Medical Support in Today's Child Support Guidelines and The Affordable Care Act

First and foremost, this article does not —and cannot— provide a clear direction for medical child support under the Affordable Care Act (ACA) (only Congress and rule makers can). What this article does is describe how states currently address medical support in their child support guidelines and how these provisions compare to ACA provisions. In short, this article documents "what is" with the hope that policymakers use it to find the appropriate path for medical child support in the future.

Introduction

As recently pointed out by Federal Office of Child Support Enforcement (OCSE) Commissioner Vicki Turetsky, despite the major changes caused by the ACA, the child support community

…will continue to keep doing what we are doing—what our statute directs us to do, which is to provide for child health care coverage in child support orders.[1]

The federal statute[2] makes no mention of medical support within the guidelines, but federal regulation does. Specifically, federal regulation requires that a state's child support guidelines address:

How the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with §303.31 of this chapter.[3]

Section 303.31 requires state child support agencies to petition the court to include an order for private insurance— if it is accessible to the child and reasonable in cost to the parent providing the private insurance— in newly established or modified child support

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[1] Turetsky, Vicki (August 2013). "What Is Our Medical Support Road Map?," *Child Support Report*. Retrieved from: http://www.acf.hhs.gov/sites/default/files/programs/css/csr1308.pdf

[2] Nonetheless, the guidelines regulation helps states meet the statutory requirements for state child support agencies to "…petition and enforce medical support included as part of a child support order, whenever health care coverage is available to the noncustodial parent at a reasonable cost. . ." and, for "all child support orders . . . [to] include a provision for medical support for the child to be provided by either or both parents, and shall be enforced, where appropriate, through the use of the National Medical Support Notice. . ." The guidelines provision is contained in Title IV-D §467(a) of the Social Security Act (42 U.S.C. 651 et seq) while the other provisions are contained in §452(f) and 466(a)(19), respectively. Retrieved from: http://www.ssa.gov/OP_Home/ssact/title04/0467.htm

[3] Title 45, Public Welfare, C.F.R § 302.56(c)(3). Retrieved from: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=d829d9fb6969a2402303f45c14097e61&r=PART&n=45y2.1.2.1.3#45:2.1.2.1.3.0.1.28

orders.[4] Section 303.31 also defines health insurance and cash medical support and provides for state discretion in their definitions of "accessible" and "reasonable cost."

State Provisions for Medical Support

All states provide for medical support in state statute, administrative rule, court rule, or a combination For example, Iowa provides that:

> The court shall order as medical support for the child a health benefit plan if available to either parent at the time the order is entered or modified. A plan is available if the plan is accessible and the cost of the plan is reasonable.[5]

The medical support provisions of most states are similar to those of Iowa except that the term "health insurance" is typically used instead of "health benefit." Few states use the term "healthcare coverage," which is actually what is in federal statute.[6]

State definitions of a health benefit/insurance are generally broad and mimic what is in federal regulation.[7] The broad wording often encompasses more than a parent's employer-sponsored insurance. For example, it encompasses insurance available from union membership in most states or insurance available through a step-parent in a few states. In all, states vary in the scope and depth of their definitions. Based on the author's knowledge, no state explicitly identifies health insurance marketplaces (i.e., the exchanges) as a health benefit/insurance, although most states have a blanket phrase that includes other types of coverage. Insurance available from an exchange could be interpreted as coverage through a state's blanket phrase.

The author also knows of no state medical support provisions that define Medicaid or CHIP as a health benefit/insurance. To the contrary, Minnesota (which uses the term, "healthcare coverage" in its guidelines) explicitly excludes any form of public coverage in its definition.[8] Texas and New York take another unique approach. Although they prioritize private insurance as the source of the child's medical support, Texas guidelines provide that if the court finds that neither parent has accessible insurance available at a reasonable cost, the court shall order the custodial parent to apply for Medicaid/CHIP on the child's behalf.[9] New York has a similar provision. In general, however, it is rare for a state's child support guidelines to provide that a parent can be ordered to apply for Medicaid or CHIP.

