





# 2024 ANNUAL CONFERENCE

Minnesota Family Support & Recovery Council  
in partnership with Minnesota County Attorneys Association

# Medical Support Overview

MFSRC Presentation (10/11/2024)  
Alex Mazurek  
Alex.Mazurek@hennepin.us

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## Medical Support Overview

- Minn. Stat. Sec. 518A.41 requires **both** parents to **share** responsibility for children's medical needs.
- This includes:
  - **Carrying** medical and dental **coverage** for joint children.
  - Sharing **cost** of medical and dental **coverage** for joint children.
  - Sharing **cost** of uninsured or unreimbursed medical/dental expenses ("UU Expenses").
- Employer responsibilities related to:
  - providing coverage,
  - terminating coverage, and
  - providing notice to the parents and public authority.
- Public authority's responsibilities and enforcement remedies.

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## Minn. Stat. Sec. 518A.41



- Subd. 1: Definitions.
- Subd. 2: Order Requirements.
- Subd. 3: "Appropriate" Coverage.
- Subd. 4: Ordering Coverage.
- Subd. 5: UU Expenses.
- Subd. 6: Employer Notice.
- Subd. 7: Employer Requirements.
- Subd. 8: Health Plan Requirements.
- Subd. 9: Employer Liability.
- Subd. 10: Contesting Enrollment.
- Subd. 11: Changing Coverage.
- Subd. 12: Spousal Coverage.
- Subd. 13: Disclosure Requirements.
- Subd. 14: Enforcement Services.
- Subd. 15: Enforcement.
- Subd. 16: Offset.
- Subd. 17: Collecting UU Expenses.
- Subd. 18: Enforcing UU Expenses.

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### Legislative Changes Effective January 1, 2025

- **Definition of health care coverage to include public coverage.**
  - Prior to 1/1/25:
    - In MN Health care coverage **DOES NOT** include Public Coverage.
    - Public Coverage **ONLY** means Medical Assistance
  - In conflict with federal law.
- **Public coverage presumed appropriate.**
  - No longer a preference for private coverage.
  - Question: Whether the Court is still required to analyze both parties' private coverage if MA is in place.
    - (Discussed on next slide).
- **Obligated parents' eligibility for public coverage.**
  - Replace eligibility amount w/ NCP's PICS is less than 200% poverty rate, no contribution.
- **Allow Administrative suspension of medical obligation if CP fails to maintain coverage as ordered.**
  - Inequity when ordered as an offset.
  - When roles are reversed, CP's offset can be administratively
  - Does not explicitly allow support to turn off when MA closes, so best to continue to get conditional language
- **Define "reasonable in cost" as 5% of parties' combined PICS and applies to cost to add the child to coverage.**
  - State policy for 5% did not apply to non-IVD cases.

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## Do we collect private coverage information when MA is in place?



### Statute:

- **Subd. 2(b)(2)** Every order addressing child support must state: ... ~~if a joint child is not presently enrolled in health care coverage~~, whether appropriate health care coverage for the joint child is available and, if so, state:
- **Subd. 3.** ~~Public health care coverage is presumed appropriate.~~
- **Subd. 4(a)** ~~If a joint child is presently enrolled in health care coverage, the court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parties agree otherwise or a party requests a change in coverage and the court determines that other health care coverage is more appropriate.~~
- **Subd. 4(a)** If a joint child is presently enrolled in health care coverage, the court shall order that the parent who currently has the joint child enrolled in health care coverage continue that enrollment if the health care coverage is appropriate as defined under subdivision 3.

### Hope:

- Advise the agency if MA was in place, then we no longer need to include information on available appropriate coverage.

### Reality:

- Unintentional result.
- Following the letter of the law: the agency needs to collect private healthcare information for the child support order.
- The statute explicitly requires the court to indicate whether appropriate coverage is available. (subd.2(b)(2)).
- The statute removed the section that only required the court to make appropriateness findings only when coverage was not already in place.
- Now, presumably a requirement of every order include whether appropriate coverage available, despite if MA or private coverage is already in place.

