeds the limits in this section, and the other
27 parent, the department, or the third-party custodian has not cured the insufficiency under [section 11].

28
29 **NEW SECTION. Section 13. Obligation of payor.** (1) Upon receipt of a medical support order, a payor
30 providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required

1 premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not
2 exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium
3 exceeds the maximum, the payor may not withhold the excess. If the premium, together with child support to
4 be withheld, exceeds the maximum, child support has priority and the payor may not withhold the part of the
5 premium that is in excess of the maximum.

6 (2) A medical support order has priority over garnishment of the income of the obligated parent for any
7 purpose, except child support.

8 (3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment
9 following any break in service, layoff, leave of absence, or other similar circumstance.

10 (b) Upon the termination of employment, extended layoff, or any other break in service that causes
11 coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the
12 department or the third-party custodian, if either submitted the medical support order or submitted a written
13 notice of interest to the plan.

14 (4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action
15 against an obligated parent for being under a medical support order.

16 (b) The obligated parent has the burden of proving that a medical support order was the sole reason for
17 the employer's action.

18 (c) A payor violating this section is subject to the contempt powers of the tribunal issuing the medical
19 support order. The tribunal may, in addition, impose a civil penalty of not less than \$150 and order the payor
20 to reinstate the obligated parent's employment and make restitution of lost wages and benefits. If the tribunal
21 imposing the civil penalty is a court, the money must be deposited in the county treasury to the credit of the
22 court's operating fund. If the tribunal is the department, the money must be deposited in the state general fund.

23

24 **NEW SECTION. Section 14. Obtaining information.** Upon the request of either of the child's parents,
25 the department, or a third-party custodian, a health benefit plan shall provide information about the child's health
26 benefit coverage, including but not limited to:

27 (1) a description of the benefits and options available under the plan and summaries of the terms and
28 costs of all plans and options for which the child is eligible;

29 (2) names and addresses of the employer, union, plan, or other entities involved in administering the
30 plan;

1 (3) identification cards or other methods for access to coverage, including but not limited to numbers,
2 codes, or other references applicable to the plan or to the group through which the child participates;

3 (4) claims received or paid on behalf of the child, including the dates and amounts of payments and the
4 names and addresses of parties who have submitted claims or received payment for claims; and

5 (5) other information relevant to the preparation, submission, processing, or verification of claims.
6

7 **NEW SECTION. Section 15. Paying claims.** Payment for a medical claim assigned to the department
8 must be to the department. If a medical claim is not assigned to the department and the claim is submitted by
9 a parent or a third-party custodian, payment must be to the health service provider involved. Payment may be
10 to the parent or third-party custodian submitting the claim if there is written evidence of prepayment to the health
11 service provider by that parent or third-party custodian.
12

13 **NEW SECTION. Section 16. Newborn children.** If, within 1 year after the birth of a child, a parent
14 obligated by a medical support order submits the order to a health benefit plan, along with plan premium
15 payments for the period between birth and the date of submission to the plan, the plan shall provide coverage
16 for the child retroactive to the date of birth.
17

18 **NEW SECTION. Section 17. Adopted children -- preexisting conditions.** A health benefit plan shall
19 provide the coverage required by 33-22-130 to a child placed for adoption.
20

21 **NEW SECTION. Section 18. Nonexclusion -- nondiscrimination by health benefit plan.** A health benefit
22 plan may not deny or limit enrollment of an obligated parent's child or discriminate against a child because:

23 (1) the child is not claimed as a dependent on the obligated parent's state or federal income tax return
24 or considered as a dependent for tax purposes;

25 (2) the child was born out of wedlock;

26 (3) the child does not reside with the obligated parent;

27 (4) the child does not reside in the health plan's service area. A plan that provides medical care at
28 particular locations or geographic areas shall also provide comparable benefits for a child whose residence or
29 location is elsewhere.

30 (5) the natural child of the obligated parent has a preexisting condition, unless the plan does not provide

1 for enrollment or provides only for limited enrollment of children with preexisting conditions.

2
3 **NEW SECTION. Section 19. Medical assistance eligibility.** A health benefit plan may not use information
4 pertaining to medical assistance eligibility under Title XIX of the federal Social Security Act as a factor in enrolling
5 a child in a plan or in making payments for benefits on behalf of the covered child. A health benefit plan may
6 not impose any restrictions or requirements on recipients of medical assistance or the department different from
7 those applicable to any other plan participant.

8
9 **NEW SECTION. Section 20. Void health benefit plans.** A health benefit plan provision that denies or
10 restricts coverage for a child in violation of a provision of [sections 15 through 18] is void as against public
11 policy.

12
13 **NEW SECTION. Section 21. Penalty imposed by tribunal.** (1) In addition to any other penalty provided
14 by [sections 1 through 25] or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed \$25
15 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly
16 violated a medical support order or a provision of or a rule adopted under [sections 1 through 25].

17 (2) The civil penalty must be deposited as provided in [section 13].

18 (3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be
19 reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

20
21 **NEW SECTION. Section 22. Duties of parents -- consequences of noncompliance.** (1) An obligated
22 parent shall promptly execute and deliver to the provider of individual insurance, to a health benefit plan, or to
23 another proper party all forms and instruments necessary to ensure the child's timely enrollment and continuous
24 participation in any individual insurance or plan ordered by the medical support order. An obligated parent shall
25 timely submit claims for processing, verification, and payment. Intentional delay or interference with enrollment
26 or with the timely submission for processing, verification, and payment of a claim is punishable as provided in
27 [section 21] and by an award of costs and attorney fees to an opposing party.

28 (2) An obligated parent shall provide the other parent, the department, and the third-party custodian with
29 identification cards or other methods for access to coverage, including but not limited to numbers, codes, or
30 other references applicable to the individual insurance, health benefit plan, or group through which the child

1 receives coverage. Intentional delay or failure to provide information is punishable as provided in [section 21]
2 and by an award of costs and attorney fees to an opposing party.

3 (3) If a party receives a reimbursement payment from individual insurance or from a health benefit plan
4 but is not the party who has paid or is paying the underlying bill of the health service provider, the party receiving
5 the payment shall promptly pay over the proceeds to the proper party. In addition to any applicable penalty for
6 theft, conversion, civil contempt, or other wrongdoing, the amount of the payment may be entered as a judgment
7 in favor of the proper party and against the party failing to promptly pay over the reimbursement.

8 (4) An obligated parent who defaults on a medical support order by failing to obtain individual insurance
9 or a health benefit plan or who permits the individual insurance or plan coverage to lapse without securing a
10 comparable replacement is liable for all of the child's medical expenses and shall indemnify the other parent, the
11 department, or the third-party custodian for the cost of obtaining health benefit coverage and for all medical
12 expenses of the child. The obligated parent may be relieved of liability by proving to the satisfaction of the
13 tribunal that:

14 (a) no reasonable-cost or cost-beneficial individual insurance coverage or health benefit plan was
15 available for the child during the period of time involved and the other parent, the department, or the third-party
16 custodian has received notice of the nonavailability;

17 (b) the individual insurance coverage or plan ceased to be available for reasons wholly unrelated to the
18 conduct of the obligated parent, replacement coverage has not been available, and timely written notice of the
19 nonavailability has been given to the other parent, the department, or the third-party custodian; or

20 (c) the other parent or third-party custodian has obtained health coverage for the child and all parties
21 have entered into an enforceable written agreement to share the costs of the coverage.

22 (5) An obligated parent who provides individual insurance coverage or a health benefit plan that is
23 deficient under the requirements of the medical support order is liable, including liability by indemnification, for
24 all of the child's medical expenses that should have been covered but were not and for the cost to the other
25 parent, the department, or the third-party custodian of obtaining coverage that complies with the order. The
26 obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

27 (a) the coverage provided for the child has been the best available during the periods of time involved
28 and timely written notice regarding the coverage available was given to the other parent, the department, or the
29 third-party custodian;

30 (b) benefits have been reduced for reasons wholly unrelated to the conduct of the obligated parent,

1 better coverage has not been available, and timely written notice has been given to the other parent, the
2 department, or the third-party custodian; or

3 (c) the other parent or the third-party custodian has obtained coverage for the child and all parties have
4 entered into an enforceable written agreement to share the costs of the coverage.

5 (6) Any liability for medical costs and expenses incurred under this section may be entered as a judgment
6 for unpaid support in favor of the party or agency paying the same and against the obligated parent.

7 (7) The consequences of noncompliance with a medical support order apply, to the extent possible, to
8 a judgment, decree, or support order that requires a parent to obtain medical or health insurance coverage for
9 a child or to pay for a child's medical care and that was entered:

10 (a) by a tribunal prior to enactment of [sections 1 through 25]; or

11 (b) by a court or administrative agency of competent jurisdiction in another state or territory.

12
13 **NEW SECTION. Section 23. Health coverage -- notice of intent to purchase.** (1) The department or a
14 court on request of the department may issue an order requiring the obligated parent to appear and show cause
15 why an order should not be issued permitting the department to purchase individual insurance or health benefit
16 plan coverage for the obligated parent's child and requiring recovery of the premium from the obligated parent
17 if the tribunal finds that:

18 (a) a medical support obligation has been established by order of a tribunal;

19 (b) the obligated parent has become delinquent by failing to provide individual insurance or a health
20 benefit plan or lets the individual insurance or health benefit plan lapse;

21 (c) there is no payor to whom an order of enrollment under [section 12] applies;

22 (d) the child is currently eligible for medical assistance benefits under Title XIX of the federal Social
23 Security Act, as amended; and

24 (e) other individual insurance or a health benefit plan is available for the child and can be purchased at
25 a reasonable cost.

26 (2) Prior to issuing or requesting an order to show cause, the department shall give the obligated parent
27 notice of the intent to purchase coverage under this section and an opportunity to enroll the child in individual
28 insurance or a health benefit plan within 30 days after notice is received by the obligated parent.

29 (3) If the obligated parent provides written proof within the 30 days after receipt of the notice that the
30 child is enrolled in individual insurance or a health benefit plan, no further action may be taken by the

1 department.

2 (4) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule
3 upon the issues. The proceeding must be dismissed if the tribunal finds that the obligated parent has enrolled
4 the child in individual insurance or a health benefit plan or that the individual insurance or plan that the
5 department intends to purchase is not reasonable.

6 (5) A health benefit plan purchased under this section may be continued by the department until:

7 (a) the child is no longer eligible for medical assistance benefits;

8 (b) the obligated parent is no longer responsible under the law for the medical needs of the child; or

9 (c) the obligated parent provides written proof that the child has been enrolled in individual insurance
10 or another adequate health benefit plan.

11

12 **NEW SECTION. Section 24. Expedited enforcement procedures.** (1) A parent, the department, or the
13 third-party custodian may apply to the court for expedited enforcement procedures under [sections 1 through
14 25]. If the child receives medicaid, a parent or third-party custodian may apply to the department for and the
15 department may on its own motion use expedited enforcement procedures under [sections 1 through 25].

16 (2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent to
17 appear and show cause why an order, penalty, fine, or any combination should not be determined, assessed,
18 and entered under one or more provisions of [sections 1 through 25]. The obligated parent may appear at the
19 hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order must
20 be issued if the tribunal finds that:

21 (a) a medical support obligation has been established by order of a tribunal or by a court or administrative
22 agency of another state, territory, or Indian reservation;

23 (b) the obligated parent is liable for medical costs and expenses or premium payments under [sections
24 1 through 25];

25 (c) a parent receives a reimbursement payment from individual insurance or a health benefit plan and
26 fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the health
27 service provider;

28 (d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian the
29 parent's share of:

30 (i) copayments and deductibles required under the individual insurance or plan; or

1 (ii) costs and expenses not covered by individual insurance or a health benefit plan; or

2 (e) there are fines, penalties, or other financial sanctions that may be imposed under [sections 1 through
3 25].

4 (3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice of
5 the claim under [sections 1 through 25]. The obligated parent may pay the claim within 30 days after receiving
6 the notice. A copy of the notice must be given to the other parent, to the department, if the department is not
7 the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the third-party
8 custodian. The other parent, the department, or the third-party custodian may participate in the proceedings as
9 a party.

10 (4) An application for expedited enforcement may be based on any credible statements or evidence
11 presented to the tribunal, including the sworn affidavit of:

12 (a) a health care provider who has provided care or benefits for the child;

13 (b) an authorized representative of the department, the health benefit plan, or the individual insurer;

14 (c) either parent of the child; or

15 (d) the third-party custodian of the child.

16 (5) The order to show cause must inform the obligated parent and any other party of the party's right
17 to respond by affidavit. An affidavit may include written proof of payment. A hearing must be scheduled within
18 15 days after the date of service of the order on the obligated parent. If an affidavit with written proof of
19 payment is not received by the tribunal within 15 days and the obligated parent does not appear at the hearing,
20 judgment may be entered for the relief requested. If an affidavit with written proof of payment is received but
21 the obligated parent does not appear at the hearing, the tribunal may resolve the issues on the basis of credible
22 documents and affidavits submitted.

23 (6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule
24 upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of the liability
25 and the amount of the liability is not contested by a party to the proceedings.

26 (7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability as
27 an award against the liable parent. If requested to do so, the tribunal may make an award specifically in favor
28 of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied bill of the
29 health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical support liability
30 involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous or in bad faith, the

1 tribunal may impose sanctions against the party including an award of costs and attorney fees.

2 (8) Awards under this section may be collected by any remedy available for the collection of delinquent
3 child support, but claims for current or past-due child support have priority.

4 (9) An award under this section is a final order and may be appealed if the tribunal is a court or may be
5 reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

6

7 **NEW SECTION. Section 25. Rulemaking authority.** The department may adopt rules to implement
8 [sections 1 through 25].

9

10 **Section 26.** Section 33-22-1202, MCA, is amended to read:

11 **"33-22-1202. Limited benefit disability insurance policies authorized.** (1) Insurers and health service
12 corporations may issue limited benefit disability insurance policies that do not provide mandated health care
13 coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304,
14 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004,
15 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the
16 provision specifically mandates coverage for policies issued under this part.

17 (2) Limited benefit disability insurance policies may be issued only to the following persons:

18 (a) employers who:

19 (i) employ 20 or fewer employees working at least 20 hours per week; and

20 (ii) have been in business in the state for at least 12 months and have not contributed, within the
21 preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

22 (b) disabled or injured workers and their families;

23 (c) unemployed individuals and their families;

24 (d) self-employed individuals and their families; and

25 (e) a parent, or the department of social and rehabilitation services on behalf of the parent, who is
26 ordered by a court or administrative authority of this or another state or who is required under 40-5-208~~(1)(b)~~
27 to provide health insurance coverage for a child if health insurance coverage is not available through employment
28 or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a
29 court or administrative authority.

30 (3) The insurer or health service corporation may establish terms and conditions for copayments and

1 deductibles.

2 (4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall
3 provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate,
4 or evidence of coverage, stating in clear and understandable language and format which mandatory coverages
5 and providers are not covered by the policy and what coverage is provided by the policy.

6 (5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum
7 requirements set forth in 33-22-1203."

8

9 **Section 27.** Section 40-4-204, MCA, is amended to read:

10 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1) In a
11 proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either
12 or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's
13 support, without regard to marital misconduct.

14 (2) The court shall consider all relevant factors, including:

15 (a) the financial resources of the child;

16 (b) the financial resources of the custodial parent;

17 (c) the standard of living the child would have enjoyed had the marriage not been dissolved;

18 (d) the physical and emotional condition of the child and the child's educational and medical needs;

19 (e) the financial resources and needs of the noncustodial parent;

20 (f) the age of the child;

21 (g) the cost of day care for the child;

22 (h) any custody arrangement that is ordered or decided upon; and

23 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

24 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
25 the child support obligation by applying the standards in this section and the uniform child support guidelines
26 adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be
27 used in all cases, including cases in which the order is entered upon the default of a party and those in which
28 the parties have entered into an agreement regarding the support amount. A verified representation of the
29 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
30 financial information for use in applying the guidelines. The amount determined under the guidelines is presumed

1 to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that
2 the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate
3 in that particular case.

4 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
5 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
6 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
7 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
8 amount must include a statement of the amount of support that would have ordinarily been ordered under the
9 guidelines.

10 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
11 child's support, the court shall state its reasons for not ordering child support.

12 (4) Each temporary or final district court judgment, decree, or order establishing a ~~final~~ child support
13 obligation under this title and each modification of a final order for child support must include a ~~provision~~
14 ~~addressing health insurance coverage in the following cases:~~

15 ~~(a) If either party has available through an employer or other organization health insurance coverage for~~
16 ~~the child or children for which the premium is partially or entirely paid by the employer or organization, the~~
17 ~~judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued~~
18 ~~or obtained.~~

19 ~~(b) In the event that health insurance required in a child support judgment, decree, or order becomes~~
20 ~~unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party~~
21 ~~must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court~~
22 ~~modify the requirement.~~

23 ~~(c) All temporary child support orders must contain a provision requiring the party who has health~~
24 ~~insurance in effect for the child or children of the parties to continue the insurance coverage pending final~~
25 ~~disposition of the case.~~

26 ~~(d) The parties may by written agreement provide for the health care coverage required by this section,~~
27 ~~subject to the approval of the court.~~

28 ~~(e) Unless otherwise provided in the decree, the health care coverage required by this section is in~~
29 ~~addition to and not in substitution, in whole or in part, for the child support obligation medical support order as~~
30 ~~provided for in [sections 1 through 25].~~

1 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is
2 included in the support order, a support obligation established by judgment, decree, or order under this section,
3 whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be
4 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
5 support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment
6 arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support
7 without need for an amendment to the support order or for any further action by the court.

