

## COMMENTS & RESPONSES to the NMSN Part A

### NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE

1. *Comment:* The Notice to Withhold Health Care Coverage does not include the language in the header paragraph that appears in the header on Part B identifying the National Medical Support Notice (NMSN) as a Medical Child Support Order.

*Response:* When the NMSN is appropriately completed, and satisfies the conditions of ERISA section 609(a)(3) and (4), the NMSN is deemed to be a “qualified medical support order.” We have added a new second sentence in the Header paragraph that reads: “Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law.”

2. *Comment:* We believe a reminder of the confidentiality of the information contained in this section should be included in the form to protect a case with a Family Violence Indicator.

*Response:* If there is a danger of domestic violence and abuse to the custodial parent and/or the children, the IV-D agency may substitute the name of an official as well as its address for the custodial parent and children. When the Family Violence Indicator is not selected, the employer should still guard the confidentiality of the information provided on the custodial parent and the children. We have added a new third sentence in the Header paragraph that reads: “The information on the Custodial Parent and Child(ren) contained on this page is confidential and should not be shared or disclosed with the Noncustodial Parent.”

3. *Comment:* After the issuing agency “FAX Number” add a line for the State’s employer web site address. A State employer web site, if available, is another way for employers to contact the issuing agency.

*Response:* In the agency information box we have added space for the State “Employer web site.”

4. *Comment:* There is an asterisk by the name of the noncustodial parent (after the word RE) in the second column. There is no reference to that asterisk elsewhere on the page. Either remove the asterisk, or note to what the asterisk is in reference.

*Response:* We have checked with the Department of Labor and the asterisk does not reference any other part of the NMSN. We have replaced the asterisk (\*) with a colon (:) on the Employer’s Name line, after the word RE and deleted the nine open ended parentheses after the Employer, Custodial Parent and Children’s Mailing Address lines in the first column.

5. *Comment:* In the center of the page between the “Custodial Parent’s Mailing Address” and the “Substitute Official/Agency Name and Address” add the word “OR.” Without the word “OR” it appears that both blanks must be completed.

*Response:* The “Substitute Official/Agency Name and Address” is used when there is a danger of domestic violence and abuse to the custodial parent and/or the children, the IV-D agency may substitute the name of an official as well as its address for the

custodial parent and children. Instead of inserting the word “or” between the sentences, we provided instructions below the “Substituted Official/Agency Name and Address” line that reads:“(Required if Custodial Parent’s mailing address is left blank.)”

6. *Comment:* The NMSN provides the full name and the acronym for the Employee Retirement Income Security Act of 1974 (ERISA) and the aggregate disposable weekly earnings (ADWE), but only provides the full name for the Child Support Performance and Incentive Act of 1998, and the Federal Consumer Credit Protection Act. We suggest including the acronyms of each for consistency throughout the Notice.

*Response:* In Part A, the Child Support Performance and Incentive Act of 1998 and the Federal Consumer Credit Protection Act are referenced only once where the Employee Retirement Income Security Act of 1974 and the aggregate disposable weekly earnings are referred more than once. When a term will be referenced multiple times within a document, the first time they are referenced it is by the full name and acronym and subsequent references it is by the acronyms ERISA and ADWE.

7. *Comment:* On page one of the NMSN, is it necessary to list the children's mailing address? It should not be different from the custodial parent's address listed on our IV-D case, or is it intended for foster care or similar type cases?

*Response:* In the Final Rule published in the Federal Register on December 27, 2000, the response to comment # 6 on Case Identification Data Section states that information on the children’s address is required under section 609(a) of the Employee Retirement Income Security Act of 1974 (ERISA). The instructions on the form are to provide the children’s mailing address if different from the custodial parent’s.

8. *Comment:* Reform the first page so the employer’s name and address fits in the window of an envelope.

*Response:* To implement this change would require that we know the exact envelope window layout and dimensions, right or left side of envelopes that are in use. Unfortunately, envelopes being used by IV-D agencies may not be universal.

9. *Comment:* Part A of the NMSN would need to be modified because in the Instructions to Plan Administrator in Part B specifies that the “custodial parent” and the “noncustodial parent” be notified and/or furnished with the health care coverage information. If the mailing address information included on Part A pertains only to the “custodial parent” and the “custodial parent” is both the employee and the “custodial parent”, the “noncustodial parent” information would not be readily available to the employer to enable them to meet this criterion.