### Possible Practice Suggestion:

- Possible interpretation:
  - Not required to look at ALL available coverage.
  - Court could find: yes, appropriate coverage is available (already in place as MA).
- Something to consider.

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## Who should carry coverage? (subd. 3)



- First Prong: Who has appropriate coverage?
  - The court should review the parties' health plans and consider four factors.
    - Written verification is needed.
  - (1). Comprehensiveness;
  - (2). Accessibility;
  - (3). Special medical needs of joint children; and
  - (4). Affordability.
  - **1/1/25: MA is presumed appropriate.**
- Second Prong: Who should carry? (Four Scenarios)
  - (1). Child is already covered.
  - (2). One party has appropriate coverage available.
  - (3). Both parties have appropriate coverage.
  - (4). Neither parties have appropriate coverage.

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## Appropriate Coverage: (1) Comprehensive



- **Presumed** comprehensive if at a **minimum** includes:
  - Preventative
  - Emergency
  - Acute/chronic care
- Minimum essential coverage: 26 U.S.C. § 5000A(f):
  - all government plans meet this standard.
- **Reality:**
  - Parties are not providing enough information
  - Unreasonable to provide contract
- If both parents have minimal comprehensive coverage, then consider which is **more** comprehensive by considering whether the plan includes:
  - Basic dental,
  - Orthodontia,
  - Eye glasses,
  - Contacts,
  - Etc.
- **Best Practice:**
  - Include 1-2 page summary of benefits sheet

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## Appropriate Coverage: (2) Accessibility



- Coverage is **accessible** if child can obtain services from a provider with **reasonable effort** by the parent with whom the child resides.
- **Presumed** accessible if:
  - (1). Coverage is available within:
    - 30 minutes or 30 miles of joint child's residence (**routine care**).
    - 60 minutes or 60 miles of joint child's residence (**specialty care**).
  - (2). Coverage is available from an employer AND employee can expected to remain there for a reasonable amount of time; and
  - (3). No pre-existing conditions exist to delay coverage.
- In Hennepin, rarely an issue
  - If one parent lives out of state, analyze this issue.
  - Issue in Greater MN

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## Appropriate Coverage: (4) Affordability



- Coverage is affordable if it is **reasonable** in cost.
- Prior to 1/1/25 “reasonable” is not defined.
- 5% Rule has been Policy(cont. on next slide)
- If both parents' coverage is **equal** regarding accessibility and comprehensiveness, then the **least costly is presumed** to be the **most appropriate**.
- When determining the least costly health care coverage the court may consider both:
  - the **premium** costs and
  - the cost of the health care coverage **deductibles**.

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## Affordability cont.: 5% Rule



- DHS Policy:
  - coverage is not affordable if **cost to add child** to coverage is **greater than 5% of gross income**.
- Federal policy:
  - coverage is not affordable if **total cost of coverage** is **greater than 5% of gross income**.
- Legislative change January 1, 2025
  - Coverage is presumed affordable if:
    - **Premium to cover child**
    - does not exceed **5% of parents' combined PICS**.
  - Court can also consider: total cost of coverage and high deductibles.

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## Affordability Cont.



- Statutory presumption possibly will **lead to more coverage** being considered **affordable**:
  - On one hand: Considers combined PICS, rather than one parent's income.
  - On the other: Court CAN consider total cost of coverage
- Personal Request:
  - Could the calculator include that calculation affordability of available coverage, since it based on PICS, not gross income?
  - Now two calcs may have to be run, first to determine combined PICS, second to add cost of coverage.
- Question:
  - What if a PICS' is based on potential income?
  - Is that still fair?
  - Something to consider.