8 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must
9 include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may
10 be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning
11 statement in a judgment or order does not preclude the use of withholding procedures.

12 (c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a
13 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to
14 the obligor's regular pay period.

15 (6) For the purposes of income withholding under subsection (5), every district court judgment, decree,
16 or order that establishes or modifies a child support obligation must include a provision requiring the parent
17 obligated to pay support to inform the court and, if the department of social and rehabilitation services is
18 providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or
19 order, the department, of the following:

20 (a) the name and address of the parent's current employer;

21 (b) whether the parent has access to health insurance through an employer or other group; and

22 (c) if insurance coverage is available, the health insurance policy information.

23 ~~(7) If the department of social and rehabilitation services is providing or later provides support~~
24 ~~enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an~~
25 ~~order must contain a statement providing that the noncustodial parent, without further order of the court, is~~
26 ~~required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning~~
27 ~~statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

28 ~~(8)~~ Each district court judgment, decree, or order establishing a final child support obligation under this
29 part and each modification of a final order for child support must contain a statement that the order is subject
30 to review and modification by the department of social and rehabilitation services upon the request of the

1 department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title
2 IV-D of the Social Security Act for the enforcement of the order.

3 ~~(9)(a)~~ (8)(a) A district court judgment, decree, or order that establishes or modifies a child support
4 obligation must include a provision requiring the child support to be paid to:

5 (i) the legal custodian of the minor child;

6 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child under
7 a legal assignment of rights; or

8 (B) the court for the benefit of the minor child;

9 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
10 custodian; or

11 (iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

12 (b) A judgment, decree, or order that omits the provision required by subsection ~~(9)(a)~~ (8)(a) is subject
13 to the requirements of subsection ~~(9)(a)~~ (8)(a) without need for an amendment to the judgment, decree, or order
14 or for any further action by the court."
15

16 **Section 28.** Section 40-4-208, MCA, is amended to read:

17 **"40-4-208. Modification and termination of provisions for maintenance, support, and property**
18 **disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to
19 maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion
20 for modification.

21 (2) (a) Whenever the decree proposed for modification does not contain provisions relating to
22 maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the
23 decree.

24 (b) Whenever the decree proposed for modification contains provisions relating to maintenance or
25 support, modification under subsection (1) may only be made:

26 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms
27 unconscionable;

28 (ii) upon written consent of the parties; or

29 (iii) upon application by the department of social and rehabilitation services, whenever the department
30 of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The

1 support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under
 2 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of
 3 the order or the most recent modification.

4 (c) The nonexistence of a medical support order as defined in [section 4] or a violation of a medical
 5 support order justifies an immediate modification of child support in order to:

6 (i) provide for the actual or anticipated costs of the child's medical care;

7 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

8 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit
 9 in the determination of the child support obligation.

10 (3) The provisions as to property disposition may not be revoked or modified by a court, except:

11 (a) upon written consent of the parties; or

12 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws
 13 of this state.

14 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future
 15 maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

16 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's
 17 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later
 18 than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement
 19 or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death
 20 of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support
 21 may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the
 22 circumstances."
 23

24 **Section 29.** Section 40-5-201, MCA, is amended to read:

25 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

26 (1) "Alleged father" means a ~~man~~ person who is alleged to have engaged in sexual intercourse with a
 27 child's mother during a possible time of conception of the child or a ~~man~~ person who is presumed to be a child's
 28 father under the provisions of 40-6-105.

29 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
 30 self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of

1 age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior
2 to the person's 18th birthday and for whom:

3 (i) support rights are assigned under 53-2-613;

4 (ii) a public assistance payment has been made;

5 (iii) the department is providing support enforcement services under 40-5-203; or

6 (iv) the department has received a referral for interstate services from an agency of another state under
7 the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security
8 Act.

9 (b) ~~Child~~ The term may not be construed to limit the ability of the department to enforce a support order
10 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

11 (3) "Department" means the department of social and rehabilitation services.

12 (4) "Director" means the director of the department of social and rehabilitation services or the director's
13 authorized representative.

14 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

15 (6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for
16 the purposes of this chapter.

17 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a
18 child or children.

19 (8) "Obligee" means:

20 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
21 under this part; or

22 (b) a public agency of this or another state having the right to receive current or accrued support
23 payments.

24 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

25 (10) "Parent" means the natural or adoptive parent of a child.

26 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either
27 that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
28 natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen
29 test and DNA probe technology.

30 (12) "Public assistance" means any type of monetary or other assistance for a child, including medical

1 and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is
 2 living, if assistance has been furnished with respect to the child by a state or county agency of this state or any
 3 other state.

4 (13) "Support debt" or "support obligation" means the amount created by:

5 (a) the failure to provide for the medical, health, and support to needs of a child under the laws of this
 6 or any other state or a support order; or

7 (b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance
 8 also contains a judgment or order requiring payment of child support for a child of whom the person awarded
 9 maintenance is the custodial parent.

10 (14) "Support order" means ~~an~~ a temporary or final order providing a for the periodic payment of a set
 11 or determinable amount of money for temporary or final periodic payment of funds for the support of a child,
 12 including medical and health needs, day-care, and other related expenses and costs of the child, that is issued
 13 by:

14 (a) a district court of this state;

15 (b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

16 (c) an administrative agency pursuant to proceedings under this part; or

17 (d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function
 18 and process similar to those of the department under this part.

19 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated
 20 thereunder."

21

22 **Section 30.** Section 40-5-208, MCA, is amended to read:

23 **"40-5-208. Medical support -- obligation enforcement ~~—sanctions.~~** (1) ~~(a) In any proceeding initiated~~
 24 ~~pursuant to this part to establish a child support order, whether final or temporary, and in each modification of~~
 25 ~~an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for~~
 26 ~~each child if health insurance coverage is available through the obligor's employment or other group health~~
 27 ~~insurance plan support order must include a medical support order as defined in [section 4]. The order or~~
 28 ~~modification of an order must include a statement that the insurance must be obtained and maintained whenever~~
 29 ~~the department is providing support enforcement services and that the failure to do so may result in the~~
 30 ~~imposition of sanctions under this section.~~

1 ~~(b) If the support order or modification of an order does not include a provision requiring the obligor to~~
 2 ~~provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support~~
 3 ~~enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health~~
 4 ~~insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:~~

5 ~~(i) an order requiring the obligee to maintain health insurance coverage;~~

6 ~~(ii) an agreement that the obligee will maintain health insurance coverage; or~~

7 ~~(iii) a failure or omission of the court order or modification of an order to require health insurance~~
 8 ~~coverage.~~

9 (2) ~~(a) If the department is providing child support enforcement IV-D services and the obligor is required~~
 10 ~~by an existing district court order or an administrative order under this section to provide health insurance~~
 11 ~~coverage for a child, the department shall also enforce the health insurance obligation. any order issued by a~~
 12 ~~court or administrative agency of competent jurisdiction that:~~

13 ~~(a) requires the obligor to make payments for the health or medical needs of the child, whether~~
 14 ~~expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same~~
 15 ~~enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied~~
 16 ~~to medical or health obligations.~~

17 ~~(b) requires the obligor to enroll a child in a health benefit plan or individual insurance as defined in~~
 18 ~~[section 4]. The department may take action to enforce the order under the provisions of [sections 1 through~~
 19 ~~25] or may impose any other appropriate remedy.~~

20 ~~(b) (3) (a) To ensure that health insurance coverage is available for the child, the obligor To permit the~~
 21 ~~department to determine whether enforcement action is necessary, if the obligor is required to enroll the child~~
 22 ~~in a health benefit plan or individual insurance, upon written request by the department, the obligor shall provide~~
 23 ~~the name of the individual insurance carrier or health benefit plan, the policy identification name and number, the~~
 24 ~~names of the persons covered, and any other pertinent information regarding coverage.~~

25 ~~(b) Failure of the obligor to provide the requisite information to the department may be punished as a~~
 26 ~~contempt under 40-5-226.~~

27 ~~(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the~~
 28 ~~department and show cause why a sum of not more than \$100 should not be assessed for each month health~~
 29 ~~insurance coverage is not secured or maintained if the department determines an obligor has failed to:~~

30 ~~(i) obtain or maintain health insurance coverage as required under this section; or~~

1 ~~(ii) provide information required under this section.~~

2 ~~(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage~~
 3 ~~has not been obtained or maintained or that the obligor has failed to provide the information required, the~~
 4 ~~department may assess against the obligor not more than \$100 for each month health insurance coverage has~~
 5 ~~not been obtained or maintained or for each month information has not been provided. The amounts may be~~
 6 ~~enforced by any administrative remedy available to the department for the enforcement of child support~~
 7 ~~obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title~~
 8 ~~40, chapter 5, part 4.~~

9 ~~(4) The health insurance coverage must be provided under this section even though it may reduce the~~
 10 ~~amount of the child support obligation or reduce the obligor's ability to pay child support as required.~~

11 (4) If the department is providing services for a child and a child support order or modification of a child
 12 support order does not include a medical support order as defined in [section 4] or fails to include any other
 13 provision for the health and medical needs of the child:

14 (a) upon notice to the obligor, the obligor shall enroll the child in a health or medical insurance plan
 15 available to the obligor through an employer or other group for which the premium is partially or entirely paid by
 16 the employer or other group; and

17 (b) the obligor shall continue enrollment of the child in the plan until:

18 (i) a medical support order is entered;

19 (ii) the obligor can demonstrate to the department that the cost of providing coverage is not reasonable;

20 (iii) the obligor's employment or membership in the group has terminated and the plan is no longer
 21 available to the obligor;

22 (iv) the employer or group eliminates coverage for all employees or members; or

23 (v) the department ceases to provide services for the child.

24 (c) If the obligor fails to enroll a child in a health or medical insurance plan under this subsection (4) or
 25 lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not
 26 be found if the obligor shows that the cost of providing coverage for the child is not reasonable.

27 ~~(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset~~
 28 ~~expenditures for medicaid."~~

29
 30 **Section 31.** Section 40-6-116, MCA, is amended to read:

1 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or
2 nonexistence of the parent and child relationship is determinative for all purposes.

3 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall
4 order that a substitute birth certificate be issued under 40-6-123.

5 (3) (a) The judgment or order may contain any other provision directed against the appropriate party to
6 the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the
7 furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of
8 the child.

9 (b) Except when the financial responsibility of a responsible parent is in the process of being determined
10 pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision
11 concerning the duty of child support.

12 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
13 pregnancy and confinement.

14 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

15 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered
16 in lieu of periodic payments of support.

17 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses
18 already incurred that the court considers just.

19 (5) In determining the amount to be paid by a parent for support of the child and the period during which
20 the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

21 (a) the needs of the child, including medical needs;

22 (b) the standard of living and circumstances of the parents;

23 (c) the relative financial means of the parents;

24 (d) the earning ability of the parents;

25 (e) the need and capacity of the child for education, including higher education;

26 (f) the age of the child;

27 (g) the financial resources and the earning ability of the child;

28 (h) the responsibility of the parents for the support of others;

29 (i) the value of services contributed by the custodial parent;

30 (j) the cost of day care for the child; and

1 (k) any custody arrangement that is ordered or decided upon.

2 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
3 the child support obligation by applying the standards in this section and the uniform child support guidelines
4 adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be
5 used in all cases, including cases in which the order is entered upon the default of a party and those in which
6 the parties have entered into an agreement regarding the support amount. A verified representation of a
7 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
8 financial information for use in applying the guidelines. The amount determined under the guidelines is presumed
9 to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that
10 the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate
11 in that particular case.

12 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
13 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
14 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
15 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
16 amount must include a statement of the amount of support that would have ordinarily been ordered under the
17 guidelines.

18 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
19 child's support, the court shall state its reasons for not ordering child support.

20 (7) The judgment or order, whether temporary or final, concerning child support and each modification
21 of a judgment or order for child support must include a ~~provision addressing health insurance coverage in the~~
22 ~~following cases:~~ medical support order as defined in [section 4].

23 ~~(a) If either party has available through an employer or other organization health insurance coverage for~~
24 ~~the child or children for which the premium is partially or entirely paid by the employer or organization, the~~
25 ~~judgment or order may contain a provision requiring that coverage for the child or children be continued or~~
26 ~~obtained.~~

27 ~~(b) In the event that health insurance required in a child support judgment or order becomes unavailable~~
28 ~~to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the~~
29 ~~absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the~~
30 ~~requirement.~~

1 ~~(e) The parties may by written agreement provide for the health care coverage required by this section,~~
2 ~~subject to the approval of the court.~~

3 ~~(d) Unless otherwise provided in the decree, the health care coverage required by this section is in~~
4 ~~addition to and not in substitution, in whole or in part, for the child support obligation.~~

5 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the
6 support order, a support obligation established by judgment, decree, or order under this section, whether
7 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be
8 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
9 support order that omits the exception or that provides for a payment arrangement inconsistent with this section
10 is nevertheless subject to withholding for the payment of support without need for an amendment to the support
11 order or for any further action by the court.

12 (b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a
13 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to
14 the obligor's regular pay period.

15 (9) For the purposes of income withholding as provided in subsection (8), whenever the district court
16 establishes or modifies a child support obligation, the judgment, decree, or order must include a provision
17 requiring the parent obligated to pay support to inform the court and, if the department of social and
18 rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the
19 judgment, decree, or order, the department, of the following:

20 (a) the name and address of the parent's current employer;

21 (b) whether the parent has access to health insurance through an employer or other group; and

22 (c) if insurance coverage is available, the health insurance policy information.

23 ~~(10) If the department of social and rehabilitation services is providing or later provides support~~
24 ~~enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an~~
25 ~~order must contain a statement providing that the noncustodial parent, without further order of the court, is~~
26 ~~required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning~~
27 ~~statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

28 (10) Each district court judgment, decree, or order establishing a final child support obligation under
29 this part and each modification of a final order for child support must contain a statement that the order is
30 subject to review and modification by the department of social and rehabilitation services upon the request of

1 the department or a party under 40-5-271 through 40-5-273 when the department is providing services under
2 Title IV-D of the Social Security Act for the enforcement of the order."

3

4 NEW SECTION. **Section 32. Severability.** If a part of [this act] is invalid, all valid parts that are
5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
6 the part remains in effect in all valid applications that are severable from the invalid applications.

7

8 NEW SECTION. **Section 33. Repealer.** Sections 40-5-440, 40-5-441, and 40-5-442, MCA, are repealed.

9

10 NEW SECTION. **Section 34. Effective date.** [This act] is effective July 1, 1995.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0402, as introduced

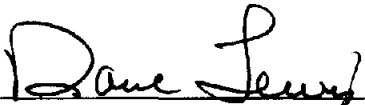
DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising child support enforcement laws to improve efficiency and effectiveness of child support enforcement services; enacting federal legislation as required; allowing the Department of Social and Rehabilitation Services (SRS) to enforce orders for periodic payments of health or medical needs or medical insurance plans.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The Child Support Enforcement Division (CSED) estimates that 255 cases per year will be impacted, where children who would otherwise be covered by Medicaid will be insured under private insurance through the obligor parent or custodian. This estimate is calculated as follows:
 - CSED has 1,080 cases annually where the obligor has verified employment;
 - For 782 of the 1,080 cases, a medical support order already exists, and a support order could be modified to include medical support in the other 298 cases.
 - based on information from the State Auditor's office indicating that 71% of employees are offered insurance for themselves and their dependents through their employer, 767 of the 1,080 cases would have insurance offered;
 - for 127 of the 767 cases, CSED records show that the obligor has obtained insurance for their dependents, leaving 640 additional cases where obligors are offered coverage for their dependents;
 - CSED estimates about 255 of the 640 cases will meet all the criteria of the legislation for actually purchasing insurance for their dependents (767 times 50% of these cases with orders over \$150 or large enough to reasonably obtain insurance, cost does not exceed 25% of the ordered amount, less the 127 with information already available);
 - Medical coverage information shows that of those employers that offer medical coverage to their employees, 76% to 93% contribute to the cost of the insurance. Thus, the more cases might be eligible if the employer's contribution is taken in to account.
3. One (1.00) FTE would be needed to modify the additional target cases this biennium due to a backlog of 2,600 cases already waiting for modification. At a rate of 15-20 modifications monthly, the 298 cases with no medical support would be completed in about 17 months. A grade 12 modifications specialist would cost about \$27,000 each year for personal services, with \$8,000 in FY96 and \$5,000 in FY97 in associated operating and equipment costs.
4. One (1.00) FTE would be needed to determine if the cost and coverage of medical insurance is reasonable. A grade 12 medical expert specialist would cost about \$27,000 each year for personal services, with \$8,000 in FY96 and \$5,000 in FY97 in associated operating and equipment costs.
5. One (1.00) FTE would be needed to focus specifically on cases impacted by this legislation so Medicaid savings can be realized in the shortest amount of time. A grade 12 caseworker would cost about \$27,000 each year for personal services, with \$8,000 in FY96 and \$5,000 in FY97 in associated operating and equipment costs.