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[4]Title 45, Public Welfare, C.F.R. § 303.31. Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=d829d9fb6969a2402303f45c14097e61&node=45:2.1.2.1.4&rgn=div5#45:2.1.2.1.4.0.1.16

[5] IA Code §252.E.1A.3 Retrieved from: http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm

[6] The Social Security Act (42 U.S.C. 651 et seq). Title IV-D §452(f) and 466(a)(19). Retrieved from: http://www.ssa.gov/OP_Home/ssact/title04/0452.htm

[7] Title 45, Public Welfare, C.F.R. § 303.31 (a) (2). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=d829d9fb6969a2402303f45c14097e61&node=45:2.1.2.1.4&rgn=div5#45:2.1.2.1.4.0.1.16

[8]MN Statutes Ch. 518A. Retrieved from: https://www.revisor.leg.state.mn.us/statutes/?id=518A.41

[9] For example, see Texas Title 5, Chapter 154, Sec. 154.182 (b-2). Retrieved from: http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.154.htm

Orders to Provide Insurance

Most states wrap the provision to carry insurance for the child into the financial child support order, although there are a few states that require two separate orders: one for financial child support, and one for health insurance and/or the child's uninsured medical expenses. In all, many child support orders contain provisions requiring one or both parents to provide health insurance for the child. Although national counts conflict, there are indisputably millions of child support orders with provisions for medical child support, specifically, orders that require parents to provide health insurance coverage for the child.[10]

Most states will order private insurance even if it is not available to either parent at the time the child support order is established. These orders typically provide that in the future, if private insurance becomes available to a parent, the child shall be enrolled in that insurance if it is accessible and reasonable in cost. Figure 1 shows examples of this type of standardized language from two states.

Figure 1: Examples of Standardized Language that Provides the Child Shall Be Enrolled in the Parent's Health Insurance if Insurance Becomes Available in the Future	
California[11]	The parent ordered to pay support The parent receiving support must (1) provide and maintain health insurance coverage for the children if available at no or reasonable cost and keep the local child support agency informed of the availability of the coverage (the cost is presumed to be reasonable if it does not exceed 5% of gross income toad a child); (2) if health insurance is not available, provide coverage when it becomes available; . . .
Vermont[12]	Private health insurance is currently unavailable to either parent at a reasonable cost. If private health insurance becomes available to either parent at a reasonable cost, that parent shall be responsible for providing and maintaining health insurance for the minor child(ren). Either parent may request a hearing to determine whether the cost of health insurance is reasonable.

The use of such language helps states meet the federal statutory timeline for issuing a National Medical Support Notice (NMSN) once a parent's employer is identified from the state's directory of new hires. It also facilitates swift enrollment of a child in a parent's employer-sponsored insurance when a parent changes employment without having to

[10] The data reports based on the Current Population Survey (CPS) and the Federal Office of Child Support Enforcement (OCSE), albeit different measurement methods and of different populations, range from 3.6 million to 6.7 million awards that include an order for insurance. The CPS data is available from: Grall, Timothy, (2011). *Custodial Mothers and Fathers and Their Child Support: 2009*. Current Population Reports P60-240, U.S. Census, Washington, D.C. p. 11.Retrieved from: http://www.census.gov/prod/2011pubs/p60-240.pdf. The OCSE data is available from: U.S. Department of Health and Human Services, Office of Child Support Enforcement, (2013), *Office of Child Support Enforcement FY 2010 Report*, Washington, D.C. Table 36, Retrieved from: http://www.acf.hhs.gov/programs/css/resource/fy2010-annual-report-table-36

[11] Judicial Council of California. *Stipulation and Order (Government)*. Form FL-625 [Rev. July 1, 2011]. Retrieved from: http://www.courts.ca.gov/documents/fl625s.pdf

[12] State of Vermont Superior Court. *Child Support Order.* Form 802. Retrieved from: https://www.vermontjudiciary.org/eforms/Form%20802.pdf

modify the order. The NMSN is essentially a qualified medical child support order requiring that the employer enroll the child in the parent's employer-sponsored insurance even if the child does not reside with the insured parent, the parents were never married, or the parent does not claim the child as dependent for tax purposes.[13]