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## Who should Carry (4 Scenarios) (subd. 4)



- **(1). Child is already covered:** parent providing **must** continue WITHOUT CONSIDERING APPROPRIATENESS, unless:
  - Agreement; or
  - Either party requests to review AND court determines other coverage is more appropriate.
  - **Legislative change: 1/1/25:**
    - Court should consider appropriateness of coverage before ordering.
    - Appropriate coverage includes MA.
    - No longer allows for other result if there is an agreement otherwise or either party makes a request.
- **(2). Only one party has coverage:** parent with appropriate coverage **must** add child to their policy.
- **(3). Both parties have appropriate coverage:** parent with whom child resides **must** be ordered to provide coverage unless:
  - Either party wants NCP to provide coverage;
  - NCP is already providing coverage for non-joint children and CP's coverage would cause an "extreme hardship;" or
  - The parties agree otherwise.
- **(4). Neither party has coverage:**
  - Order cost of contribution based on proportional PICS ("Parental Income for Determining Child Support").
  - If child receiving medical assistance ("MA"), non-custodial parent ("NCP") must contribute to cost of public coverage.
  - Court can order custodial parent ("CP") to apply for public coverage.

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## Who Should Carry Cont.: Questions



- What if **both parents** already have the child enrolled? (double coverage).
  - Statute is ambiguous, but no explicit prohibition against ordering both parents to carry coverage.
  - Court of appeals case makes clear cannot require parent to contribute to cost if also required to carry coverage, Hennepin Cty. v. Peters, No. C2-02-1921, 2003 WL 21448858, at \*4 (Minn. Ct. App. June 24, 2003)
- Scenario where MA and Private coverage in place:
  - Technically support is assigned, but court should consider facts:
    - Is anyone paying out of pocket for premiums?
    - Is private coverage primary, and MA secondary?
    - Is MA covering the cost of private coverage?
  - Court can or cannot require party to carry coverage, or ask parent to make MA secondary
- What if parent complains that open enrollment already closed for the year?
  - Court order related to adding child requires that employer add the coverage.

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## Who Should Could Carry Other Issue: Can the Court order MA to be maintained?



- **Subd. 1(a)** “Health care coverage” . . . Also means public health care coverage.
- **Subd. 4(a)** If a joint child is presently enrolled in health care coverage, the court shall order that the parent who currently has the joint child enrolled in health care coverage continue that enrollment if the health care coverage is appropriate as defined under subdivision 3.
- **(g)(f)** If neither parent has appropriate health care coverage available, the court may order the parent with whom the child resides to apply for public health care coverage for the child.
- **Prior advice:** court cannot order parent to maintain public coverage.
  - Separation of powers issue.
  - Exec. Branch determines eligibility.
  - Also, do not want to force receipt of PA.
- **Now:** Is the court required to order a parent to maintain MA if its already in place?
  - Advice: Still separation of powers issue
  - If Court orders private coverage remain in place, should only be “while determined eligible.”

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## Medical Support Contribution: sharing cost of coverage (for private coverage) (subd. 5)



- First, determine **cost** to carry child's insurance:
  - The cost to add this child to coverage.
    - Rather than total amount of the parent's insurance.
    - Most of the time, insurers won't have cost for individual child and CSO will have to calculate the cost.
  - Example:
    - Single: \$50
    - Family: \$150
    - Child's cost: \$100 (\$150-\$50=\$100)
  - What if there is no additional cost?
    - No contribution.
    - Even if there is a cost difference in single and family, but coverage is already being expended for non-joint children and there is no additional cost to add the joint child.
- Second, determine each parent's **share** through PICS percentages.
  - Each parent is responsible for their proportionate share of cost of coverage.
  - Example:
    - CP: \$5,500/mo. NCP: gross income \$4,500/mo. Total PICS: \$10,000.
    - PICS percentage: CP: 55% and NCP: 45% ( $5,500/10,000=55\%$  and  $4,500/10,000=45\%$ )
    - Cost of insurance: \$100/mo.
    - CP responsible for \$55/mo.
    - NCP responsible for \$45/mo.
  - Support calculator makes this calculation

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## Medical Support Contribution: sharing cost of coverage (for private coverage) (subd. 5)