(continued)

 2-18-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-18-95
DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0402, as introduced

SB 402

Fiscal Note Request, SB0402, as introduced

Page 2

(continued)

6. A contract for an additional hearings officer to address the additional hearings generated by these cases (30 hearings taking 3 months to complete) is estimated at \$24,000 annually.
7. Each case represents a family with an average of two children.
8. In FY94, the average Medicaid cost for this type of child was \$488.
9. Inflation for Medicaid services will increase 5.1% between FY94 and FY95, 9.2% between FY95 and FY96 and 9.8% between FY96 and FY97.
10. Medicaid benefit savings are funded at the Federal Matching Assistance Percentage (FMAP) rate of 30.26% general fund and 69.74% federal funds in FY96 and 31.00% general fund and 69.00% federal funds in FY97.

FISCAL IMPACT:

Expenditures:

| | <u>FY96</u> | <u>FY97</u> |
|------------------------|-------------------|-------------------|
| | <u>Difference</u> | <u>Difference</u> |
| FTE | 3.00 | 3.00 |
| CSED Personal Services | 81,000 | 81,000 |
| CSED Operating | 39,000 | 39,000 |
| CSED Equipment | 9,000 | 0 |
| Medicaid Benefits | <u>(285,600)</u> | <u>(313,650)</u> |
| Total | (156,600) | (193,650) |

Funding:

| | | |
|---------------|------------------|------------------|
| General Fund | (42,563) | (56,432) |
| Federal Funds | <u>(114,037)</u> | <u>(137,218)</u> |
| Total | (156,600) | (193,650) |

Net Impact:

| | | |
|----------------------|----------|----------|
| General Fund Savings | (42,563) | (56,432) |
|----------------------|----------|----------|

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for SB0402, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising child support enforcement laws to improve efficiency and effectiveness of child support enforcement services; enacting federal legislation as required; allowing the Department of Social and Rehabilitation Services (SRS) to enforce orders for periodic payments of health or medical needs or medical insurance plans.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The Child Support Enforcement Division (CSED) estimates that 255 cases per year will be impacted, where children who would otherwise be covered by Medicaid will be insured under private insurance through the obligor parent or custodian. This estimate is calculated as follows:
 - CSED has 1,080 cases annually where the obligor has verified employment;
 - For 782 of the 1,080 cases, a medical support order already exists, and a support order could be modified to include medical support in the other 298 cases.
 - based on information from the State Auditor's office indicating that 71% of employees are offered insurance for themselves and their dependents through their employer, 767 of the 1,080 cases would have insurance offered;
 - for 127 of the 767 cases, CSED records show that the obligor has obtained insurance for their dependents, leaving 640 additional cases where obligors are offered coverage for their dependents;
 - CSED estimates about 255 of the 640 cases will meet all the criteria of the legislation for actually purchasing insurance for their dependents (767 times 50% of these cases with orders over \$150 or large enough to reasonably obtain insurance, cost does not exceed 25% of the ordered amount, less the 127 with information already available);
 - Medical coverage information shows that of those employers that offer medical coverage to their employees, 76% to 93% contribute to the cost of the insurance. Thus, the more cases might be eligible if the employer's contribution is taken in to account.
3. One (1.00) FTE would be needed to modify the additional target cases this biennium due to a backlog of 2,600 cases already waiting for modification. At a rate of 15-20 modifications monthly, the 298 cases with no medical support would be completed in about 17 months. A grade 12 modifications specialist would cost about \$27,000 each year for personal services, with \$8,000 in FY96 and \$5,000 in FY97 in associated operating and equipment costs.
4. One (1.00) FTE would be needed to determine if the cost and coverage of medical insurance is reasonable. A grade 12 medical expert specialist would cost about \$27,000 each year for personal services, with \$8,000 in FY96 and \$5,000 in FY97 in associated operating and equipment costs.
5. One (1.00) FTE would be needed to focus specifically on cases impacted by this legislation so Medicaid savings can be realized in the shortest amount of time. A grade 12 caseworker would cost about \$27,000 each year for personal services, with \$8,000 in FY96 and \$5,000 in FY97 in associated operating and equipment costs.

(continued)

David Lewis 3-7-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Dorothy Eck 3-8-95
DOROTHY ECK, PRIMARY SPONSOR DATE

(continued)

6. A contract for an additional hearings officer to address the additional hearings generated by these cases (30 hearings taking 3 months to complete) is estimated at \$24,000 annually.
7. Each case represents a family with an average of two children.
8. In FY94, the average Medicaid cost for this type of child was \$488.
9. Inflation for Medicaid services will increase 5.1% between FY94 and FY95, 9.2% between FY95 and FY96 and 9.8% between FY96 and FY97.
10. Medicaid benefit savings are funded at the Federal Matching Assistance Percentage (FMAP) rate of 30.26% general fund and 69.74% federal funds in FY96 and 31.00% general fund and 69.00% federal funds in FY97.

FISCAL IMPACT:Child Support Enforcement DivisionExpenditures:

| | <u>FY96</u> | <u>FY97</u> |
|-------------------|-------------------|-------------------|
| | <u>Difference</u> | <u>Difference</u> |
| FTE | 3.00 | 3.00 |
| Personal Services | 81,000 | 81,000 |
| Operating | 39,000 | 39,000 |
| Equipment | <u>9,000</u> | <u>0</u> |
| Total | 129,000 | 120,000 |

Funding:

| | | |
|--------------------|---------------|---------------|
| General Fund (01) | 43,860 | 40,800 |
| Federal Funds (03) | <u>85,140</u> | <u>79,200</u> |
| Total | 129,000 | 120,000 |

Medicaid Services DivisionExpenditures:

| | | |
|-------------------|-----------|-----------|
| Medicaid Benefits | (285,600) | (313,650) |
|-------------------|-----------|-----------|

Funding:

| | | |
|--------------------|------------------|------------------|
| General Fund (01) | (86,423) | (97,232) |
| Federal Funds (03) | <u>(199,177)</u> | <u>(216,418)</u> |
| Total | (285,600) | (313,650) |

Net Impact on General Fund Balance:

| | | |
|---------------------------|--------|--------|
| General Fund Savings (01) | 42,563 | 56,432 |
|---------------------------|--------|--------|

APPROVED BY COM
ON JUDICIARY

1 SENATE BILL NO. 402

2 INTRODUCED BY ECK

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS
6 TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;
7 ENACTING FEDERAL LEGISLATION AS REQUIRED; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS
8 FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL
9 INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND
10 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN
11 EFFECTIVE DATE."
12

13 WHEREAS, it is necessary to draft a bill specifically enacting federally required legislation in order
14 to maintain adequate levels of federal funding and to present proposed program improvements for medical
15 support enforcement in a single, comprehensive bill that promotes the needs of legislative energy,
16 efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and
17 readings on those bills.
18

19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because it grants rulemaking authority to the
21 department of social and rehabilitation services TO ADOPT RULES FOR EXPEDITED PROCEDURES. ~~The~~
22 ~~department should adopt rules for expedited procedures, appropriate fines and penalties, and methods by~~
23 ~~which to encourage cooperation from parents, employers, unions, and health benefit providers.~~
24

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
27 NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be known and cited as the
28 "Medical Support Reform Act".
29

30 NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 25] is to promote the

1 health and medical care of children and to conserve the expenditure of public assistance funds by ensuring
2 that children have access to reasonable health insurance coverage or a health benefit plan provided by their
3 parents, who are primarily responsible for their support.
4

5 NEW SECTION. **Section 3. Scope.** [Sections 1 through 25] do not expand any coverage available
6 to any individual under any health insurance coverage or a health benefit plan required under federal law
7 or Title 33, chapter 22, though [sections 1 through 25] may expand the class of children who may be
8 eligible for individual insurance or health benefit plan coverage due to a duty of support owed to them by
9 their parents.
10

11 NEW SECTION. **Section 4. Definitions.** For purposes of [sections 1 through 25], the following
12 definitions apply:

13 (1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose
14 behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled
15 or eligible for enrollment under a health benefit plan or individual insurance policy.

16 (2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

17 (3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under
18 which dependent children of employees may continue to receive, for a limited time under specific
19 circumstances, health plan coverage after termination of employment.

20 (4) "Department" means the department of social and rehabilitation services as provided for in
21 2-15-2201.

22 (5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other
23 than public assistance programs, that provides medical care or benefits for a child. The term includes but
24 is not limited to a health maintenance organization, self-funded group, medical or health services
25 corporation, or similar plan.

26 (6) "Individual insurance" means health or medical insurance coverage other than a group health
27 benefit plan or public assistance that is or may be provided individually for a child.

28 (7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness,
29 or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose
30 of affecting any structure or function of the body.

1 (8) "Medical support order" means a judgment, decree, or order, including approval of a settlement
2 agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and
3 that complies with the requirements of [sections 1 through 25].

4 (9) "Obligated parent" means the parent who is required by a medical support order to provide for
5 the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

6 (10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker
7 having lawful charge of the child.

8 (11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer,
9 trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic
10 basis, who has or provides individual insurance or a health benefit plan, and who is subject to the
11 jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure.

12 (12) "Primary parent" means the parent with whom the child resides for the most 24-hour periods
13 in a plan year.

14 (13) "Qualified medical child support order" means an order that meets the requirements of 29
15 U.S.C. 1169.

16 (14) "Third-party custodian" means an agency or person other than a parent who:

17 (a) is authorized by legal process to have physical custody of a child;

18 (b) has actual physical custody of a child with the written consent of the parent or parents having
19 legal custody of the child; or

20 (c) has actual physical custody of a child because of the parents' neglect, failure, or inability to
21 provide for the child's support, medical care, and other needs.

22 (15) "Tribunal" means a court of competent jurisdiction or the department.

23
24 **NEW SECTION. Section 5. Establishing medical support orders.** (1) In an action or proceeding
25 to establish a child support order, whether temporary or final, or to modify an existing child support order,
26 the tribunal shall also establish a medical support order. In establishing a medical support order, a tribunal
27 shall consider:

28 (a) the best interests of the child;

29 (b) the child's present and anticipated needs for medical care;

30 (c) the financial ability of the parents to pay for individual insurance or a health benefit plan; and

1 (d) the extent to which an available health benefit plan or individual insurance coverage is
2 subsidized or reduced in cost by an employer or by participation in a plan on a group basis.

3 (2) Except as otherwise provided in [sections 1 through 25], a tribunal may not consider a child's
4 eligibility for a public assistance program as a factor in determining a parent's financial ability to afford
5 individual insurance or a health benefit plan.

6
7 **NEW SECTION. Section 6. Contents of medical support order.** (1) A medical support order may
8 specify terms for individual insurance coverage and, to the extent of options within an available health
9 benefit plan, the terms for plan coverage, including:

10 (a) minimum required policy limits;

11 (b) minimum required coverage;

12 (c) maximum terms for deductibles or required copayments; and

13 (d) other significant terms.

14 (2) If a child is already covered by individual insurance or a health benefit plan, if the child does
15 not have existing coverage but coverage can be obtained under a health benefit plan that is available to the
16 primary parent, or if the child does not have existing coverage and coverage for the child under a plan is
17 available to the other parent, then the medical support order must require participation in that plan unless:

18 (a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or
19 cost-beneficial; or

20 (b) another plan or individual insurance is available that will better serve the interests of the parties.

21 (3) If health benefit plans are available to both parents at a combined cost that is reasonable or
22 cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage,
23 the medical support order must require both parents to provide coverage for the child.

24 (4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not
25 available to either parent, the parent other than the primary parent must be required to obtain individual
26 insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective:

27 (a) the parent other than the primary parent must be required to obtain individual insurance or a
28 health benefit plan at such time in the future that it becomes available to that parent at reasonable cost.

29 The requirements in this subsection (4) to obtain a plan are not enforceable if:

30 (b) the primary parent has obtained individual insurance or a health benefit plan for the child and

1 both parents have agreed in writing to share the costs of maintaining the coverage; or

2 (c) the other parent persuades the tribunal that the cost of available health benefit plans is not
3 reasonable or cost-beneficial.

4 (5) This section also applies when a child is placed with a third-party custodian, unless a parent
5 has obtained individual insurance or a plan for the child and both parents have agreed in writing to share
6 the costs of maintaining the coverage or a parent persuades the tribunal that the cost of available individual
7 insurance and plans is not reasonable or cost-beneficial. For purposes of this subsection, the primary
8 parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12
9 months prior to placement with the third-party custodian.

10 (6) The medical support order must also provide that the cost of individual insurance or the health
11 benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for
12 the child that are not covered by individual insurance or the plan must be shared between parents in
13 accordance with the child support guidelines. If the order fails to designate each parent's share, each
14 parent is liable for 50% of the costs and expenses.

15 (7) (a) Except as provided in subsection (7)(b), if the cost of individual insurance or a health benefit
16 plan is not reasonable or cost-beneficial or if a plan is not otherwise available and if the child is a recipient
17 of medical assistance under Title XIX of the federal Social Security Act or later becomes a recipient of
18 medical assistance:

19 (i) when the child is a recipient together with a parent, the medical support order must require the
20 other parent to pay \$50 per month;

21 (ii) when the child is not a recipient with a parent, the medical support order must require each
22 parent to pay \$50 per month; and

23 (iii) when the child is a recipient with both parents, neither parent has an obligation under this
24 subsection (7)(a).

25 (b) The tribunal may order the parent or parents to pay a greater or lesser amount each month as
26 the tribunal finds appropriate to the circumstances.

27 (c) The amounts ordered to be paid under this subsection (7) must be paid to the department for
28 return to the appropriate state treasury fund to help offset the costs of the medical assistance program.

29 (8) The costs of providing individual insurance or a health benefit plan may not be used as a direct
30 offset to the child support obligation. However, as provided by the child support guidelines, the costs may

1 be considered in making or modifying a child support order.

2 (9) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost
3 if:

4 (i) an amount payable for individual insurance or health benefit plan premiums does not exceed
5 25% of the obligated parent’s total parental child support obligation when calculated under the child
6 support guidelines without credit for the medical support obligation; or

7 (ii) a health benefit plan is available through an employer or other group organization for which the
8 premium is partially or entirely paid by the employer or other group organization.

9 (b) The presumption under subsection (9)(a) may be rebutted by clear and convincing evidence and
10 the tribunal has the discretion to:

11 (i) order individual insurance or health benefit plan coverage when the amount of the premium may
12 be greater than the presumptive amount; or

13 (ii) not order coverage when the amount of the premium is less than the presumptive amount.
14

15 **NEW SECTION. Section 7. Mandatory provisions of medical support order.** (1) Unless the tribunal
16 expressly specifies otherwise, a medical support order must include terms directed toward the provisions
17 of [section 6(2) through (9)], even though a provision contained in those subsections may not apply to the
18 parent’s circumstances at the time the order is entered. The terms may be established as alternatives or
19 contingencies that provide that if circumstances later change, the health needs of the child will continue
20 to be met under one of the subsections without need for modification of the medical support order or other
21 action by the tribunal that issued the order or any other tribunal of competent jurisdiction.

22 (2) If circumstances change and a parent believes that corresponding changes in costs are not
23 reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.

24 (3) If a health benefit plan is provided through an employer, union, or other group, the medical
25 support order must also include provisions necessary to entitle the order to recognition as a qualified
26 medical child support order.
27

28 **NEW SECTION. Section 8. Persistence and duration of obligation.** (1) A parent’s obligation to
29 provide for medical care of a child ceases only when the parental obligation to support a child terminates
30 under law.

1 (2) The obligations to provide medical care for a child, provide financial child support, and provide
2 or comply with visitation and custody arrangements are independent of each other, and the failure or
3 inability to provide one or more does not reduce one of the others.

4 (3) A guardian or caretaker who is not the child's father or mother may not be compelled to
5 support the child or be held liable for the child's expenses, except to the extent that the guardian or
6 caretaker has voluntarily agreed in writing to assume the responsibility.

7
8 NEW SECTION. **Section 9. Effect of order on health benefit plans.** (1) The duties and
9 responsibilities under a plan pursuant to [sections 1 through 25] apply equally to a union or employer that
10 serves as the administrator of a plan for a parent who is a member or employee.

11 (2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may
12 be submitted to the plan administrator by either parent, by the department, or by a third-party custodian.
13 The party submitting the order shall submit the child's name and birth date and the names and mailing
14 addresses of the parents. If the child is a recipient of public assistance, the party submitting the order shall
15 also submit the address of the department. If there is a third-party custodian of the child, the address of
16 the third-party custodian must also be submitted.

17 (3) Presentation of the medical support order to the plan administrator authorizes each parent, the
18 department, if the department has interest, or the third-party custodian to receive pertinent notices from
19 the plan administrator and to freely communicate and generally interact with the plan administrator in all
20 respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so
21 personally.

22 (4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation
23 of the order to the plan administrator binds the plan to enroll the child in the plan as provided by [sections
24 1 through 25].

25 (5) If a health benefit plan is available through the obligated parent's employer or other payor of
26 income, presentation of the medical support order to the payor binds the payor to enrollment of the child
27 in the plan and to automatically deduct premium payments required by the plan from the obligated parent's
28 income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

29 (6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily
30 delay health benefit plan coverage for a child.

1 (b) If more than one plan is available to an obligated parent and the medical support order fails to
2 specify a plan or combination of benefits to be provided for a child or if there has been a change in plans
3 due to a change in employment of the obligated parent or for some other reason, the parties and the
4 department shall apply the medical support order so as to provide the child with coverage under a plan that
5 has a reasonable cost and that provides the child with benefits closest to those described in the order.
6

7 **NEW SECTION. Section 10. Authorization to enroll and participate in health benefit plan.** (1) A plan
8 administrator shall enroll a child when given a medical support order even if the obligated parent fails to execute
9 documents required by the plan. The parents, the department, and a third-party custodian may release to a plan
10 provider, employer, union, or other group any information necessary to obtain or enforce medical support or to
11 facilitate the preparation, submission, processing, verification, or payment of claims.