*Response:* We believe that the “Instructions to Plan Administrator” to notify the noncustodial parent with health care coverage information pertains to those situations where the noncustodial parent is ordered to provide health care coverage and not when the custodial parent is ordered to provide health care coverage. It would not be necessary to include the noncustodial parent’s information in Part A if the custodial parent is ordered to provide health care coverage.

## EMPLOYER RESPONSE

*1. Comment:* In the first paragraph, the third sentence should be revised to clarify that when health insurance is available that the employer is to send Part B to the Plan Administrator. Recommend the sentence be revised to read: "If family health care coverage is available (neither 1, 2, nor 3 applies), forward Part B to the appropriate plan administrator(s) within 20 business days after the date of the Notice, or sooner if reasonable."

*Response:* It was determined that the best approach to clarify the instructions in the third sentence was to delete the words "neither", "nor" and "applies" and we revised the sentence to read: "If 1, 2, 3 or 4 do not apply, forward Part B..."

*2. Comment:* It has been discovered that many employers do not forward Part B to the union third party administrator (TPA) because the NMSN is not clear enough about the employer's responsibilities when coverage is provided through the employee's union.

*Response:* PIQ-02-03 dated Dec 20, 2002, is clear that the employer must send the NMSN to the union or third-party entity serving as the union's plan administrator. However, to make the NMSN clear about the employer's responsibilities when coverage is provided through the employee's union or third-party entity we added a new fourth sentence in the first paragraph that reads: "This includes any organization or labor union that provides group health care benefits to the employee."

*3. Comment:* In the first paragraph, fourth sentence that reads: "If the Plan Administrator informs you that the child(ren) is/are enrolled in an option under..." should state "would be" rather than "is/are".

*Response:* In the first paragraph, fourth sentence is now the fifth sentence, and we revised the sentence to read: "Check number 5 and return this **Part A** to the **Issuing Agency** if the Plan Administrator informs you that the child(ren) would be enrolled in or qualify(ies) for an option under..."

*4. Comment:* In a follow-up phone survey to non-responders found that some employers had not responded to the NMSN as they did not believe it was necessary when the employee had separated from service, or they did not provide coverage for that employee class. There needs to be a statement to clarify to employers that they must respond even when the employee has separated from service or they do not provide coverage.

*Response:* In the first paragraph, we have added as the sixth sentence to clarify to employers that they must respond even when the employee has separated from service or they do not provide coverage, that reads: "You are required to respond to the Issuing Agency with the **Employer Response** regardless of whether you provide group health benefits or the employee named herein is no longer employed by your organization."

*5. Comment:* At the bottom of the Employer Response, it requires an Employer Representative to list the date, his/her name, telephone number, and title, and the Federal Employer Identification Number (FEIN) of the employer, if not provided. The current version of the form does not directly state that this information is required, and because of the format, it is only completed if the checkbox for response 4 is selected.

*Response:* We have added as the seventh sentence in the first paragraph to read: "Information on the Employer Representative at the bottom of this section is required." We have also added the word "(Required)" after Employer Representative at the bottom of the page.

6. *Comment:* There are situations where the employer is unable to identify the individual listed as the employee and the NMSN does not provide an opportunity for the employer to indicate this scenario.

*Response:* In situations where the employer is unable to identify the individual listed as the employee, we have added a new check box # 1 that reads: "The employee named in this Notice has never been employed by this employer." The remaining check boxes have been renumbered: 1 is now 2, 2 is now 3, 3 is now 4, and 4 is now 5.

7. *Comment:* Experience has shown that employers often misread the response at check box # 1 to say "employee" rather than "employer."

*Response:* We have renumbered this as check box # 2 and revised it to read: "We, the employer, do not maintain or contribute to plans providing dependent or family health care coverage to our employees."

8. *Comment:* Employers incorrectly check box # 2 when the employee is temporarily ineligible for health insurance, such as when there is a waiting period.

*Response:* We have renumbered this as check box # 3 and added a second sentence that reads: "Do not check this box if the employee is only temporarily ineligible for health insurance."

9. *Comment:* Suggest that the last sentence at the bottom of the page be revised to read: "EIN (if not provided by the Issuing Agency on Page 1 of this Notice to Withhold for Health Care Coverage):" Adding "Page 1 of this" will direct employers where to look to determine if the issuing agency provided the EIN.