- **Written verification** of costs is needed for court to consider a contribution:
  - Summary of Benefits
  - Cost of premiums
  - Best practice:
    - include more than just employer verification hand-written amounts.
    - Ask employers for this info.
- What if Court orders parent to carry private coverage, and other parent receives MA?
  - Hennepin Practice: We do not ask for contribution to private coverage
  - Court/parent covering can disagree
  - Nothing precludes Court from ordering this

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## Is Medical Support Assigned to us: “Is the County Involved?” (256.741/518A.81)



- **In General:**
  - County is involved in ANY case in which PA is open.
  - Also can be involved where we are enforcing the order.
    - “NPA application for services” (establishment, modification, paternity, enforcement)
- **Determining whether Public Assistance is open for Medical Support:**
  - ONLY Medical Assistance is considered PA for medical support.
    - **Public coverage = “MEDICAL ASSISTANCE” – 518A.41, subd. 1(f)**
    - Open for the Joint Child(ren). Not for the mother.
  - Does NOT include:
    - Medicare
    - Federal subsidies
    - MNSure – MNSure is an insurance exchange/marketplace. NOT a form of coverage.
  - Medicaid is the Federal program. MN calls it Medical Assistance.
  - Practice Point:
    - These terms are confusing, often you may need to ask follow up questions
    - to ensure “medical assistance is open for the joint child(ren).”

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## The METS problem... (ongoing since 2013)



- Previously, MA (“Medical Assistance”) cases housed in MAXIS.
  - MAXIS→PRISM interface kept the agency updated.
- After ACA and implementation of MNSURE (MN’s Insurance Exchange).
  - MA information is housed through METS (Minnesota Eligibility Technology System).
  - METS holds new and recertified MA cases through MNSURE.
- METS does not communicate with PRISM in the same way (or as frequently).
  - Often MA can be open, but not interfacing with PRISM.
- Agency is advised to “trust the program” and treat the case as NPA until we receive a referral through METS.
- Practice Point:
  - Still relevant evidentiary (i.e., who carries coverage for the child and what is the cost)
  - Trust the CSO and PRISM when gathering information related to open PA.
  - Unless MA is interfacing, County does not have assigned medical support.
  - Agency may be able to “push” referral if they reach out to METS. But, it still takes a few weeks, and not automated.

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## Medical Support Contribution: sharing cost of coverage (for public coverage) (subd. 5)



- Assignment/Contribution to Medical Assistance:
  - If the joint child is on MA, support obligation goes to public assistance (not to the mother).
  - NCP's obligation determined by complicated calculation (Minnesota Statutes section 256L.15, subdivision 2(d))
    - NCP Pays what they'd pay if they applied themselves.
  - **Legislative change for 1/1/25:** cut off for contribution is 200% of federal poverty rate.
- If NCP receives **"Public Assistance"** should not be ordered to pay medical support.
  - 518A.41 does not define PA, but
  - 256.741/518A.81, subd. 1 defines **PA to include MA, Child care, MFIP, and foster care funding**
  - Calculator only takes into consideration whether NCP receives MA.
- Premium Scale 2021-2024:
  - \$0 if NCP qualifies for MA based on PICS
  - \$28/mo. per child. Max. 3 children
  - \$84/mo. MAX.
  - Hennepin Practice: if obligation is less than \$25, ask for a \$0: Cost of enforcing is not worth collecting.
- Practice Point:
  - Even after 1/1/25 law change, important to note that MS should charge "for any month that public coverage/medical assistance is open for the child."
  - Agency lacks administrative authority to turn off medical support when applied to MA.
- If MA and Private Coverage in place?
  - Fact dependent on recommendation
  - Technically, support is assigned.
  - If private premium is expended, can order contribution to apply towards that cost.
  - If MA is covering cost of private premium?