12 (2) The signature of either parent, of an authorized representative of the department, or of a third-party
13 custodian authorizes the plan to receive and process claims and exercise any available options for the
14 continuation or extension.
15

16 **NEW SECTION. Section 11. Authorization to cure nonpayment of health benefit plan premium.** In the
17 case of an actual or threatened adverse action that would reduce or terminate plan benefits because of
18 nonpayment of premium or insufficient payment of premium, the other parent, the department, or the third-party
19 custodian may advance the cost of necessary premiums and keep benefits continually in force for the child. The
20 advance may be entered as a judgment for unpaid child support in favor of the advancing party and against the
21 obligated parent.
22

23 **NEW SECTION. Section 12. Obligations of health benefit plan.** (1) Upon receipt of a medical support
24 order requiring a parent to provide coverage for a child, the administrator of a health benefit plan who receives
25 the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The health
26 benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

27 (2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance
28 is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to
29 freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively
30 as if done by the obligated parent.

1 (3) A copy of the medical support order must be accepted by the plan administrator as a request and
2 application of the eligible obligated parent requesting that new or continued benefits, including continuation
3 coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after
4 receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan
5 as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

6 (4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary
7 premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in
8 [section 13].

9 (5) Within 30 days after receipt of a copy of a medical support order, the health benefit plan shall give
10 written notice to both parents, to the department, and to any third-party custodian setting forth the status of
11 the child's enrollment in the plan and the addresses and telephone numbers of the offices where further
12 information can be obtained and where changes of address and other updated information should be submitted.

13 (6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide
14 written notice to both parents, to the department, whenever public assistance is paid for the child, or to the
15 third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone
16 numbers of the offices where further information can be obtained and where changes of address and other
17 updated information should be submitted.

18 (7) A plan administrator may not terminate a child's coverage unless:

19 (a) written evidence shows that the medical support order is no longer in effect, that the child will be
20 enrolled in another health benefit plan, or that individual insurance is provided;

21 (b) the employer, union, or other group eliminates coverage for all members or employees;

22 (c) the plan is available through the obligated parent's employer or other payor of income and the
23 obligated parent's employment or right to receive income from the payor is terminated and continued coverage
24 under COBRA is not available or the time for such coverage is expired; or

25 (d) the plan is available through the obligated parent's employer or other payor of income, the amount
26 of the premium or the premium together with child support exceeds the limits in this section, and the other
27 parent, the department, or the third-party custodian has not cured the insufficiency under [section 11].

28
29 **NEW SECTION. Section 13. Obligation of payor.** (1) Upon receipt of a medical support order, a payor
30 providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required

1 premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not
2 exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium
3 exceeds the maximum, the payor may not withhold the excess. If the premium, together with child support to
4 be withheld, exceeds the maximum, child support has priority and the payor may not withhold the part of the
5 premium that is in excess of the maximum.

6 (2) A medical support order has priority over garnishment of the income of the obligated parent for any
7 purpose, except child support.

8 (3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment
9 following any break in service, layoff, leave of absence, or other similar circumstance.

10 (b) Upon the termination of employment, extended layoff, or any other break in service that causes
11 coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the
12 department or the third-party custodian, if either submitted the medical support order or submitted a written
13 notice of interest to the plan.

14 (4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action
15 against an obligated parent for being under a medical support order.

16 (b) The obligated parent has the burden of proving that a medical support order was the sole reason for
17 the employer's action.

18 (c) A payor KNOWINGLY violating this section is subject to the contempt powers of the tribunal issuing
19 the medical support order. The tribunal may, in addition, impose a civil penalty of not less than \$150 and order
20 the payor to reinstate the obligated parent's employment and make restitution of lost wages and benefits. If the
21 tribunal imposing the civil penalty is a court, the money must be deposited in the county treasury to the credit
22 of the court's operating fund. If the tribunal is the department, the money must be deposited in the state general
23 fund.

24
25 **NEW SECTION. Section 14. Obtaining information.** Upon the request of either of the child's parents,
26 the department, or a third-party custodian, a health benefit plan shall provide information about the child's health
27 benefit coverage, including but not limited to:

28 (1) a description of the benefits and options available under the plan and summaries of the terms and
29 costs of all plans and options for which the child is eligible;

30 (2) names and addresses of the employer, union, plan, or other entities involved in administering the

1 plan;

2 (3) identification cards or other methods for access to coverage, including but not limited to numbers,
3 codes, or other references applicable to the plan or to the group through which the child participates;

4 (4) claims received or paid on behalf of the child, including the dates and amounts of payments and the
5 names and addresses of parties who have submitted claims or received payment for claims; and

6 (5) other information relevant to the preparation, submission, processing, or verification of claims.
7

8 **NEW SECTION. Section 15. Paying claims.** Payment for a medical claim assigned to the department
9 must be to the department. If a medical claim is not assigned to the department and the claim is submitted by
10 a parent or a third-party custodian, payment must be to the health service provider involved. Payment may be
11 to the parent or third-party custodian submitting the claim if there is written evidence of prepayment to the health
12 service provider by that parent or third-party custodian.
13

14 **NEW SECTION. Section 16. Newborn children.** ~~If, within 1 year after the birth of a child, a parent~~
15 ~~obligated by a medical support order submits the order to a health benefit plan, along with plan premium~~
16 ~~payments for the period between birth and the date of submission to the plan, the plan shall provide coverage~~
17 ~~for the child retroactive to the date of birth.~~ **A HEALTH BENEFIT PLAN MUST PROVIDE THE COVERAGE**
18 **REQUIRED BY 33-22-301 TO A NEWBORN CHILD COVERED BY [SECTIONS 1 THROUGH 25].**
19

20 **NEW SECTION. Section 17. Adopted children -- preexisting conditions.** A health benefit plan shall
21 provide the coverage required by 33-22-130 to a child placed for adoption.
22

23 **NEW SECTION. Section 18. Nonexclusion -- nondiscrimination by health benefit plan.** A health benefit
24 plan may not deny or limit enrollment of an obligated parent's child or discriminate against a child because:

25 (1) the child is not claimed as a dependent on the obligated parent's state or federal income tax return
26 or considered as a dependent for tax purposes;

27 (2) the child was born out of wedlock;

28 (3) the child does not reside with the obligated parent;

29 (4) the child does not reside in the health plan's service area. A plan that provides medical care at
30 particular locations or geographic areas shall also provide comparable benefits for a child whose residence or

1 location is elsewhere.

2 (5) the natural child of the obligated parent has a preexisting condition, unless the plan does not provide
3 for enrollment or provides only for limited enrollment of children with preexisting conditions.

4

5 **NEW SECTION. Section 19. Medical assistance eligibility.** A health benefit plan may not use information
6 pertaining to medical assistance eligibility under Title XIX of the federal Social Security Act as a factor in enrolling
7 a child in a plan or in making payments for benefits on behalf of the covered child. A health benefit plan may
8 not impose any restrictions or requirements on recipients of medical assistance or the department different from
9 those applicable to any other plan participant.

10

11 **NEW SECTION. Section 20. Void health benefit plans.** A health benefit plan provision that denies or
12 restricts coverage for a child in violation of a provision of [sections 15 through 18] is void as against public
13 policy.

14

15 **NEW SECTION. Section 21. Penalty imposed by tribunal.** (1) In addition to any other penalty provided
16 by [sections 1 through 25] or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed \$25
17 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly
18 violated a medical support order or a provision of or a rule adopted under [sections 1 through 25].

19 (2) The civil penalty must be deposited as provided in [section 13].

20 (3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be
21 reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

22

23 **NEW SECTION. Section 22. Duties of parents -- consequences of noncompliance.** (1) An obligated
24 parent shall promptly execute and deliver to the provider of individual insurance, to a health benefit plan, or to
25 another proper party all forms and instruments necessary to ensure the child's timely enrollment and continuous
26 participation in any individual insurance or plan ordered by the medical support order. An obligated parent shall
27 timely submit claims for processing, verification, and payment. Intentional delay or interference with enrollment
28 or with the timely submission for processing, verification, and payment of a claim is punishable as provided in
29 [section 21] and by an award of costs and attorney fees to an opposing party.

30 (2) An obligated parent shall provide the other parent, the department, and the third-party custodian with

1 identification cards or other methods for access to coverage, including but not limited to numbers, codes, or
2 other references applicable to the individual insurance, health benefit plan, or group through which the child
3 receives coverage. Intentional delay or failure to provide information is punishable as provided in [section 21]
4 and by an award of costs and attorney fees to an opposing party.

5 (3) If a party receives a reimbursement payment from individual insurance or from a health benefit plan
6 but is not the party who has paid or is paying the underlying bill of the health service provider, the party receiving
7 the payment shall promptly pay over the proceeds to the proper party. In addition to any applicable penalty for
8 theft, conversion, civil contempt, or other wrongdoing, the amount of the payment may be entered as a judgment
9 in favor of the proper party and against the party failing to promptly pay over the reimbursement.

10 (4) An obligated parent who defaults on a medical support order by failing to obtain individual insurance
11 or a health benefit plan or who permits the individual insurance or plan coverage to lapse without securing a
12 comparable replacement is liable for all of the child's medical expenses and shall indemnify the other parent, the
13 department, or the third-party custodian for the cost of obtaining health benefit coverage and for all medical
14 expenses of the child. The obligated parent may be relieved of liability by proving to the satisfaction of the
15 tribunal that:

16 (a) no reasonable-cost or cost-beneficial individual insurance coverage or health benefit plan was
17 available for the child during the period of time involved and the other parent, the department, or the third-party
18 custodian has received notice of the nonavailability;

19 (b) the individual insurance coverage or plan ceased to be available for reasons wholly unrelated to the
20 conduct of the obligated parent, replacement coverage has not been available, and timely written notice of the
21 nonavailability has been given to the other parent, the department, or the third-party custodian; or

22 (c) the other parent or third-party custodian has obtained health coverage for the child and all parties
23 have entered into an enforceable written agreement to share the costs of the coverage.

24 (5) An obligated parent who provides individual insurance coverage or a health benefit plan that is
25 deficient under the requirements of the medical support order is liable, including liability by indemnification, for
26 all of the child's medical expenses that should have been covered but were not and for the cost to the other
27 parent, the department, or the third-party custodian of obtaining coverage that complies with the order. The
28 obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

29 (a) the coverage provided for the child has been the best available during the periods of time involved
30 and timely written notice regarding the coverage available was given to the other parent, the department, or the

1 third-party custodian;

2 (b) benefits have been reduced for reasons wholly unrelated to the conduct of the obligated parent,
3 better coverage has not been available, and timely written notice has been given to the other parent, the
4 department, or the third-party custodian; or

5 (c) the other parent or the third-party custodian has obtained coverage for the child and all parties have
6 entered into an enforceable written agreement to share the costs of the coverage.

7 (6) Any liability for medical costs and expenses incurred under this section may be entered as a judgment
8 for unpaid support in favor of the party or agency paying the same and against the obligated parent.

9 (7) The consequences of noncompliance with a medical support order apply, to the extent possible, to
10 a judgment, decree, or support order that requires a parent to obtain medical or health insurance coverage for
11 a child or to pay for a child's medical care and that was entered:

12 (a) by a tribunal prior to enactment of [sections 1 through 25]; or

13 (b) by a court or administrative agency of competent jurisdiction in another state or territory.

14

15 **NEW SECTION. Section 23. Health coverage -- notice of intent to purchase.** (1) The department or a
16 court on request of the department may issue an order requiring the obligated parent to appear and show cause
17 why an order should not be issued permitting the department to purchase individual insurance or health benefit
18 plan coverage for the obligated parent's child and requiring recovery of the premium from the obligated parent
19 if the tribunal finds that:

20 (a) a medical support obligation has been established by order of a tribunal;

21 (b) the obligated parent has become delinquent by failing to provide individual insurance or a health
22 benefit plan or lets the individual insurance or health benefit plan lapse;

23 (c) there is no payor to whom an order of enrollment under [section 12] applies;

24 (d) the child is currently eligible for medical assistance benefits under Title XIX of the federal Social
25 Security Act, as amended; and

26 (e) other individual insurance or a health benefit plan is available for the child and can be purchased at
27 a reasonable cost.

28 (2) Prior to issuing or requesting an order to show cause, the department shall give the obligated parent
29 notice of the intent to purchase coverage under this section and an opportunity to enroll the child in individual
30 insurance or a health benefit plan within 30 days after notice is received by the obligated parent.

1 (3) If the obligated parent provides written proof within the 30 days after receipt of the notice that the
2 child is enrolled in individual insurance or a health benefit plan, no further action may be taken by the
3 department.

4 (4) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule
5 upon the issues. The proceeding must be dismissed if the tribunal finds that the obligated parent has enrolled
6 the child in individual insurance or a health benefit plan or that the individual insurance or plan that the
7 department intends to purchase is not reasonable.

8 (5) A health benefit plan purchased under this section may be continued by the department until:

9 (a) the child is no longer eligible for medical assistance benefits;

10 (b) the obligated parent is no longer responsible under the law for the medical needs of the child; or

11 (c) the obligated parent provides written proof that the child has been enrolled in individual insurance
12 or another adequate health benefit plan.

13
14 **NEW SECTION. Section 24. Expedited enforcement procedures.** (1) A parent, the department, or the
15 third-party custodian may apply to the court for expedited enforcement procedures under [sections 1 through
16 25]. If the child receives medicaid, a parent or third-party custodian may apply to the department for and the
17 department may on its own motion use expedited enforcement procedures under [sections 1 through 25].

18 (2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent to
19 appear and show cause why an order, penalty, fine, or any combination should not be determined, assessed,
20 and entered under one or more provisions of [sections 1 through 25]. The obligated parent may appear at the
21 hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order must
22 be issued if the tribunal finds that:

23 (a) a medical support obligation has been established by order of a tribunal or by a court or administrative
24 agency of another state, territory, or Indian reservation;

25 (b) the obligated parent is liable for medical costs and expenses or premium payments under [sections
26 1 through 25];

27 (c) a parent receives a reimbursement payment from individual insurance or a health benefit plan and
28 fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the health
29 service provider;

30 (d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian the

1 parent's share of:

- 2 (i) copayments and deductibles required under the individual insurance or plan; or
- 3 (ii) costs and expenses not covered by individual insurance or a health benefit plan; or
- 4 (e) there are fines, penalties, or other financial sanctions that may be imposed under [sections 1 through
- 5 25].

6 (3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice of
 7 the claim under [sections 1 through 25]. The obligated parent may pay the claim within 30 days after receiving
 8 the notice. A copy of the notice must be given to the other parent, to the department, if the department is not
 9 the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the third-party
 10 custodian. The other parent, the department, or the third-party custodian may participate in the proceedings as
 11 a party.

12 (4) An application for expedited enforcement may be based on any credible statements or evidence
 13 presented to the tribunal, including the sworn affidavit of:

- 14 (a) a health care provider who has provided care or benefits for the child;
- 15 (b) an authorized representative of the department, the health benefit plan, or the individual insurer;
- 16 (c) either parent of the child; or
- 17 (d) the third-party custodian of the child.

18 (5) The order to show cause must inform the obligated parent and any other party of the party's right
 19 to respond by affidavit. An affidavit may include written proof of payment. A hearing must be scheduled within
 20 15 days after the date of service of the order on the obligated parent. If an affidavit with written proof of
 21 payment is not received by the tribunal within 15 days and the obligated parent does not appear at the hearing,
 22 judgment may be entered for the relief requested. If an affidavit with written proof of payment is received but
 23 the obligated parent does not appear at the hearing, the tribunal may resolve the issues on the basis of credible
 24 documents and affidavits submitted.

25 (6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule
 26 upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of the liability
 27 and the amount of the liability is not contested by a party to the proceedings.

28 (7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability as
 29 an award against the liable parent. If requested to do so, the tribunal may make an award specifically in favor
 30 of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied bill of the

1 health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical support liability
 2 involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous or in bad faith, the
 3 tribunal may impose sanctions against the party including an award of costs and attorney fees.

4 (8) Awards under this section may be collected by any remedy available for the collection of delinquent
 5 child support, but claims for current or past-due child support have priority.

6 (9) An award under this section is a final order and may be appealed if the tribunal is a court or may be
 7 reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

8
 9 **NEW SECTION. Section 25. Rulemaking authority.** The department may adopt rules to implement
 10 [sections 1 through 25].

11
 12 **Section 26.** Section 33-22-1202, MCA, is amended to read:

13 **"33-22-1202. Limited benefit disability insurance policies authorized.** (1) Insurers and health service
 14 corporations may issue limited benefit disability insurance policies that do not provide mandated health care
 15 coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304,
 16 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004,
 17 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the
 18 provision specifically mandates coverage for policies issued under this part.