*Response:* We have revised the last sentence at the bottom of the page by adding the word "Federal" before EIN to be consistent with Page 1 and we also added "Page 1 of this" before the word "Notice".

10. *Comment:* Revise check box # 2 by adding: "Please inform our agency if this status changes. You can do this by going to our website @."

*Response:* We have added space for the State Employer web site on page 1 (see section above on Notice To Withhold For Health Care Coverage, comment and response 3). We have also renumbered this as check box # 3. In the Employer Responsibilities section 2c, directs the employer to notify the Issuing Agency when the employee's duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked). The determination by measure other than the passage of time would also cover an employee's status changing from part-time to full time and/or eligibility for union enrollment.

*11. Comment:* Some States' child support orders have a limit on the amount the employee is obligated to pay for the children's insurance coverage. For example, the employee may be required to provide insurance if the employee's cost for the children's premium does not exceed \$100 per month. An employer could check box 4 on the Employer Response for a number of reasons: (1) cash support plus the insurance premium exceeds the State or Federal withholding limitation, (2) the cost to the employee for the children's insurance premium is greater than the limit set by the child support order, (3) prioritization prevents the children from being enrolled. It would be helpful for the IV-D agency to know the cost of the children's coverage. In some cases, it may be possible for the IV-D agency to adjust the amount collected on back support in order to enroll the children. Suggest the addition of a statement and space under box 4, such as: "The cost to the employee to add the child(ren) is \$ \_\_\_\_\_ per month."

*Response:* In the Final Rule published in the Federal Register on Dec 27, 2000, under the comments on 303.32(c)(5) now section 303.32(c)(6), additional blank lines were added under the subheading Priority of Withholding where States may include State specific information regarding prioritization between cash and medical support. States may include with the NMSN their own cover letter or a separate document to provide or request additional information according to PIQ-02-03 Dated Dec 20, 2002.

*12. Comment:* The Employer Response section advises the employer to "*check the appropriate box and return.*" However, there are no boxes to check. We suggest adding check boxes to this section to provide the employer a means of indicating their response.

*Response:* The original WORD version of the NMSN has check boxes. When the NMSN was converted into a PDF format and posted at <http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0222.pdf> the check boxes were omitted. The web site version has been corrected.

## **INSTRUCTIONS TO EMPLOYER**

*1. Comment:* In the Instructions to Employer, experience has shown that employers often fail to recognize that the NMSN as a legal document, compelling action. Recommend adding the word "legal" before the word "Notice" in the first sentence of the Employer Instructions.

*Response:* In the Final Rule published in the Federal Register on Dated Dec 27, 2000, if the NMSN is appropriately completed, and satisfies the conditions of ERISA section 609(a)(3) and (4), the NMSN is deemed to be a "qualified medical child support order." To help clarify to employers that the NMSN is a legal document, we have added the word "legal" before the word "Notice" in the first sentence of the first paragraph.

*2. Comment:* Some employers do not forward Part B to their plan administrator. If the plan administrator does not have the NMSN, they do not always know that there is an alternate recipient (the custodial parent) who must also receive a copy of the insurance card. We have found that this is often the reason why custodial parents call requesting a copy of an insurance card and find that it can take some time to get the NMSN to the plan administrator after the fact. The resulting delay in getting an insurance card to a custodial parent can be problematic, especially when the child has a pending medical

procedure or chronic medical needs. In the second paragraph in the line reading "...and Part B – Medical Support Notice to the Plan Administrator, which must..." capitalize and bold the word "must".

*Response:* In the second paragraph, first sentence, we have bolded the word "must".

3. *Comment:* Experience indicates that employers are often unable to follow the flow of the instructions as they are being provided. Employers often fail to respond when the individual named in the Notice never was or no longer is employed, or coverage is not offered. Employers may be completing Part A as a response due to the fact they themselves do not provide the coverage rather than forwarding Part B to the Union acting as the plan administrator. The instructions to the Employer do not clearly indicate that Part B of the NMSN should not only be forwarded to a plan administrator but also to a Labor Union when the Union is the entity providing benefits to the employee. Employers often do not complete and forward the Notice when they have received it and the employee has enrolled the child(ren). Often the issuing agency is not aware of the enrollment. In addition, recommend moving and modifying the last sentence of paragraph 1 of the Instructions to Employer to the end of the new paragraph 3, the flow of the instructions will be improved.