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## Turning off Medical Support (subds. 16 and 16a)

### Offsets



- If the party ordered to carry coverage is also ordered to pay child support, the party's child support is reduced by the amount of the other party's contributions towards the premium. MINN. STAT. § 518A.41, SUBD. 16.
- Example (using numbers from previous slide):
  - NCP has joint child covered at \$100/mo.
  - Basic support: \$500/mo. (owed to CP by NCP).
  - Medical support: \$55/mo. (owed to NCP by CP).
  - CP would receive \$445/mo. (offset).
- An offset can be removed by the public authority **administratively** if:
  - the party's coverage terminates,
  - the party does not enroll the child in different coverage,
  - a modification motion is not pending, and
  - notice is sent to the parties. MINN. STAT. § 518A.41, SUBD. 16(b)(1)–(3).
  - Party can request a hearing if they object to removal of offset.
- The Court order should **differentiate** basic support and medical support before the offset because COLA does not apply to medical support.
- Order does NOT need explicitly reference the offset.
- **Legislative change 1/1/25 fixing Inequity.**
  - Now if CP fails to carry coverage, same process applies to turn of NCP's obligation
  - Previously only applied to CP's offset med obligation
- If MA is open:
  - Continue to request conditional language to give agency administrative authority;
  - **"Med support should charge only for any month that PA is open in the form of medical assistance."**
  - Statutory change did NOT contemplate administratively turning off medical support when MA closes.
  - Both stats. Involving admin. Turning off med. support explicitly say "private coverage."

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## Medical Support Contribution: sharing cost of coverage (for public coverage) Cont.



- Ensure calculator is filled out correctly.
- Computation is different when PA v. Private.
- Make sure
  - Parent A is always NCP
  - Parent B is always CP.
- Calculator only asks if MA is open for Parent B, but statute references any PA.

	Parent A	Parent B
6. What is the <u>monthly income received</u> ?	\$	\$
7. What is the <u>potential income</u> for each parent, if any?	\$	\$
8. What is the monthly amount the <u>joint child(ren)</u> receive in <u>benefits from Social Security or the U.S. Department of Veterans Affairs (VA) due to a parent's eligibility</u> ?	\$	\$
9. If the <u>joint child(ren)</u> receive Social Security or VA benefits, which parent is the <u>responsible payee</u> ?	<input type="radio"/> Parent A	<input type="radio"/> Parent B
10. What is the monthly amount each parent is ordered to pay for <u>spousal maintenance</u> ?	\$	\$
11. What is the total amount each parent is ordered to pay for monthly <u>child support</u> for <u>nonjoint child(ren)</u> ?	\$	\$
12. What is the number of <u>nonjoint child(ren)</u> living in the home?		
13. What is the monthly cost of <u>health care coverage for the joint child(ren)</u> ?	\$	\$
14. What is the monthly cost of <u>dental coverage for the joint child(ren)</u> if separate from <u>health care coverage</u> ?	\$	\$

\*\* To calculate child support using a parenting expense adjustment effective through July 31, 2018, answer "no" to question 15a, leave question 15b blank, and answer "yes" to question 15c. If there is no order for parenting time or it is less than 10 percent, use 0 overnights for Parent A and 365 overnights for Parent B (per joint child) for question 15b and answer "no" for question 15c.

15a. Do you have court ordered equal parenting time?  Yes  No

15b. What is the annual number of overnights awarded to each parent by the court?    
 Click to add a child   
 Go to the [Minnesota Child Support Parenting Time Calendar Tool](#) to calculate the number of court-ordered overnights.

15c. If you are unable to calculate the number of overnights awarded to each parent, do you have a current child support order with a parenting expense adjustment?  Yes  No

16. Number of joint child(ren) receiving child care?

17. How much are the total monthly child care costs? \$

18. Which parent incurs the child care costs?

19. Does either parent receive child care assistance for the joint child(ren)?

20. Does Parent B receive Medical Assistance for the joint child(ren)?  Yes  No

21. Does Parent A receive Medical Assistance?  Yes  No

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## Uninsured/Unreimbursed Expense Reimbursements ("UU Expenses") (subd. 17 and 18)