19 (2) Limited benefit disability insurance policies may be issued only to the following persons:

20 (a) employers who:

21 (i) employ 20 or fewer employees working at least 20 hours per week; and

22 (ii) have been in business in the state for at least 12 months and have not contributed, within the
 23 preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

24 (b) disabled or injured workers and their families;

25 (c) unemployed individuals and their families;

26 (d) self-employed individuals and their families; and

27 (e) a parent, or the department of social and rehabilitation services on behalf of the parent, who is
 28 ordered by a court or administrative authority of this or another state or who is required under 40-5-208~~(1)(b)~~
 29 to provide health insurance coverage for a child if health insurance coverage is not available through employment
 30 or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a

1 court or administrative authority.

2 (3) The insurer or health service corporation may establish terms and conditions for copayments and
3 deductibles.

4 (4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall
5 provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate,
6 or evidence of coverage, stating in clear and understandable language and format which mandatory coverages
7 and providers are not covered by the policy and what coverage is provided by the policy.

8 (5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum
9 requirements set forth in 33-22-1203."

10

11 **Section 27.** Section 40-4-204, MCA, is amended to read:

12 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1) In a
13 proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either
14 or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's
15 support, without regard to marital misconduct.

16 (2) The court shall consider all relevant factors, including:

17 (a) the financial resources of the child;

18 (b) the financial resources of the custodial parent;

19 (c) the standard of living the child would have enjoyed had the marriage not been dissolved;

20 (d) the physical and emotional condition of the child and the child's educational and medical needs;

21 (e) the financial resources and needs of the noncustodial parent;

22 (f) the age of the child;

23 (g) the cost of day care for the child;

24 (h) any custody arrangement that is ordered or decided upon; and

25 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

26 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
27 the child support obligation by applying the standards in this section and the uniform child support guidelines
28 adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be
29 used in all cases, including cases in which the order is entered upon the default of a party and those in which
30 the parties have entered into an agreement regarding the support amount. A verified representation of the

1 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
2 financial information for use in applying the guidelines. The amount determined under the guidelines is presumed
3 to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that
4 the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate
5 in that particular case.

6 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
7 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
8 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
9 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
10 amount must include a statement of the amount of support that would have ordinarily been ordered under the
11 guidelines.

12 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
13 child's support, the court shall state its reasons for not ordering child support.

14 (4) Each temporary or final district court judgment, decree, or order establishing a ~~final~~ child support
15 obligation under this title and each modification of a final order for child support must include a ~~provision~~
16 ~~addressing health insurance coverage in the following cases:~~

17 ~~(a) If either party has available through an employer or other organization health insurance coverage for~~
18 ~~the child or children for which the premium is partially or entirely paid by the employer or organization, the~~
19 ~~judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued~~
20 ~~or obtained.~~

21 ~~(b) In the event that health insurance required in a child support judgment, decree, or order becomes~~
22 ~~unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party~~
23 ~~must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court~~
24 ~~modify the requirement.~~

25 ~~(c) All temporary child support orders must contain a provision requiring the party who has health~~
26 ~~insurance in effect for the child or children of the parties to continue the insurance coverage pending final~~
27 ~~disposition of the case.~~

28 ~~(d) The parties may by written agreement provide for the health care coverage required by this section,~~
29 ~~subject to the approval of the court.~~

30 ~~(e) Unless otherwise provided in the decree, the health care coverage required by this section is in~~

1 ~~addition to and not in substitution, in whole or in part, for the child support obligation~~ medical support order as
 2 provided for in [sections 1 through 25].

3 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is
 4 included in the support order, a support obligation established by judgment, decree, or order under this section,
 5 whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be
 6 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
 7 support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment
 8 arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support
 9 without need for an amendment to the support order or for any further action by the court.

10 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must
 11 include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may
 12 be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning
 13 statement in a judgment or order does not preclude the use of withholding procedures.

14 (c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a
 15 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to
 16 the obligor's regular pay period.

17 (6) For the purposes of income withholding under subsection (5), every district court judgment, decree,
 18 or order that establishes or modifies a child support obligation must include a provision requiring the parent
 19 obligated to pay support to inform the court and, if the department of social and rehabilitation services is
 20 providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or
 21 order, the department, of the following:

22 (a) the name and address of the parent's current employer;

23 (b) whether the parent has access to health insurance through an employer or other group; and

24 (c) if insurance coverage is available, the health insurance policy information.

25 ~~(7) If the department of social and rehabilitation services is providing or later provides support~~
 26 ~~enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an~~
 27 ~~order must contain a statement providing that the noncustodial parent, without further order of the court, is~~
 28 ~~required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning~~
 29 ~~statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

30 ~~(8)~~ Each district court judgment, decree, or order establishing a final child support obligation under this

1 part and each modification of a final order for child support must contain a statement that the order is subject
 2 to review and modification by the department of social and rehabilitation services upon the request of the
 3 department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title
 4 IV-D of the Social Security Act for the enforcement of the order.

5 ~~(9)(a)~~ (8)(a) A district court judgment, decree, or order that establishes or modifies a child support
 6 obligation must include a provision requiring the child support to be paid to:

7 (i) the legal custodian of the minor child;

8 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child under
 9 a legal assignment of rights; or

10 (B) the court for the benefit of the minor child;

11 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
 12 custodian; or

13 (iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

14 (b) A judgment, decree, or order that omits the provision required by subsection ~~(9)(a)~~ (8)(a) is subject
 15 to the requirements of subsection ~~(9)(a)~~ (8)(a) without need for an amendment to the judgment, decree, or order
 16 or for any further action by the court."

17
 18 **Section 28.** Section 40-4-208, MCA, is amended to read:

19 **"40-4-208. Modification and termination of provisions for maintenance, support, and property**
 20 **disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to
 21 maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion
 22 for modification.

23 (2) (a) Whenever the decree proposed for modification does not contain provisions relating to
 24 maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the
 25 decree.

26 (b) Whenever the decree proposed for modification contains provisions relating to maintenance or
 27 support, modification under subsection (1) may only be made:

28 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms
 29 unconscionable;

30 (ii) upon written consent of the parties; or

1 (iii) upon application by the department of social and rehabilitation services, whenever the department
 2 of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The
 3 support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under
 4 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of
 5 the order or the most recent modification.

6 (c) The nonexistence of a medical support order as defined in [section 4] or a violation of a medical
 7 support order justifies an immediate modification of child support in order to:

8 (i) provide for the actual or anticipated costs of the child's medical care;

9 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

10 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit
 11 in the determination of the child support obligation.

12 (3) The provisions as to property disposition may not be revoked or modified by a court, except:

13 (a) upon written consent of the parties; or

14 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws
 15 of this state.

16 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future
 17 maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

18 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's
 19 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later
 20 than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement
 21 or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death
 22 of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support
 23 may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the
 24 circumstances."

25
 26 **Section 29.** Section 40-5-201, MCA, is amended to read:

27 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

28 (1) "Alleged father" means a ~~man~~ person who is alleged to have engaged in sexual intercourse with a
 29 child's mother during a possible time of conception of the child or a ~~man~~ person who is presumed to be a child's
 30 father under the provisions of 40-6-105.

1 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
2 self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of
3 age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior
4 to the person's 18th birthday and for whom:

5 (i) support rights are assigned under 53-2-613;

6 (ii) a public assistance payment has been made;

7 (iii) the department is providing support enforcement services under 40-5-203; or

8 (iv) the department has received a referral for interstate services from an agency of another state under
9 the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security
10 Act.

11 (b) ~~Child~~ The term may not be construed to limit the ability of the department to enforce a support order
12 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

13 (3) "Department" means the department of social and rehabilitation services.

14 (4) "Director" means the director of the department of social and rehabilitation services or the director's
15 authorized representative.

16 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

17 (6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for
18 the purposes of this chapter.

19 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a
20 child or children.

21 (8) "Obligee" means:

22 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
23 under this part; or

24 (b) a public agency of this or another state having the right to receive current or accrued support
25 payments.

26 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

27 (10) "Parent" means the natural or adoptive parent of a child.

28 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either
29 that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
30 natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen

1 test and DNA probe technology.

2 (12) "Public assistance" means any type of monetary or other assistance for a child, including medical
3 and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is
4 living, if assistance has been furnished with respect to the child by a state or county agency of this state or any
5 other state.

6 (13) "Support debt" or "support obligation" means the amount created by:

7 (a) the failure to provide for the medical, health, and support to needs of a child under the laws of this
8 or any other state or a support order; or

9 (b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance
10 also contains a judgment or order requiring payment of child support for a child of whom the person awarded
11 maintenance is the custodial parent.

12 (14) "Support order" means ~~an a temporary or final~~ order providing ~~a for the periodic payment of a set~~
13 ~~or determinable amount of money for temporary or final periodic payment of funds for the support of a child,~~
14 including medical and health needs, day-care, and other related expenses and costs of the child, that is issued
15 by:

16 (a) a district court of this state;

17 (b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

18 (c) an administrative agency pursuant to proceedings under this part; or

19 (d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function
20 and process similar to those of the department under this part.

21 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated
22 thereunder."

23

24 **Section 30.** Section 40-5-208, MCA, is amended to read:

25 **"40-5-208. Medical support -- obligation enforcement -- ~~sanctions.~~** (1) ~~(a)~~ In any proceeding initiated
26 pursuant to this part to establish a child support order, whether final or temporary, and in each modification of
27 an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for
28 each child if health insurance coverage is available through the obligor's employment or other group health
29 insurance plan support order must include a medical support order as defined in [section 4]. ~~The order or~~
30 ~~modification of an order must include a statement that the insurance must be obtained and maintained whenever~~

1 ~~the department is providing support enforcement services and that the failure to do so may result in the~~
 2 ~~imposition of sanctions under this section.~~

3 ~~(b) If the support order or modification of an order does not include a provision requiring the obligor to~~
 4 ~~provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support~~
 5 ~~enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health~~
 6 ~~insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:~~

7 ~~(i) an order requiring the obligee to maintain health insurance coverage;~~

8 ~~(ii) an agreement that the obligee will maintain health insurance coverage; or~~

9 ~~(iii) a failure or omission of the court order or modification of an order to require health insurance~~
 10 ~~coverage.~~

11 ~~(2) (a) If the department is providing child support enforcement IV-D services and the obligor is required~~
 12 ~~by an existing district court order or an administrative order under this section to provide health insurance~~
 13 ~~coverage for a child, the department shall also enforce the health insurance obligation. any order issued by a~~
 14 ~~court or administrative agency of competent jurisdiction that:~~

15 ~~(a) requires the obligor to make payments for the health or medical needs of the child, whether~~
 16 ~~expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same~~
 17 ~~enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied~~
 18 ~~to medical or health obligations.~~

19 ~~(b) requires the obligor to enroll a child in a health benefit plan or individual insurance as defined in~~
 20 ~~[section 4]. The department may take action to enforce the order under the provisions of [sections 1 through~~
 21 ~~25] or may impose any other appropriate remedy.~~

22 ~~(b) (3) (a) To ensure that health insurance coverage is available for the child, the obligor To permit the~~
 23 ~~department to determine whether enforcement action is necessary, if the obligor is required to enroll the child~~
 24 ~~in a health benefit plan or individual insurance, upon written request by the department, the obligor shall provide~~
 25 ~~the name of the individual insurance carrier or health benefit plan, the policy identification name and number, the~~
 26 ~~names of the persons covered, and any other pertinent information regarding coverage.~~

27 ~~(b) Failure of the obligor to provide the requisite information to the department may be punished as a~~
 28 ~~contempt under 40-5-226.~~

29 ~~(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the~~
 30 ~~department and show cause why a sum of not more than \$100 should not be assessed for each month health~~

1 ~~insurance coverage is not secured or maintained if the department determines an obligor has failed to:~~

2 ~~(i) obtain or maintain health insurance coverage as required under this section; or~~

3 ~~(ii) provide information required under this section.~~

4 ~~(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage~~
5 ~~has not been obtained or maintained or that the obligor has failed to provide the information required, the~~
6 ~~department may assess against the obligor not more than \$100 for each month health insurance coverage has~~
7 ~~not been obtained or maintained or for each month information has not been provided. The amounts may be~~
8 ~~enforced by any administrative remedy available to the department for the enforcement of child support~~
9 ~~obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title~~
10 ~~40, chapter 5, part 4.~~

11 ~~(4) The health insurance coverage must be provided under this section even though it may reduce the~~
12 ~~amount of the child support obligation or reduce the obligor's ability to pay child support as required.~~

13 (4) If the department is providing services for a child and a child support order or modification of a child
14 support order does not include a medical support order as defined in [section 4] or fails to include any other
15 provision for the health and medical needs of the child:

16 (a) upon notice to the obligor, the obligor shall enroll the child in a health or medical insurance plan
17 available to the obligor through an employer or other group for which the premium is partially or entirely paid by
18 the employer or other group; and

19 (b) the obligor shall continue enrollment of the child in the plan until:

20 (i) a medical support order is entered;

21 (ii) the obligor can demonstrate to the department that the cost of providing coverage is not reasonable;

22 (iii) the obligor's employment or membership in the group has terminated and the plan is no longer
23 available to the obligor;

24 (iv) the employer or group eliminates coverage for all employees or members; or

25 (v) the department ceases to provide services for the child.

26 (c) If the obligor fails to enroll a child in a health or medical insurance plan under this subsection (4) or
27 lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not
28 be found if the obligor shows that the cost of providing coverage for the child is not reasonable.

29 ~~(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset~~
30 ~~expenditures for medicaid."~~

1 **Section 31.** Section 40-6-116, MCA, is amended to read:

2 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or
3 nonexistence of the parent and child relationship is determinative for all purposes.

4 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall
5 order that a substitute birth certificate be issued under 40-6-123.

6 (3) (a) The judgment or order may contain any other provision directed against the appropriate party to
7 the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the
8 furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of
9 the child.

10 (b) Except when the financial responsibility of a responsible parent is in the process of being determined
11 pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision
12 concerning the duty of child support.

13 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
14 pregnancy and confinement.

15 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

16 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered
17 in lieu of periodic payments of support.

18 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses
19 already incurred that the court considers just.

20 (5) In determining the amount to be paid by a parent for support of the child and the period during which
21 the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

22 (a) the needs of the child, including medical needs;

23 (b) the standard of living and circumstances of the parents;

24 (c) the relative financial means of the parents;

25 (d) the earning ability of the parents;

26 (e) the need and capacity of the child for education, including higher education;

27 (f) the age of the child;

28 (g) the financial resources and the earning ability of the child;

29 (h) the responsibility of the parents for the support of others;

30 (i) the value of services contributed by the custodial parent;

1 (j) the cost of day care for the child; and

2 (k) any custody arrangement that is ordered or decided upon.

3 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
4 the child support obligation by applying the standards in this section and the uniform child support guidelines
5 adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be
6 used in all cases, including cases in which the order is entered upon the default of a party and those in which
7 the parties have entered into an agreement regarding the support amount. A verified representation of a
8 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
9 financial information for use in applying the guidelines. The amount determined under the guidelines is presumed
10 to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that
11 the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate
12 in that particular case.

13 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
14 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
15 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
16 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
17 amount must include a statement of the amount of support that would have ordinarily been ordered under the
18 guidelines.

19 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
20 child's support, the court shall state its reasons for not ordering child support.

21 (7) The judgment or order, whether temporary or final, concerning child support and each modification
22 of a judgment or order for child support must include a ~~provision addressing health insurance coverage in the~~
23 ~~following cases: medical support order as defined in [section 4].~~

24 ~~(a) If either party has available through an employer or other organization health insurance coverage for~~
25 ~~the child or children for which the premium is partially or entirely paid by the employer or organization, the~~
26 ~~judgment or order may contain a provision requiring that coverage for the child or children be continued or~~
27 ~~obtained.~~

28 ~~(b) In the event that health insurance required in a child support judgment or order becomes unavailable~~
29 ~~to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the~~
30 ~~absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the~~

1 requirement.

2 ~~(e) The parties may by written agreement provide for the health care coverage required by this section,~~
3 ~~subject to the approval of the court.~~

4 ~~(d) Unless otherwise provided in the decree, the health care coverage required by this section is in~~
5 ~~addition to and not in substitution, in whole or in part, for the child support obligation.~~

6 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the
7 support order, a support obligation established by judgment, decree, or order under this section, whether
8 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be
9 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
10 support order that omits the exception or that provides for a payment arrangement inconsistent with this section
11 is nevertheless subject to withholding for the payment of support without need for an amendment to the support
12 order or for any further action by the court.

13 (b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a
14 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to
15 the obligor's regular pay period.

16 (9) For the purposes of income withholding as provided in subsection (8), whenever the district court
17 establishes or modifies a child support obligation, the judgment, decree, or order must include a provision
18 requiring the parent obligated to pay support to inform the court and, if the department of social and
19 rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the
20 judgment, decree, or order, the department, of the following:

21 (a) the name and address of the parent's current employer;

22 (b) whether the parent has access to health insurance through an employer or other group; and

23 (c) if insurance coverage is available, the health insurance policy information.

24 ~~(10) If the department of social and rehabilitation services is providing or later provides support~~
25 ~~enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an~~
26 ~~order must contain a statement providing that the noncustodial parent, without further order of the court, is~~
27 ~~required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning~~
28 ~~statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

29 ~~(10)~~ Each district court judgment, decree, or order establishing a final child support obligation under
30 this part and each modification of a final order for child support must contain a statement that the order is

1 subject to review and modification by the department of social and rehabilitation services upon the request of
2 the department or a party under 40-5-271 through 40-5-273 when the department is providing services under
3 Title IV-D of the Social Security Act for the enforcement of the order."