Obviously, the parent ordered to provide insurance through a medical child support order may not be the same parent that faces the ACA penalty for not maintaining healthcare coverage for the children. ACA provides that the parent claiming the child as a dependent for federal income tax purposes is the parent responsible for obtaining and maintaining healthcare coverage for the child. Exacerbating this issue is that some child support orders (and child support guidelines such as Arizona's[14]) provide that the nonresidential parent will claim all or some of the children as dependents for tax purposes. The federal government has recently released new rules that can relieve these situations.[15] Specifically the rule allows an exemption from the penalty if:

> . . .a child who has been determined ineligible for Medicaid and CHIP, and for whom a party other than the party who expects to claim him or her as a tax dependent is required by court order to provide medical support. We note that this exemption should only be provided for the months during which the medical support order is in effect . . . .

Definitions of Accessible and Reasonable-Cost Insurance

Since 2008, federal regulation provides that states consider whether the insurance is accessible to the child and the cost of the insurance is reasonable.[16] Specifically, the cost of the child's health insurance is deemed reasonable if it does not exceed 5 percent of the parent's gross income, but a state may develop its own income-based standard that is appropriate for its state. The federal regulation was in response to escalating health insurance premium costs and the affordability of premium costs. The five-percent threshold was borrowed from the Child Health Insurance Program (CHIP), in which federal regulations provide that the CHIP cost-sharing (e.g., premiums and co-pays) cannot exceed five-percent of the CHIP family's income.

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[13] More information about qualified medical support orders can be found at the U.S. Department of Labor (n.d.) *Qualified Medical Child Support Orders*, Retrieved from: http://www.dol.gov/ebsa/publications/qmcso.html

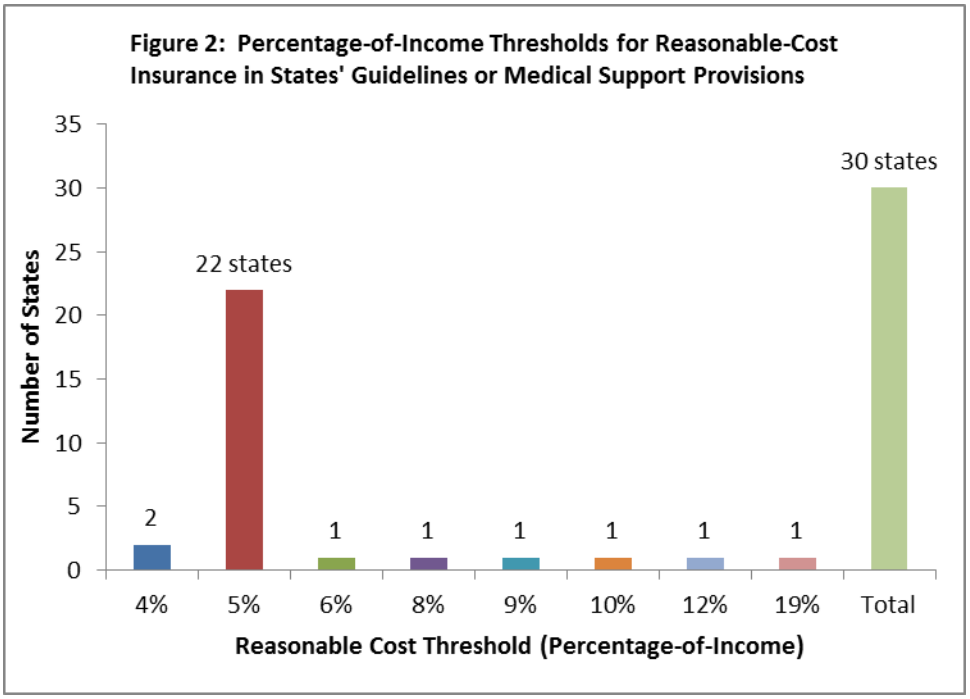
[14] Arizona Supreme Court (2011). *Administrative Order 2011-46*. p. 21. Retrieved from: http://www.azcourts.gov/Portals/31/GuideSched10072011.pdf