- Process by which **EITHER** parent is able to submit expenses to the agency for UU Reimbursement from other parent.
- Must be a "**reasonable** and **necessary** medical or dental expense" (cont. on next page)
- Statutorily prescribed UNLESS parties have an agreement otherwise: language of the order controls.
- Each parent's contribution to UU expenses is based on PICS Percentage.
  - Example (based on previous slide's numbers):
    - UU Split: 45%/55%.
    - \$200 in out of pocket prescription glasses.
    - CP contribution: \$110.
    - NCP contribution: \$90.
- Must be brought within **two years of date** the expense was **incurred**.
- **Notice** must be provided other parent and they have **30 days** to:
  - pay in full,
  - enter a payment agreement, or
  - file a motion to contest.
- Can be either **added or deducted** from arrears.
  - Repaid at 20% (like all arrears)
- All enforcement remedies are available to agency in collection of UU expenses.

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## UU: Reasonable and Necessary Costs



- Can request “**reasonable and necessary**” UU expenses – Minn. Stat. § 518A.41, subd. 1(g).
- *Leak v. Leak*, A20-1049, 2021 WL 3478409, at \*5 (Minn. Ct. App. Aug. 9, 2021)
  - Facts:
    - NCP carried coverage.
    - Child had a therapist.
    - CP chose a therapist out of network without considering in network options.
    - NCP objected to pay UU% Proportion since an in-network option was not utilized and he did not agree.
    - Court discussion related to joint legal custody.
  - “As a result of the parties’ disagreement and their respective unilateral actions, unreimbursed medical expenses were incurred. Because such expenses were incurred, they must be allocated to the parties according to the previously determined shares.”
- **Agency does not verify information and does not determine whether expenses were “reasonable and necessary.”**
  - Keep in mind if you attend a UU Hearing.
  - Agency’s process is administrative, not fact finding.

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## Medical Support-Only Modifications (518A.39, subd. 8)



- In 2016, medical support-only modifications became authorized by statute.
- Basis for modification:
  - Child support has been reviewed within last three years; AND
  - One of the following:
    - “ a change in the availability of appropriate health care or coverage;”
    - A substantial decrease or increase in health care coverage costs;
    - An enactment, amendment, or repeal of law constitutes a substantial change;
    - Change in eligibility for medical assistance;
    - Party’s failure to carry coverage; or
    - Parent who carries insurance does not receive the federal child tax credit.
- Evidentiary hearing is discretionary for the Court.
- PICs from previous order shall be used.

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## Medical Support Orders (subd. 4)



- Findings
  - Does either parent have private coverage:
    - In place
    - Available
  - Does either parent have MA in place
    - For themselves and or joint children
  - Does NCP have other PA in place
  - Is the coverage:
    - Affordable
    - Accessible
    - Comprehensive
    - Special needs of the child
  - Who will be required to cover child
  - What is the cost of coverage: sum certain.
- Agreements
  - Order:
    - Who carries coverage (unless MA, then court can only order a parent to APPLY)
      - Example: "Beginning April 1, 2016, Mother shall obtain and maintain private health coverage for the joint children, as long as available through her employer."
    - What is the contribution to medical support
      - Example: "Beginning April 1, 2016, Father shall pay \$48 per month for medical support."
      - If MA; additional conditional language is needed: "...ONLY FOR ANY MONTH MA IS OPEN."
        - If this language is not included, medical support will still charge when MA is closed.
    - 1/1/25: Do NOT need to include
      - Agency authority to turn off med support when private is in place

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## Questions?



- Shifting burden to carry coverage:
  - Statute discusses this (518A.41, subd. (b)(2)(iii))
  - Often included in private dissolutions
  - Disfavored by Hennepin
  - No administrative authority to analyze appropriateness of coverage and require other parent to carry coverage.
- Sum Certain vs. Percentage Order:
  - Hennepin requires sum certain, in majority of cases
  - No administrative authority to determine health care costs
- Feel free to contact me!
  - [Alex.Mazurek@hennepin.us](mailto:Alex.Mazurek@hennepin.us)

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