4

5 NEW SECTION. SECTION 32. CODIFICATION INSTRUCTION. [SECTIONS 1 THROUGH 25] ARE
6 INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 40, AND THE PROVISIONS OF TITLE 40 APPLY
7 TO [SECTIONS 1 THROUGH 25].

8

9 NEW SECTION. Section 33. Severability. If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12

13 NEW SECTION. Section 34. Repealer. Sections 40-5-440, 40-5-441, and 40-5-442, MCA, are repealed.

14

15 NEW SECTION. Section 35. Effective date. [This act] is effective July 1, 1995.

16

-END-

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SENATE BILL NO. 402
INTRODUCED BY ECK
BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; ENACTING FEDERAL LEGISLATION AS REQUIRED; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN EFFECTIVE DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.



HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 402** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Kottel

And, that such amendments read:

1. Title, line 7.
Strike: "ENACTING FEDERAL LEGISLATION AS REQUIRED;"
2. Page 1, line 13.
Strike: "necessary"
Insert: "appropriate"
Strike: "enacting federally required legislation in order"
3. Page 1, line 14.
Strike: "to maintain adequate levels of federal funding and"
4. Page 1, line 17.
Following: "bills"
Insert: "; and
WHEREAS, parents should be held responsible for providing medical care for their children, whether or not the parents voluntarily do so"
5. Page 3.
Following: line 11
Insert: "(12) "Plan administrator" means the person or entity that assesses and collects premiums, accepts and processes claims, and pays benefits."
Renumber: subsequent subsections

SB 402

Committee Vote:
Yes 16, No 2.

HOUSE

6. Page 10, line 15.

Strike: "for being under"

Insert: "solely because of the issuance of"

7. Page 10, line 16.

Strike: "a"

Insert: "the issuance of the"

8. Page 10, line 19.

Strike: "less"

Insert: "more"

9. Page 10, lines 19 through 23.

Strike: "and order" on line 19 through "fund" on line 23

10. Page 24, line 12.

Strike: "a temporary or final"

Insert: "an"

Strike: "for the periodic payment of a set"

11. Page 24, line 13.

Following: line 12

Strike: "or"

Insert: "a"

Strike: "of money"

Following: "~~funds for~~"

Insert: "temporary or final periodic payment of funds for"

12. Page 24, line 14.

Strike: "including" through "the child,"

-END-

1 SENATE BILL NO. 402

2 INTRODUCED BY ECK

3 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS
6 TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES;
7 ~~ENACTING FEDERAL LEGISLATION AS REQUIRED~~; ALLOWING THE DEPARTMENT TO ENFORCE ORDERS
8 FOR PERIODIC PAYMENTS OF HEALTH OR MEDICAL NEEDS OR ENROLLMENT IN HEALTH OR MEDICAL
9 INSURANCE PLANS; AMENDING SECTIONS 33-22-1202, 40-4-204, 40-4-208, 40-5-201, 40-5-208, AND
10 40-6-116, MCA; REPEALING SECTIONS 40-5-440, 40-5-441, AND 40-5-442, MCA; AND PROVIDING AN
11 EFFECTIVE DATE."

12
13 WHEREAS, it is ~~necessary~~ APPROPRIATE to draft a bill specifically ~~enacting federally required~~
14 ~~legislation in order to maintain adequate levels of federal funding and~~ to present proposed program
15 improvements for medical support enforcement in a single, comprehensive bill that promotes the needs of
16 legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need
17 for hearings and readings on those bills; AND

18 WHEREAS, PARENTS SHOULD BE HELD RESPONSIBLE FOR PROVIDING MEDICAL CARE FOR
19 THEIR CHILDREN, WHETHER OR NOT THE PARENTS VOLUNTARILY DO SO.

20
21 STATEMENT OF INTENT

22 A statement of intent is required for this bill because it grants rulemaking authority to the
23 department of social and rehabilitation services TO ADOPT RULES FOR EXPEDITED PROCEDURES. ~~The~~
24 ~~department should adopt rules for expedited procedures, appropriate fines and penalties, and methods by~~
25 ~~which to encourage cooperation from parents, employers, unions, and health benefit providers.~~

26
27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

28
29 NEW SECTION. Section 1. Short title. [Sections 1 through 25] may be known and cited as the
30 "Medical Support Reform Act".

1 **NEW SECTION. Section 2. Purpose.** The purpose of [sections 1 through 25] is to promote the
2 health and medical care of children and to conserve the expenditure of public assistance funds by ensuring
3 that children have access to reasonable health insurance coverage or a health benefit plan provided by their
4 parents, who are primarily responsible for their support.

5
6 **NEW SECTION. Section 3. Scope.** [Sections 1 through 25] do not expand any coverage available
7 to any individual under any health insurance coverage or a health benefit plan required under federal law
8 or Title 33, chapter 22, though [sections 1 through 25] may expand the class of children who may be
9 eligible for individual insurance or health benefit plan coverage due to a duty of support owed to them by
10 their parents.

11
12 **NEW SECTION. Section 4. Definitions.** For purposes of [sections 1 through 25], the following
13 definitions apply:

14 (1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose
15 behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled
16 or eligible for enrollment under a health benefit plan or individual insurance policy.

17 (2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

18 (3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under
19 which dependent children of employees may continue to receive, for a limited time under specific
20 circumstances, health plan coverage after termination of employment.

21 (4) "Department" means the department of social and rehabilitation services as provided for in
22 2-15-2201.

23 (5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other
24 than public assistance programs, that provides medical care or benefits for a child. The term includes but
25 is not limited to a health maintenance organization, self-funded group, medical or health services
26 corporation, or similar plan.

27 (6) "Individual insurance" means health or medical insurance coverage other than a group health
28 benefit plan or public assistance that is or may be provided individually for a child.

29 (7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness,
30 or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose

1 of affecting any structure or function of the body.

2 (8) "Medical support order" means a judgment, decree, or order, including approval of a settlement
3 agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and
4 that complies with the requirements of [sections 1 through 25].

5 (9) "Obligated parent" means the parent who is required by a medical support order to provide for
6 the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

7 (10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker
8 having lawful charge of the child.

9 (11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer,
10 trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic
11 basis, who has or provides individual insurance or a health benefit plan, and who is subject to the
12 jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure.

13 (12) "PLAN ADMINISTRATOR" MEANS THE PERSON OR ENTITY THAT ASSESSES AND
14 COLLECTS PREMIUMS, ACCEPTS AND PROCESSES CLAIMS, AND PAYS BENEFITS.

15 ~~(12)~~(13) "Primary parent" means the parent with whom the child resides for the most 24-hour
16 periods in a plan year.

17 ~~(13)~~(14) "Qualified medical child support order" means an order that meets the requirements of
18 29 U.S.C. 1169.

19 ~~(14)~~(15) "Third-party custodian" means an agency or person other than a parent who:

- 20 (a) is authorized by legal process to have physical custody of a child;
- 21 (b) has actual physical custody of a child with the written consent of the parent or parents having
22 legal custody of the child; or
- 23 (c) has actual physical custody of a child because of the parents' neglect, failure, or inability to
24 provide for the child's support, medical care, and other needs.

25 ~~(15)~~(16) "Tribunal" means a court of competent jurisdiction or the department.

26

27 NEW SECTION. Section 5. Establishing medical support orders. (1) In an action or proceeding
28 to establish a child support order, whether temporary or final, or to modify an existing child support order,
29 the tribunal shall also establish a medical support order. In establishing a medical support order, a tribunal
30 shall consider:

- 1 (a) the best interests of the child;
- 2 (b) the child's present and anticipated needs for medical care;
- 3 (c) the financial ability of the parents to pay for individual insurance or a health benefit plan; and
- 4 (d) the extent to which an available health benefit plan or individual insurance coverage is
- 5 subsidized or reduced in cost by an employer or by participation in a plan on a group basis.

6 (2) Except as otherwise provided in [sections 1 through 25], a tribunal may not consider a child's

7 eligibility for a public assistance program as a factor in determining a parent's financial ability to afford

8 individual insurance or a health benefit plan.

9

10 **NEW SECTION. Section 6. Contents of medical support order.** (1) A medical support order may

11 specify terms for individual insurance coverage and, to the extent of options within an available health

12 benefit plan, the terms for plan coverage, including:

- 13 (a) minimum required policy limits;
- 14 (b) minimum required coverage;
- 15 (c) maximum terms for deductibles or required copayments; and
- 16 (d) other significant terms.

17 (2) If a child is already covered by individual insurance or a health benefit plan, if the child does

18 not have existing coverage but coverage can be obtained under a health benefit plan that is available to the

19 primary parent, or if the child does not have existing coverage and coverage for the child under a plan is

20 available to the other parent, then the medical support order must require participation in that plan unless:

- 21 (a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or
- 22 cost-beneficial; or
- 23 (b) another plan or individual insurance is available that will better serve the interests of the parties.

24 (3) If health benefit plans are available to both parents at a combined cost that is reasonable or

25 cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage,

26 the medical support order must require both parents to provide coverage for the child.

27 (4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not

28 available to either parent, the parent other than the primary parent must be required to obtain individual

29 insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective:

- 30 (a) the parent other than the primary parent must be required to obtain individual insurance or a

1 health benefit plan at such time in the future that it becomes available to that parent at reasonable cost.

2 The requirements in this subsection (4) to obtain a plan are not enforceable if:

3 (b) the primary parent has obtained individual insurance or a health benefit plan for the child and
4 both parents have agreed in writing to share the costs of maintaining the coverage; or

5 (c) the other parent persuades the tribunal that the cost of available health benefit plans is not
6 reasonable or cost-beneficial.

7 (5) This section also applies when a child is placed with a third-party custodian, unless a parent
8 has obtained individual insurance or a plan for the child and both parents have agreed in writing to share
9 the costs of maintaining the coverage or a parent persuades the tribunal that the cost of available individual
10 insurance and plans is not reasonable or cost-beneficial. For purposes of this subsection, the primary
11 parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12
12 months prior to placement with the third-party custodian.

13 (6) The medical support order must also provide that the cost of individual insurance or the health
14 benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for
15 the child that are not covered by individual insurance or the plan must be shared between parents in
16 accordance with the child support guidelines. If the order fails to designate each parent's share, each
17 parent is liable for 50% of the costs and expenses.

18 (7) (a) Except as provided in subsection (7)(b), if the cost of individual insurance or a health benefit
19 plan is not reasonable or cost-beneficial or if a plan is not otherwise available and if the child is a recipient
20 of medical assistance under Title XIX of the federal Social Security Act or later becomes a recipient of
21 medical assistance:

22 (i) when the child is a recipient together with a parent, the medical support order must require the
23 other parent to pay \$50 per month;

24 (ii) when the child is not a recipient with a parent, the medical support order must require each
25 parent to pay \$50 per month; and

26 (iii) when the child is a recipient with both parents, neither parent has an obligation under this
27 subsection (7)(a).

28 (b) The tribunal may order the parent or parents to pay a greater or lesser amount each month as
29 the tribunal finds appropriate to the circumstances.

30 (c) The amounts ordered to be paid under this subsection (7) must be paid to the department for

1 return to the appropriate state treasury fund to help offset the costs of the medical assistance program.

2 (8) The costs of providing individual insurance or a health benefit plan may not be used as a direct
3 offset to the child support obligation. However, as provided by the child support guidelines, the costs may
4 be considered in making or modifying a child support order.

5 (9) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost
6 if:

7 (i) an amount payable for individual insurance or health benefit plan premiums does not exceed
8 25% of the obligated parent's total parental child support obligation when calculated under the child
9 support guidelines without credit for the medical support obligation; or

10 (ii) a health benefit plan is available through an employer or other group organization for which the
11 premium is partially or entirely paid by the employer or other group organization.

12 (b) The presumption under subsection (9)(a) may be rebutted by clear and convincing evidence and
13 the tribunal has the discretion to:

14 (i) order individual insurance or health benefit plan coverage when the amount of the premium may
15 be greater than the presumptive amount; or

16 (ii) not order coverage when the amount of the premium is less than the presumptive amount.

17
18 **NEW SECTION. Section 7. Mandatory provisions of medical support order.** (1) Unless the tribunal
19 expressly specifies otherwise, a medical support order must include terms directed toward the provisions
20 of [section 6(2) through (9)], even though a provision contained in those subsections may not apply to the
21 parent's circumstances at the time the order is entered. The terms may be established as alternatives or
22 contingencies that provide that if circumstances later change, the health needs of the child will continue
23 to be met under one of the subsections without need for modification of the medical support order or other
24 action by the tribunal that issued the order or any other tribunal of competent jurisdiction.

25 (2) If circumstances change and a parent believes that corresponding changes in costs are not
26 reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.

27 (3) If a health benefit plan is provided through an employer, union, or other group, the medical
28 support order must also include provisions necessary to entitle the order to recognition as a qualified
29 medical child support order.

30

1 **NEW SECTION. Section 8. Persistence and duration of obligation.** (1) A parent's obligation to
2 provide for medical care of a child ceases only when the parental obligation to support a child terminates
3 under law.

4 (2) The obligations to provide medical care for a child, provide financial child support, and provide
5 or comply with visitation and custody arrangements are independent of each other, and the failure or
6 inability to provide one or more does not reduce one of the others.

7 (3) A guardian or caretaker who is not the child's father or mother may not be compelled to
8 support the child or be held liable for the child's expenses, except to the extent that the guardian or
9 caretaker has voluntarily agreed in writing to assume the responsibility.

10
11 **NEW SECTION. Section 9. Effect of order on health benefit plans.** (1) The duties and
12 responsibilities under a plan pursuant to [sections 1 through 25] apply equally to a union or employer that
13 serves as the administrator of a plan for a parent who is a member or employee.

14 (2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may
15 be submitted to the plan administrator by either parent, by the department, or by a third-party custodian.
16 The party submitting the order shall submit the child's name and birth date and the names and mailing
17 addresses of the parents. If the child is a recipient of public assistance, the party submitting the order shall
18 also submit the address of the department. If there is a third-party custodian of the child, the address of
19 the third-party custodian must also be submitted.

20 (3) Presentation of the medical support order to the plan administrator authorizes each parent, the
21 department, if the department has interest, or the third-party custodian to receive pertinent notices from
22 the plan administrator and to freely communicate and generally interact with the plan administrator in all
23 respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so
24 personally.

25 (4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation
26 of the order to the plan administrator binds the plan to enroll the child in the plan as provided by [sections
27 1 through 25].

28 (5) If a health benefit plan is available through the obligated parent's employer or other payor of
29 income, presentation of the medical support order to the payor binds the payor to enrollment of the child
30 in the plan and to automatically deduct premium payments required by the plan from the obligated parent's

1 income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

2 (6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily
3 delay health benefit plan coverage for a child.

4 (b) If more than one plan is available to an obligated parent and the medical support order fails to
5 specify a plan or combination of benefits to be provided for a child or if there has been a change in plans
6 due to a change in employment of the obligated parent or for some other reason, the parties and the
7 department shall apply the medical support order so as to provide the child with coverage under a plan that
8 has a reasonable cost and that provides the child with benefits closest to those described in the order.

9

10 **NEW SECTION. Section 10. Authorization to enroll and participate in health benefit plan.** (1) A plan
11 administrator shall enroll a child when given a medical support order even if the obligated parent fails to execute
12 documents required by the plan. The parents, the department, and a third-party custodian may release to a plan
13 provider, employer, union, or other group any information necessary to obtain or enforce medical support or to
14 facilitate the preparation, submission, processing, verification, or payment of claims.

15 (2) The signature of either parent, of an authorized representative of the department, or of a third-party
16 custodian authorizes the plan to receive and process claims and exercise any available options for the
17 continuation or extension.

18

19 **NEW SECTION. Section 11. Authorization to cure nonpayment of health benefit plan premium.** In the
20 case of an actual or threatened adverse action that would reduce or terminate plan benefits because of
21 nonpayment of premium or insufficient payment of premium, the other parent, the department, or the third-party
22 custodian may advance the cost of necessary premiums and keep benefits continually in force for the child. The
23 advance may be entered as a judgment for unpaid child support in favor of the advancing party and against the
24 obligated parent.

25

26 **NEW SECTION. Section 12. Obligations of health benefit plan.** (1) Upon receipt of a medical support
27 order requiring a parent to provide coverage for a child, the administrator of a health benefit plan who receives
28 the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The health
29 benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

30 (2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance

1 is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to
2 freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively
3 as if done by the obligated parent.

4 (3) A copy of the medical support order must be accepted by the plan administrator as a request and
5 application of the eligible obligated parent requesting that new or continued benefits, including continuation
6 coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after
7 receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan
8 as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

9 (4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary
10 premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in
11 [section 13].

12 (5) Within 30 days after receipt of a copy of a medical support order, the health benefit plan shall give
13 written notice to both parents, to the department, and to any third-party custodian setting forth the status of
14 the child's enrollment in the plan and the addresses and telephone numbers of the offices where further
15 information can be obtained and where changes of address and other updated information should be submitted.

16 (6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide
17 written notice to both parents, to the department, whenever public assistance is paid for the child, or to the
18 third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone
19 numbers of the offices where further information can be obtained and where changes of address and other
20 updated information should be submitted.