[15] Cohen, Gary (June 26, 2013). "Guidance on Hardship Exemption Criteria and Special Enrollment Periods." [Online.] Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, Retrieved from: http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/exemptions-guidance-6-26-2013.pdf

[16] U.S. Department of Health and Human Services Administration for Children and Families (ACF), (2008), "Child Support Enforcement Program; Medical Support: Final Regulation." *Federal Register*, Vol. 73 , No. 140 (July 21, 2008, pp. 42416-42442). Retrieved from: http://www.gpo.gov/fdsys/pkg/FR-2008-07-21/html/E8-15771.htm

As of 2010, 23 state guidelines or medical support provisions provide a definition for accessible insurance.[17] The definitions vary among states. Some are very specific definitions (e.g., consider the number of miles or minutes between the child's primary residence and primary healthcare provider).

As of January, 2013 30 states have adopted a percentage-of-income based standard for determining whether the cost of a child's health insurance is reasonable to the parent providing the insurance. As shown in Figure 2, most states have adopted the five-percent threshold and a few states have adopted lower or higher percentages. Some states with net-income guidelines relate their threshold to net income rather than gross income (e.g., South Dakota). There are also several states that use gross income for the reasonable-cost threshold, but define gross income for the calculation of financial child support differently (e.g., New York).



The reasonable-cost percentages in state medical support provisions are generally less than the effective maximum cost of coverage through healthcare exchanges (i.e., 9.5 percent of modified adjusted gross income)[18] and 8 percent, which is the threshold for exemption from the ACA penalty for non-compliance with mandatory insurance.[19] Nonetheless, it is important to note that the reasonable-cost percentages apply to the

[17] In some states, the medical support provisions are separate from statute. Iowa is a case in point. Its guidelines are set by court rule but its medical support provisions are in statute.
[18] A good summary of the ACA provisions is provided by the Kaiser Family Foundation, (2013) *Focus on Healthcare Reform: Summary of the Affordable Care Act.* Retrieved from http://kaiserfamilyfoundation.files.wordpress.com/2011/04/8061-021.pdf
[19] See Kaiser Family Foundation (n.d.), *The Requirement to Buy Coverage Under the Affordable Care Act* for a simple explanation of the penalty. Retrieved from: http://kff.org/infographic/the-requirement-to-buy-coverage-under-the-affordable-care-act/

child's share of the insurance premium, whereas the ACA percentages relate to the premium for an individual or an entire family. So, for medical child support purposes, if a single parent obtains insurance for two children, the children's share of the premium is the difference between the costs for single and family coverage. Historically, since cost information about single and family coverage is often unavailable, many state guidelines provide that the child's share of the premium can be determined by prorating the premium across the number of covered individuals. An unexpected benefit of the healthcare exchanges is that the automated calculators that have a data field for family size can ease the calculation of the child's share of the premium.

Cash Medical Support

The 2008 medical support rules call for child support agencies to petition for cash medical support when accessible private health insurance is not available to parents at a reasonable cost. It also defines cash medical support:

> [A]n amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.[20]

States' interpretations and applications of cash medical support vary widely. As of 2010, the guidelines or medical support provisions in 16 states provide an explicit definition of cash medical support. Several states provide that cash medical support is to be paid to the state Medicaid agency when the child is enrolled in Medicaid. Some of these states (e.g., Iowa, Ohio, and Texas) also routinely order and collect this type of cash medical support. Among these states, Texas stands out for its substantial collections. In 2006, Texas collected over $10 million in cash medical support to offset Medicaid costs.[21] Ordering cash medical support that is distributed to the Medicaid agency, however, is not the norm among states.

States also fulfill the cash medical support requirement through their base guidelines amounts because they include some of the child's medical expenses.[22] In addition, states have fulfilled the requirement by ordering the parents to share in the financial responsibility of any out-of-pocket medical expenses incurred for the child.