21 (7) A plan administrator may not terminate a child's coverage unless:

22 (a) written evidence shows that the medical support order is no longer in effect, that the child will be
23 enrolled in another health benefit plan, or that individual insurance is provided;

24 (b) the employer, union, or other group eliminates coverage for all members or employees;

25 (c) the plan is available through the obligated parent's employer or other payor of income and the
26 obligated parent's employment or right to receive income from the payor is terminated and continued coverage
27 under COBRA is not available or the time for such coverage is expired; or

28 (d) the plan is available through the obligated parent's employer or other payor of income, the amount
29 of the premium or the premium together with child support exceeds the limits in this section, and the other
30 parent, the department, or the third-party custodian has not cured the insufficiency under [section 11].

1 **NEW SECTION. Section 13. Obligation of payor.** (1) Upon receipt of a medical support order, a payor
 2 providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required
 3 premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not
 4 exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium
 5 exceeds the maximum, the payor may not withhold the excess. If the premium, together with child support to
 6 be withheld, exceeds the maximum, child support has priority and the payor may not withhold the part of the
 7 premium that is in excess of the maximum.

8 (2) A medical support order has priority over garnishment of the income of the obligated parent for any
 9 purpose, except child support.

10 (3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment
 11 following any break in service, layoff, leave of absence, or other similar circumstance.

12 (b) Upon the termination of employment, extended layoff, or any other break in service that causes
 13 coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the
 14 department or the third-party custodian, if either submitted the medical support order or submitted a written
 15 notice of interest to the plan.

16 (4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action
 17 against an obligated parent ~~for being under~~ **SOLELY BECAUSE OF THE ISSUANCE OF** a medical support order.

18 (b) The obligated parent has the burden of proving that a **THE ISSUANCE OF THE** medical support order
 19 was the sole reason for the employer's action.

20 (c) A payor **KNOWINGLY** violating this section is subject to the contempt powers of the tribunal issuing
 21 the medical support order. The tribunal may, in addition, impose a civil penalty of not ~~less~~ **MORE** than \$150 ~~and~~
 22 ~~order the payor to reinstate the obligated parent's employment and make restitution of lost wages and benefits.~~
 23 ~~If the tribunal imposing the civil penalty is a court, the money must be deposited in the county treasury to the~~
 24 ~~credit of the court's operating fund. If the tribunal is the department, the money must be deposited in the state~~
 25 ~~general fund.~~

26
 27 **NEW SECTION. Section 14. Obtaining information.** Upon the request of either of the child's parents,
 28 the department, or a third-party custodian, a health benefit plan shall provide information about the child's health
 29 benefit coverage, including but not limited to:

30 (1) a description of the benefits and options available under the plan and summaries of the terms and

- 1 costs of all plans and options for which the child is eligible;
- 2 (2) names and addresses of the employer, union, plan, or other entities involved in administering the
- 3 plan;
- 4 (3) identification cards or other methods for access to coverage, including but not limited to numbers,
- 5 codes, or other references applicable to the plan or to the group through which the child participates;
- 6 (4) claims received or paid on behalf of the child, including the dates and amounts of payments and the
- 7 names and addresses of parties who have submitted claims or received payment for claims; and
- 8 (5) other information relevant to the preparation, submission, processing, or verification of claims.
- 9

10 **NEW SECTION. Section 15. Paying claims.** Payment for a medical claim assigned to the department

11 must be to the department. If a medical claim is not assigned to the department and the claim is submitted by

12 a parent or a third-party custodian, payment must be to the health service provider involved. Payment may be

13 to the parent or third-party custodian submitting the claim if there is written evidence of prepayment to the health

14 service provider by that parent or third-party custodian.

15

16 **NEW SECTION. Section 16. Newborn children.** ~~If, within 1 year after the birth of a child, a parent~~

17 ~~obligated by a medical support order submits the order to a health benefit plan, along with plan premium~~

18 ~~payments for the period between birth and the date of submission to the plan, the plan shall provide coverage~~

19 ~~for the child retroactive to the date of birth.~~ **A HEALTH BENEFIT PLAN MUST PROVIDE THE COVERAGE**

20 **REQUIRED BY 33-22-301 TO A NEWBORN CHILD COVERED BY [SECTIONS 1 THROUGH 25].**

21

22 **NEW SECTION. Section 17. Adopted children -- preexisting conditions.** A health benefit plan shall

23 provide the coverage required by 33-22-130 to a child placed for adoption.

24

25 **NEW SECTION. Section 18. Nonexclusion -- nondiscrimination by health benefit plan.** A health benefit

26 plan may not deny or limit enrollment of an obligated parent's child or discriminate against a child because:

- 27 (1) the child is not claimed as a dependent on the obligated parent's state or federal income tax return
- 28 or considered as a dependent for tax purposes;
- 29 (2) the child was born out of wedlock;
- 30 (3) the child does not reside with the obligated parent;

1 (4) the child does not reside in the health plan's service area. A plan that provides medical care at
 2 particular locations or geographic areas shall also provide comparable benefits for a child whose residence or
 3 location is elsewhere.

4 (5) the natural child of the obligated parent has a preexisting condition, unless the plan does not provide
 5 for enrollment or provides only for limited enrollment of children with preexisting conditions.

6
 7 **NEW SECTION. Section 19. Medical assistance eligibility.** A health benefit plan may not use information
 8 pertaining to medical assistance eligibility under Title XIX of the federal Social Security Act as a factor in enrolling
 9 a child in a plan or in making payments for benefits on behalf of the covered child. A health benefit plan may
 10 not impose any restrictions or requirements on recipients of medical assistance or the department different from
 11 those applicable to any other plan participant.

12
 13 **NEW SECTION. Section 20. Void health benefit plans.** A health benefit plan provision that denies or
 14 restricts coverage for a child in violation of a provision of [sections 15 through 18] is void as against public
 15 policy.

16
 17 **NEW SECTION. Section 21. Penalty imposed by tribunal.** (1) In addition to any other penalty provided
 18 by [sections 1 through 25] or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed \$25
 19 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly
 20 violated a medical support order or a provision of or a rule adopted under [sections 1 through 25].

21 (2) The civil penalty must be deposited as provided in [section 13].

22 (3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be
 23 reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

24
 25 **NEW SECTION. Section 22. Duties of parents -- consequences of noncompliance.** (1) An obligated
 26 parent shall promptly execute and deliver to the provider of individual insurance, to a health benefit plan, or to
 27 another proper party all forms and instruments necessary to ensure the child's timely enrollment and continuous
 28 participation in any individual insurance or plan ordered by the medical support order. An obligated parent shall
 29 timely submit claims for processing, verification, and payment. Intentional delay or interference with enrollment
 30 or with the timely submission for processing, verification, and payment of a claim is punishable as provided in

1 [section 21] and by an award of costs and attorney fees to an opposing party.

2 (2) An obligated parent shall provide the other parent, the department, and the third-party custodian with
3 identification cards or other methods for access to coverage, including but not limited to numbers, codes, or
4 other references applicable to the individual insurance, health benefit plan, or group through which the child
5 receives coverage. Intentional delay or failure to provide information is punishable as provided in [section 21]
6 and by an award of costs and attorney fees to an opposing party.

7 (3) If a party receives a reimbursement payment from individual insurance or from a health benefit plan
8 but is not the party who has paid or is paying the underlying bill of the health service provider, the party receiving
9 the payment shall promptly pay over the proceeds to the proper party. In addition to any applicable penalty for
10 theft, conversion, civil contempt, or other wrongdoing, the amount of the payment may be entered as a judgment
11 in favor of the proper party and against the party failing to promptly pay over the reimbursement.

12 (4) An obligated parent who defaults on a medical support order by failing to obtain individual insurance
13 or a health benefit plan or who permits the individual insurance or plan coverage to lapse without securing a
14 comparable replacement is liable for all of the child's medical expenses and shall indemnify the other parent, the
15 department, or the third-party custodian for the cost of obtaining health benefit coverage and for all medical
16 expenses of the child. The obligated parent may be relieved of liability by proving to the satisfaction of the
17 tribunal that:

18 (a) no reasonable-cost or cost-beneficial individual insurance coverage or health benefit plan was
19 available for the child during the period of time involved and the other parent, the department, or the third-party
20 custodian has received notice of the nonavailability;

21 (b) the individual insurance coverage or plan ceased to be available for reasons wholly unrelated to the
22 conduct of the obligated parent, replacement coverage has not been available, and timely written notice of the
23 nonavailability has been given to the other parent, the department, or the third-party custodian; or

24 (c) the other parent or third-party custodian has obtained health coverage for the child and all parties
25 have entered into an enforceable written agreement to share the costs of the coverage.

26 (5) An obligated parent who provides individual insurance coverage or a health benefit plan that is
27 deficient under the requirements of the medical support order is liable, including liability by indemnification, for
28 all of the child's medical expenses that should have been covered but were not and for the cost to the other
29 parent, the department, or the third-party custodian of obtaining coverage that complies with the order. The
30 obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

1 (a) the coverage provided for the child has been the best available during the periods of time involved
 2 and timely written notice regarding the coverage available was given to the other parent, the department, or the
 3 third-party custodian;

4 (b) benefits have been reduced for reasons wholly unrelated to the conduct of the obligated parent,
 5 better coverage has not been available, and timely written notice has been given to the other parent, the
 6 department, or the third-party custodian; or

7 (c) the other parent or the third-party custodian has obtained coverage for the child and all parties have
 8 entered into an enforceable written agreement to share the costs of the coverage.

9 (6) Any liability for medical costs and expenses incurred under this section may be entered as a judgment
 10 for unpaid support in favor of the party or agency paying the same and against the obligated parent.

11 (7) The consequences of noncompliance with a medical support order apply, to the extent possible, to
 12 a judgment, decree, or support order that requires a parent to obtain medical or health insurance coverage for
 13 a child or to pay for a child's medical care and that was entered:

14 (a) by a tribunal prior to enactment of [sections 1 through 25]; or

15 (b) by a court or administrative agency of competent jurisdiction in another state or territory.

16
 17 **NEW SECTION. Section 23. Health coverage -- notice of intent to purchase.** (1) The department or a
 18 court on request of the department may issue an order requiring the obligated parent to appear and show cause
 19 why an order should not be issued permitting the department to purchase individual insurance or health benefit
 20 plan coverage for the obligated parent's child and requiring recovery of the premium from the obligated parent
 21 if the tribunal finds that:

22 (a) a medical support obligation has been established by order of a tribunal;

23 (b) the obligated parent has become delinquent by failing to provide individual insurance or a health
 24 benefit plan or lets the individual insurance or health benefit plan lapse;

25 (c) there is no payor to whom an order of enrollment under [section 12] applies;

26 (d) the child is currently eligible for medical assistance benefits under Title XIX of the federal Social
 27 Security Act, as amended; and

28 (e) other individual insurance or a health benefit plan is available for the child and can be purchased at
 29 a reasonable cost.

30 (2) Prior to issuing or requesting an order to show cause, the department shall give the obligated parent

1 notice of the intent to purchase coverage under this section and an opportunity to enroll the child in individual
2 insurance or a health benefit plan within 30 days after notice is received by the obligated parent.

3 (3) If the obligated parent provides written proof within the 30 days after receipt of the notice that the
4 child is enrolled in individual insurance or a health benefit plan, no further action may be taken by the
5 department.

6 (4) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule
7 upon the issues. The proceeding must be dismissed if the tribunal finds that the obligated parent has enrolled
8 the child in individual insurance or a health benefit plan or that the individual insurance or plan that the
9 department intends to purchase is not reasonable.

10 (5) A health benefit plan purchased under this section may be continued by the department until:

11 (a) the child is no longer eligible for medical assistance benefits;

12 (b) the obligated parent is no longer responsible under the law for the medical needs of the child; or

13 (c) the obligated parent provides written proof that the child has been enrolled in individual insurance
14 or another adequate health benefit plan.

15
16 **NEW SECTION. Section 24. Expedited enforcement procedures.** (1) A parent, the department, or the
17 third-party custodian may apply to the court for expedited enforcement procedures under [sections 1 through
18 25]. If the child receives medicaid, a parent or third-party custodian may apply to the department for and the
19 department may on its own motion use expedited enforcement procedures under [sections 1 through 25].

20 (2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent to
21 appear and show cause why an order, penalty, fine, or any combination should not be determined, assessed,
22 and entered under one or more provisions of [sections 1 through 25]. The obligated parent may appear at the
23 hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order must
24 be issued if the tribunal finds that:

25 (a) a medical support obligation has been established by order of a tribunal or by a court or administrative
26 agency of another state, territory, or Indian reservation;

27 (b) the obligated parent is liable for medical costs and expenses or premium payments under [sections
28 1 through 25];

29 (c) a parent receives a reimbursement payment from individual insurance or a health benefit plan and
30 fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the health

1 service provider;

2 (d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian the
3 parent's share of:

4 (i) copayments and deductibles required under the individual insurance or plan; or

5 (ii) costs and expenses not covered by individual insurance or a health benefit plan; or

6 (e) there are fines, penalties, or other financial sanctions that may be imposed under [sections 1 through
7 25].

8 (3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice of
9 the claim under [sections 1 through 25]. The obligated parent may pay the claim within 30 days after receiving
10 the notice. A copy of the notice must be given to the other parent, to the department, if the department is not
11 the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the third-party
12 custodian. The other parent, the department, or the third-party custodian may participate in the proceedings as
13 a party.

14 (4) An application for expedited enforcement may be based on any credible statements or evidence
15 presented to the tribunal, including the sworn affidavit of:

16 (a) a health care provider who has provided care or benefits for the child;

17 (b) an authorized representative of the department, the health benefit plan, or the individual insurer;

18 (c) either parent of the child; or

19 (d) the third-party custodian of the child.

20 (5) The order to show cause must inform the obligated parent and any other party of the party's right
21 to respond by affidavit. An affidavit may include written proof of payment. A hearing must be scheduled within
22 15 days after the date of service of the order on the obligated parent. If an affidavit with written proof of
23 payment is not received by the tribunal within 15 days and the obligated parent does not appear at the hearing,
24 judgment may be entered for the relief requested. If an affidavit with written proof of payment is received but
25 the obligated parent does not appear at the hearing, the tribunal may resolve the issues on the basis of credible
26 documents and affidavits submitted.

27 (6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule
28 upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of the liability
29 and the amount of the liability is not contested by a party to the proceedings.

30 (7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability as

1 an award against the liable parent. If requested to do so, the tribunal may make an award specifically in favor
 2 of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied bill of the
 3 health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical support liability
 4 involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous or in bad faith, the
 5 tribunal may impose sanctions against the party including an award of costs and attorney fees.

6 (8) Awards under this section may be collected by any remedy available for the collection of delinquent
 7 child support, but claims for current or past-due child support have priority.

8 (9) An award under this section is a final order and may be appealed if the tribunal is a court or may be
 9 reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

10
 11 **NEW SECTION.** **Section 25. Rulemaking authority.** The department may adopt rules to implement
 12 [sections 1 through 25].

13
 14 **Section 26.** Section 33-22-1202, MCA, is amended to read:

15 **"33-22-1202. Limited benefit disability insurance policies authorized.** (1) Insurers and health service
 16 corporations may issue limited benefit disability insurance policies that do not provide mandated health care
 17 coverage as required in 33-22-111, 33-22-114, 33-22-131, 33-22-229, 33-22-301, 33-22-302, 33-22-304,
 18 33-22-504, 33-22-506, 33-22-509, 33-22-703, 33-22-1002, 33-30-1001, 33-30-1003, 33-30-1004,
 19 33-30-1008, 33-30-1011, 33-30-1013, or any other provision enacted after January 1, 1991, unless the
 20 provision specifically mandates coverage for policies issued under this part.

21 (2) Limited benefit disability insurance policies may be issued only to the following persons:

22 (a) employers who:

23 (i) employ 20 or fewer employees working at least 20 hours per week; and

24 (ii) have been in business in the state for at least 12 months and have not contributed, within the
 25 preceding 12 months, to payment of any premiums for disability insurance on behalf of an employee;

26 (b) disabled or injured workers and their families;

27 (c) unemployed individuals and their families;

28 (d) self-employed individuals and their families; and

29 (e) a parent, or the department of social and rehabilitation services on behalf of the parent, who is
 30 ordered by a court or administrative authority of this or another state or who is required under 40-5-208~~41(b)~~

1 to provide health insurance coverage for a child if health insurance coverage is not available through employment
2 or a union. This subsection (e) applies only to orders or modifications of orders issued after July 1, 1991, by a
3 court or administrative authority.

4 (3) The insurer or health service corporation may establish terms and conditions for copayments and
5 deductibles.

6 (4) The insurer or health service corporation issuing a limited benefit disability insurance policy shall
7 provide the insured individual with a written disclosure statement, separate from the insurance policy, certificate,
8 or evidence of coverage, stating in clear and understandable language and format which mandatory coverages
9 and providers are not covered by the policy and what coverage is provided by the policy.

10 (5) Limited benefit disability insurance policies must provide coverage in accordance with the minimum
11 requirements set forth in 33-22-1203."

12
13 **Section 27.** Section 40-4-204, MCA, is amended to read:

14 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1) In a
15 proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either
16 or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's
17 support, without regard to marital misconduct.

18 (2) The court shall consider all relevant factors, including:

19 (a) the financial resources of the child;

20 (b) the financial resources of the custodial parent;

21 (c) the standard of living the child would have enjoyed had the marriage not been dissolved;

22 (d) the physical and emotional condition of the child and the child's educational and medical needs;

23 (e) the financial resources and needs of the noncustodial parent;

24 (f) the age of the child;

25 (g) the cost of day care for the child;

26 (h) any custody arrangement that is ordered or decided upon; and

27 (i) the needs of any person, other than the child, whom either parent is legally obligated to support.