Out-of-Pocket Healthcare Expenses

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[20] Title 45, Public Welfare, C.F.R. § 303.31(a)(1). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=d829d9fb6969a2402303f45c14097e61&node=45:2.1.2.1.4&rgn=div5#45:2.1.2.1.4.0.1.16

[21] Greg Abbott, (n.d.) *How the AG Helps Parents Meet Their Children's Medical Needs*, Texas Attorney General. Retrieved from: https://www.oag.state.tx.us/agency/weeklyag/2006/0306csd_medical.pdf.

[22] This approach appears to be consistent with federal regulations. See response to comment 1 on p. 42419, U.S. Department of Health and Human Services Administration for Children and Families (ACF), (2008), "Child Support Enforcement Program; Medical Support: Final Regulation." *Federal Register*, Vol. 73 , No. 140 (July 21, 2008, pp. 42416-42442). Retrieved from: http://www.gpo.gov/fdsys/pkg/FR-2008-07-21/html/E8-15771.htm

Most state guidelines provide for two types of out-of-pocket healthcare expenses. One type is a nominal amount of out-of-pocket healthcare expenses that is included in the base guidelines formula or child support schedule. It is intended to cover routine and ordinary healthcare expenses that are typical for children (e.g., co-pays for well visits and some over-the-counter medicines such as cough syrup). Over half of the states include $100 or $250 per child per year or a similar amount for these expenses in their base guidelines calculation. The other type is for extraordinary, out-of-pocket healthcare expenses. This includes recurring expenses (e.g., asthma treatments) or future expenses if they occur (e.g., the out-of-pocket expense for an emergency room visit). Most state guidelines prorate these expenses between the parents. If they are recurring and known at the time of order establishment, the nonresidential parent's prorated share is added to the base award amount. For future expenses, the order will state each parent's percentage share (e.g., the custodial parent is responsible for 50 percent and the nonresidential parent is responsible for 50 percent). The parent incurring the expense notifies the other parent to recoup that parent's share directly. If the other parent does not pay, the out-of-pocket expenses can be reduced to a judgment, and only then can child support enforcement actions be taken. Some state guidelines (e.g., Michigan and Texas) impose timeframes and other requirements for reporting and recouping out-of-pocket healthcare expenses.

Full implementation of ACA will change the amount of out-of-pocket medical expenses that families typically incur for their children. The change will vary by income level. Children covered by Medicaid will have no expense and some higher income families with private healthcare coverage will face high deductibles. Medicaid assesses no premiums, co-pays, or other cost sharing for children's health services. ACA provides that beginning in 2014, the maximum out-of-pocket limits for most qualified plans will be $12,700 for families.[23]

More children will be eligible for Medicaid beginning in 2014. Over a half million children alone will be newly eligible in 2014 because ACA expands Medicaid eligibility for older children from 105 to 138 percent of the federal poverty level (FPL).[24] As of 2014, Medicaid income eligibility will range from 138 to 380 percent of FPL (about $37,000 to $74,000 per year for a family of three) depending on the state and age of the child.[25]

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[23] Andrews, Michelle (July 9, 2013). "In Addition To Premium Credits, Health Law Offers Some Consumers Help Paying Deductibles And Co-Pays," *Kaiser Health News*. Retrieved from: http://www.kaiserhealthnews.org/features/insuring-your-health/2013/070913-michelle-andrews-on-cost-sharing-subsidies.aspx

[24] Prater, Wesley (2013). *Aligning Eligibility for Children: Moving the Stairstep Kids to Medicaid.* Kaiser Family Foundation, Menlo Park, California. Retrieved from: http://kff.org/report-section/aligning-eligibility-for-children-moving-the-stairstep-kids-to-medicaid-issue-brief/

[25] The Henry J. Kaiser Family Foundation, (n.d.) "Medicaid and CHIP Income Eligibility Limits for Children at Application, Effective January 1, 2014: *State Health Facts*, Retrieved from: http://kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-children-at-application-effective-january-1-2014/

States' CHIP income eligibility thresholds are often slightly higher than Medicaid's. States may assess nominal premiums, co-pays, or other cost sharing for CHIP. A recent study using 1999 data found that 72.9 percent of all child support-eligible children are Medicaid or CHIP eligible, and the proportion is even higher (81.3 percent) among child support-eligible children lacking health insurance.[26] Another study using 2009 data found that 63 percent of IV-D custodial-parent families and 17 percent of non-IV-D custodial-parent families receive Medicaid.[27] The study did not note the percentage enrolled in CHIP. National data, however, shows that 84.8 percent of all children eligible for Medicaid or CHIP in 2011 were indeed enrolled.[28]

Low-income families ineligible for Medicaid or CHIP may be eligible for ACA cost-sharing subsidies that will reduce deductibles, co-payments, co-insurance and total out-of-pocket expenses. High-income families, however, may face relatively high deductibles. The extent to which out-of-pocket healthcare expenses on behalf children will reach these limits is unknown. ACA prohibits cost sharing for many preventive healthcare services, so out-of-pocket healthcare expenses will be less if the children are generally healthy and do not use emergency room services or need other healthcare services subject to cost sharing.

Healthcare Expenses in the Calculation of the Award

In all, there are four ways that healthcare expenses affect the amount of the child support award. One way is the amount of ordinary, out-of-pocket healthcare expenses included in the child support schedule. States that include none of these expenses generally have lower child support schedules than those that do. As identified earlier, most states include some healthcare expenses in their base guidelines formula or schedule.

Another way is the treatment of the cost of providing insurance for the child. Most state guidelines prorate the actual cost of the child's health insurance between the parents and add or subtract the prorated amount to the base guidelines amount. If the custodial parent pays the premium, the total amount owed by the nonresidential parent is more than the base support calculation. If the nonresidential parent pays the premium, the final award amount is less than the base support calculation. There are also twelve state guidelines that deduct the premium from the parent's income. In effect, a larger premium reduces the amount of income available for financial child support.

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[26] McMorrow, Stacey, et.al. (2011), *Health Care Coverage and Medicaid/CHIP Eligibility for Child Support Eligible Children*, Research Brief prepared for the U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, Urban Institute, Washington, D.C. Retrieved from http://aspe.hhs.gov/hsp/11/HealthCare-ChildSupport/rb.pdf.

[27] Lippold, Kye and Sorensen, Elaine (2013). *Characteristics of Families Served by the Child Support (IV-D) Program: 2010 Census Survey Results*, Urban Institute, Washington, D.C. p. 6. Retrieved from: http://www.acf.hhs.gov/programs/css/resource/characteristics-of-families-served-by-the-child-support-iv-d-program-2010

[28] Insurekidsnow.gov (n.d.), *Medicaid/CHIP Participation Rates.* Retrieved from: http://www.insurekidsnow.gov/professionals/reports/index.html

The third and fourth ways consist of provisions for cash medical support and the child's uninsured medical expenses, which were discussed previously. Specifically, orders for cash medical support can add to the nonresidential parent's financial obligation. Orders for recurring, uninsured medical expenses can also add to the nonresidential parent's financial obligation. In practice, however, few orders are adjusted for recurring medical expenses. This trend may reflect that the child does not have a known medical condition or that there are significant recurring medical expenses at the time that the order is established. Nonetheless, orders for future uninsured medical expenses are of concern particularly in cases in which the children are covered by insurance plans with high deductibles. If these orders go unpaid, there will be a greater need for child support enforcement.

Conclusions

In general, medical child support provisions in state guidelines are based on pre-ACA statutes and regulations and on outdated data regarding medical costs. Some of the regulations affecting child support guidelines actually stem from federal statutes that are detailed requirements for the establishment and enforcement of IV-D medical support orders while the child support guidelines apply to all orders regardless of IV-D status. OCSE promises new regulations, but their release is still pending. A complete review (and possible overhaul) of both federal statutes and regulations affecting medical child support is warranted. A clear federal direction is needed before states can revamp their medical child support provisions. Millions of children and parents are affected by medical child support orders. They deserve orders that are just and appropriate for their individual case circumstances, including their actual access to affordable and quality healthcare coverage, as well as appropriate for the new healthcare landscape of the post-ACA world.

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