28 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
29 the child support obligation by applying the standards in this section and the uniform child support guidelines
30 adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be

1 used in all cases, including cases in which the order is entered upon the default of a party and those in which
2 the parties have entered into an agreement regarding the support amount. A verified representation of the
3 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
4 financial information for use in applying the guidelines. The amount determined under the guidelines is presumed
5 to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that
6 the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate
7 in that particular case.

8 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
9 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
10 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
11 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
12 amount must include a statement of the amount of support that would have ordinarily been ordered under the
13 guidelines.

14 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
15 child's support, the court shall state its reasons for not ordering child support.

16 (4) Each temporary or final district court judgment, decree, or order establishing a ~~final~~ child support
17 obligation under this title and each modification of a final order for child support must include a ~~provision~~
18 ~~addressing health insurance coverage in the following cases:~~

19 ~~(a) If either party has available through an employer or other organization health insurance coverage for~~
20 ~~the child or children for which the premium is partially or entirely paid by the employer or organization, the~~
21 ~~judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued~~
22 ~~or obtained.~~

23 ~~(b) In the event that health insurance required in a child support judgment, decree, or order becomes~~
24 ~~unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party~~
25 ~~must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court~~
26 ~~modify the requirement.~~

27 ~~(c) All temporary child support orders must contain a provision requiring the party who has health~~
28 ~~insurance in effect for the child or children of the parties to continue the insurance coverage pending final~~
29 ~~disposition of the case.~~

30 ~~(d) The parties may by written agreement provide for the health care coverage required by this section,~~

1 ~~subject to the approval of the court.~~

2 ~~(e) Unless otherwise provided in the decree, the health care coverage required by this section is in~~
3 ~~addition to and not in substitution, in whole or in part, for the child support obligation medical support order as~~
4 ~~provided for in [sections 1 through 25].~~

5 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is
6 included in the support order, a support obligation established by judgment, decree, or order under this section,
7 whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be
8 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
9 support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment
10 arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support
11 without need for an amendment to the support order or for any further action by the court.

12 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must
13 include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may
14 be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning
15 statement in a judgment or order does not preclude the use of withholding procedures.

16 (c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a
17 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to
18 the obligor's regular pay period.

19 (6) For the purposes of income withholding under subsection (5), every district court judgment, decree,
20 or order that establishes or modifies a child support obligation must include a provision requiring the parent
21 obligated to pay support to inform the court and, if the department of social and rehabilitation services is
22 providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or
23 order, the department, of the following:

24 (a) the name and address of the parent's current employer;

25 (b) whether the parent has access to health insurance through an employer or other group; and

26 (c) if insurance coverage is available, the health insurance policy information.

27 ~~(7) If the department of social and rehabilitation services is providing or later provides support~~
28 ~~enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an~~
29 ~~order must contain a statement providing that the noncustodial parent, without further order of the court, is~~
30 ~~required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning~~

1 ~~statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

2 ~~(8)~~ Each district court judgment, decree, or order establishing a final child support obligation under this
3 part and each modification of a final order for child support must contain a statement that the order is subject
4 to review and modification by the department of social and rehabilitation services upon the request of the
5 department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title
6 IV-D of the Social Security Act for the enforcement of the order.

7 ~~(9) (a) (8)(a)~~ A district court judgment, decree, or order that establishes or modifies a child support
8 obligation must include a provision requiring the child support to be paid to:

9 (i) the legal custodian of the minor child;

10 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child under
11 a legal assignment of rights; or

12 (B) the court for the benefit of the minor child;

13 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal
14 custodian; or

15 (iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

16 (b) A judgment, decree, or order that omits the provision required by subsection ~~(9)(a) (8)(a)~~ is subject
17 to the requirements of subsection ~~(9)(a) (8)(a)~~ without need for an amendment to the judgment, decree, or order
18 or for any further action by the court."
19

20 **Section 28.** Section 40-4-208, MCA, is amended to read:

21 **"40-4-208. Modification and termination of provisions for maintenance, support, and property**
22 **disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to
23 maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion
24 for modification.

25 (2) (a) Whenever the decree proposed for modification does not contain provisions relating to
26 maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the
27 decree.

28 (b) Whenever the decree proposed for modification contains provisions relating to maintenance or
29 support, modification under subsection (1) may only be made:

30 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms

1 unconscionable;

2 (ii) upon written consent of the parties; or

3 (iii) upon application by the department of social and rehabilitation services, whenever the department
4 of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The
5 support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under
6 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of
7 the order or the most recent modification.

8 (c) The nonexistence of a medical support order as defined in [section 4] or a violation of a medical
9 support order justifies an immediate modification of child support in order to:

10 (i) provide for the actual or anticipated costs of the child's medical care;

11 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

12 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit
13 in the determination of the child support obligation.

14 (3) The provisions as to property disposition may not be revoked or modified by a court, except:

15 (a) upon written consent of the parties; or

16 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws
17 of this state.

18 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future
19 maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

20 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's
21 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later
22 than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement
23 or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death
24 of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support
25 may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the
26 circumstances."

27

28 **Section 29.** Section 40-5-201, MCA, is amended to read:

29 **"40-5-201. Definitions.** As used in this part, the following definitions apply:

30 (1) "Alleged father" means a ~~man~~ person who is alleged to have engaged in sexual intercourse with a

1 child's mother during a possible time of conception of the child or a ~~man~~ person who is presumed to be a child's
2 father under the provisions of 40-6-105.

3 (2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated,
4 self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of
5 age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior
6 to the person's 18th birthday and for whom:

7 (i) support rights are assigned under 53-2-613;

8 (ii) a public assistance payment has been made;

9 (iii) the department is providing support enforcement services under 40-5-203; or

10 (iv) the department has received a referral for interstate services from an agency of another state under
11 the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security
12 Act.

13 (b) ~~Child~~ The term may not be construed to limit the ability of the department to enforce a support order
14 according to its terms when the order provides for support to extend beyond the child's 18th birthday.

15 (3) "Department" means the department of social and rehabilitation services.

16 (4) "Director" means the director of the department of social and rehabilitation services or the director's
17 authorized representative.

18 (5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

19 (6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for
20 the purposes of this chapter.

21 (7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a
22 child or children.

23 (8) "Obligee" means:

24 (a) a person to whom a duty of support is owed and who is receiving support enforcement services
25 under this part; or

26 (b) a public agency of this or another state having the right to receive current or accrued support
27 payments.

28 (9) "Obligor" means a person, including an alleged father, who owes a duty of support.

29 (10) "Parent" means the natural or adoptive parent of a child.

30 (11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either

1 that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the
 2 natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen
 3 test and DNA probe technology.

4 (12) "Public assistance" means any type of monetary or other assistance for a child, including medical
 5 and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is
 6 living, if assistance has been furnished with respect to the child by a state or county agency of this state or any
 7 other state.

8 (13) "Support debt" or "support obligation" means the amount created by:

9 (a) the failure to provide for the medical, health, and support to needs of a child under the laws of this
 10 or any other state or a support order; or

11 (b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance
 12 also contains a judgment or order requiring payment of child support for a child of whom the person awarded
 13 maintenance is the custodial parent.

14 (14) "Support order" means ~~an a temporary or final AN order providing a for the periodic payment of a~~
 15 ~~set of A~~ determinable amount ~~of money~~ for ~~temporary or final periodic payment of funds for~~ TEMPORARY OR
 16 FINAL PERIODIC PAYMENT OF FUNDS FOR the support of a child, ~~including medical and health needs, day care,~~
 17 ~~and other related expenses and costs of the child,~~ that is issued by:

18 (a) a district court of this state;

19 (b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

20 (c) an administrative agency pursuant to proceedings under this part; or

21 (d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function
 22 and process similar to those of the department under this part.

23 (15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated
 24 thereunder."

25

26 **Section 30.** Section 40-5-208, MCA, is amended to read:

27 **"40-5-208. Medical support -- obligation enforcement —sanctions.** (1) ~~(a)~~ In any proceeding initiated
 28 pursuant to this part to establish a child support order, whether final or temporary, and in each modification of
 29 an existing order, the ~~department shall require the obligor to obtain and maintain health insurance coverage for~~
 30 ~~each child if health insurance coverage is available through the obligor's employment or other group health~~

1 ~~insurance plan support order must include a medical support order as defined in [section 4]. The order or~~
2 ~~modification of an order must include a statement that the insurance must be obtained and maintained whenever~~
3 ~~the department is providing support enforcement services and that the failure to do so may result in the~~
4 ~~imposition of sanctions under this section.~~

5 ~~(b) If the support order or modification of an order does not include a provision requiring the obligor to~~
6 ~~provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support~~
7 ~~enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health~~
8 ~~insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:~~

9 ~~(i) an order requiring the obligee to maintain health insurance coverage;~~

10 ~~(ii) an agreement that the obligee will maintain health insurance coverage; or~~

11 ~~(iii) a failure or omission of the court order or modification of an order to require health insurance~~
12 ~~coverage.~~

13 ~~(2) (a) If the department is providing child support enforcement IV-D services and the obligor is required~~
14 ~~by an existing district court order or an administrative order under this section to provide health insurance~~
15 ~~coverage for a child, the department shall also enforce the health insurance obligation. any order issued by a~~
16 ~~court or administrative agency of competent jurisdiction that:~~

17 ~~(a) requires the obligor to make payments for the health or medical needs of the child, whether~~
18 ~~expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same~~
19 ~~enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied~~
20 ~~to medical or health obligations.~~

21 ~~(b) requires the obligor to enroll a child in a health benefit plan or individual insurance as defined in~~
22 ~~[section 4]. The department may take action to enforce the order under the provisions of [sections 1 through~~
23 ~~25] or may impose any other appropriate remedy.~~

24 ~~(b) (3) (a) To ensure that health insurance coverage is available for the child, the obligor~~
25 ~~department to determine whether enforcement action is necessary, if the obligor is required to enroll the child~~
26 ~~in a health benefit plan or individual insurance, upon written request by the department, the obligor shall provide~~
27 ~~the name of the individual insurance carrier or health benefit plan, the policy identification name and number, the~~
28 ~~names of the persons covered, and any other pertinent information regarding coverage.~~

29 ~~(b) Failure of the obligor to provide the requisite information to the department may be punished as a~~
30 ~~contempt under 40-5-226.~~

1 ~~(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the~~
 2 ~~department and show cause why a sum of not more than \$100 should not be assessed for each month health~~
 3 ~~insurance coverage is not secured or maintained if the department determines an obligor has failed to:~~

4 ~~(i) obtain or maintain health insurance coverage as required under this section; or~~

5 ~~(ii) provide information required under this section.~~

6 ~~(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage~~
 7 ~~has not been obtained or maintained or that the obligor has failed to provide the information required, the~~
 8 ~~department may assess against the obligor not more than \$100 for each month health insurance coverage has~~
 9 ~~not been obtained or maintained or for each month information has not been provided. The amounts may be~~
 10 ~~enforced by any administrative remedy available to the department for the enforcement of child support~~
 11 ~~obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title~~
 12 ~~40, chapter 5, part 4.~~

13 ~~(4) The health insurance coverage must be provided under this section even though it may reduce the~~
 14 ~~amount of the child support obligation or reduce the obligor's ability to pay child support as required.~~

15 (4) If the department is providing services for a child and a child support order or modification of a child
 16 support order does not include a medical support order as defined in [section 4] or fails to include any other
 17 provision for the health and medical needs of the child:

18 (a) upon notice to the obligor, the obligor shall enroll the child in a health or medical insurance plan
 19 available to the obligor through an employer or other group for which the premium is partially or entirely paid by
 20 the employer or other group; and

21 (b) the obligor shall continue enrollment of the child in the plan until:

22 (i) a medical support order is entered;

23 (ii) the obligor can demonstrate to the department that the cost of providing coverage is not reasonable;

24 (iii) the obligor's employment or membership in the group has terminated and the plan is no longer
 25 available to the obligor;

26 (iv) the employer or group eliminates coverage for all employees or members; or

27 (v) the department ceases to provide services for the child.

28 (c) If the obligor fails to enroll a child in a health or medical insurance plan under this subsection (4) or
 29 lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not
 30 be found if the obligor shows that the cost of providing coverage for the child is not reasonable.

1 ~~(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset~~
2 ~~expenditures for medicaid."~~

3
4 **Section 31.** Section 40-6-116, MCA, is amended to read:

5 **"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or
6 nonexistence of the parent and child relationship is determinative for all purposes.

7 (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall
8 order that a substitute birth certificate be issued under 40-6-123.

9 (3) (a) The judgment or order may contain any other provision directed against the appropriate party to
10 the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the
11 furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of
12 the child.

13 (b) Except when the financial responsibility of a responsible parent is in the process of being determined
14 pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision
15 concerning the duty of child support.

16 (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's
17 pregnancy and confinement.

18 (4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

19 (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered
20 in lieu of periodic payments of support.

21 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses
22 already incurred that the court considers just.

23 (5) In determining the amount to be paid by a parent for support of the child and the period during which
24 the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

25 (a) the needs of the child, including medical needs;

26 (b) the standard of living and circumstances of the parents;

27 (c) the relative financial means of the parents;

28 (d) the earning ability of the parents;

29 (e) the need and capacity of the child for education, including higher education;

30 (f) the age of the child;

1 (g) the financial resources and the earning ability of the child;

2 (h) the responsibility of the parents for the support of others;

3 (i) the value of services contributed by the custodial parent;

4 (j) the cost of day care for the child; and

5 (k) any custody arrangement that is ordered or decided upon.

6 (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine
7 the child support obligation by applying the standards in this section and the uniform child support guidelines
8 adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be
9 used in all cases, including cases in which the order is entered upon the default of a party and those in which
10 the parties have entered into an agreement regarding the support amount. A verified representation of a
11 defaulting parent's income, based on the best information available, may be used when a parent fails to provide
12 financial information for use in applying the guidelines. The amount determined under the guidelines is presumed
13 to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that
14 the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate
15 in that particular case.

16 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state
17 its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is
18 inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have
19 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline
20 amount must include a statement of the amount of support that would have ordinarily been ordered under the
21 guidelines.

22 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the
23 child's support, the court shall state its reasons for not ordering child support.

24 (7) The judgment or order, whether temporary or final, concerning child support and each modification
25 of a judgment or order for child support must include a ~~provision addressing health insurance coverage in the~~
26 ~~following cases:~~ medical support order as defined in [section 4].

27 ~~(e) If either party has available through an employer or other organization health insurance coverage for~~
28 ~~the child or children for which the premium is partially or entirely paid by the employer or organization, the~~
29 ~~judgment or order may contain a provision requiring that coverage for the child or children be continued or~~
30 ~~obtained.~~

1 ~~(b) In the event that health insurance required in a child support judgment or order becomes unavailable~~
2 ~~to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the~~
3 ~~absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the~~
4 ~~requirement.~~

5 ~~(c) The parties may by written agreement provide for the health care coverage required by this section,~~
6 ~~subject to the approval of the court.~~

7 ~~(d) Unless otherwise provided in the decree, the health care coverage required by this section is in~~
8 ~~addition to and not in substitution, in whole or in part, for the child support obligation.~~

9 (8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the
10 support order, a support obligation established by judgment, decree, or order under this section, whether
11 temporary or final, and each modification of an existing support obligation made under 40-6-118 must be
12 enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A
13 support order that omits the exception or that provides for a payment arrangement inconsistent with this section
14 is nevertheless subject to withholding for the payment of support without need for an amendment to the support
15 order or for any further action by the court.

16 (b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a
17 monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to
18 the obligor's regular pay period.

19 (9) For the purposes of income withholding as provided in subsection (8), whenever the district court
20 establishes or modifies a child support obligation, the judgment, decree, or order must include a provision
21 requiring the parent obligated to pay support to inform the court and, if the department of social and
22 rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the
23 judgment, decree, or order, the department, of the following:

24 (a) the name and address of the parent's current employer;

25 (b) whether the parent has access to health insurance through an employer or other group; and

26 (c) if insurance coverage is available, the health insurance policy information.

27 ~~(10) If the department of social and rehabilitation services is providing or later provides support~~
28 ~~enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an~~
29 ~~order must contain a statement providing that the noncustodial parent, without further order of the court, is~~
30 ~~required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning~~

1 ~~statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.~~

2 (11)(10) Each district court judgment, decree, or order establishing a final child support obligation under
3 this part and each modification of a final order for child support must contain a statement that the order is
4 subject to review and modification by the department of social and rehabilitation services upon the request of
5 the department or a party under 40-5-271 through 40-5-273 when the department is providing services under
6 Title IV-D of the Social Security Act for the enforcement of the order."

7

8 NEW SECTION. SECTION 32. CODIFICATION INSTRUCTION. [SECTIONS 1 THROUGH 25] ARE
9 INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 40, AND THE PROVISIONS OF TITLE 40 APPLY
10 TO [SECTIONS 1 THROUGH 25].

11

12 NEW SECTION. Section 33. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.

15

16 NEW SECTION. Section 34. Repealer. Sections 40-5-440, 40-5-441, and 40-5-442, MCA, are repealed.

17

18 NEW SECTION. Section 35. Effective date. [This act] is effective July 1, 1995.

19

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