*Response:* We have added a new third paragraph that reads: "An employer receiving this legal Notice is required to complete and return **Part A** if appropriate. If group health coverage is not available to the employee named herein, or the employee was never or is no longer employed, the employer is still required to complete **Part A – Employer Response** and return it to the Issuing Agency with the appropriate response checked. If you, the employer, provide the health care benefits to the employee, forward **Part B – Plan Administrator Response** to the health plan administrator of your organization. If the employee's health care benefits are administered through another organization, including a labor union, forward Part B of the Notice to the labor union or other organization acting as the plan administrator for completion. If the employee has already enrolled the child(ren) in health care coverage, the employer should forward Part B to the plan administrator for completion and submittal to the Issuing Agency."

4. *Comment:* Employers often contact the issuing agency for additional copies of the NMSN as they are required to advise the issuing agency of the employee terminations and often use the notice. Recommend adding a 4<sup>th</sup> paragraph to advise employers to keep a copy of the Employer Response for the future.

*Response:* We have added a new fourth paragraph that reads: "Keep a copy of **Part A** as it may be used to notify the Issuing Agency at anytime in the future the employee separates from service for any reason including retirement or termination."

## **EMPLOYER RESPONSIBILITIES**

1. *Comment:* In the first paragraph labeled as #1, remove the word "above" from the sentence. The Instructions to Employer does not include a section for referencing the individual's name.

*Response:* In the first sentence of the first paragraph labeled as #1, we replaced the word "above" with "in this Notice".

2. *Comment:* In the seventh paragraph labeled as #2(c), the word “of” should not be bolded in this section.

*Response:* In the seventh paragraph labeled as #2(c), we have un-bolded the word “of” after “**Part B**”.

## **LIMITATIONS ON WITHHOLDING**

1. *Comment:* Change the Limitations on Withholding and Priority of Withholding sections of the NMSN to be similar to the Income Withholding form.

*Response:* In the Final Rule published in the Federal Register on December 27, 2000, the response to comment # 25 on Instructions to the Employer indicates that the current form allows States to specify limits for amounts withheld which may be less than the maximum amounts allowed for the CCPA. With respect to prioritization, space was added under the subheading “Priority of Withholding” in the “Instructions to Employer” section of Part A. Additional space is intended for States to provide information on how they prioritize between cash and medical support. Changing Part A to be similar to the Income Withholding form would eliminate the spaces provided for States’ information.

2. *Comment:* The NMSN refers to limitations on withholdings as a weekly withholding amount. Many support orders and States’ computer systems are set up for monthly amounts. To avoid misunderstandings, change the NMSN to reference monthly withholding amounts and limits.

*Response:* The Limitations on Withholding section of the NMSN mirrors the Consumer Credit Protection Act (15 U.S.C. 1673) which refers to the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment.

## **DURATION OF WITHHOLDING**

1. *Comment:* In the first paragraph, the second sentence that reads: “Coverage of a child as a dependent will end when similarly situated dependants are no longer eligible for coverage under the terms of the plan” is confusing and suggests that if there are multiple minor children, and one child emancipates, the remaining children are no longer eligible for coverage. We suggest this sentence be rewritten for clarification.

*Response:* In the first paragraph, we have revised the second sentence to read: “Coverage of a child as a dependent will end when conditions for eligibility for coverage under the terms of the plan no longer apply.”

2. *Comment:* In the sentence labeled as #1(a), suggest removing the word “above” from the sentence for this section of the NMSN does not include a reference to the child support order.

*Response:* In the sentence labeled as #1(a), we have deleted the word “above” and replaced it with “in this Notice.”

## **POSSIBLE SANCTIONS**

*1. Comment:* The current NMSN form does not include an area to provide information to employers on any sanctions that may apply in the case of non-compliance with the NMSN.

*Response:* According to PIQ-02-03 dated Dec 20, 2002, Federal IV-D law does not specifically require States to include a fine against employers in their State laws requiring employers to honor the NMSN. However, we strongly encourage States to address in State law the consequences for an employer who does not respond to a NMSN. This PIQ also allows States to include with the NMSN their own cover letter or a separate document to provide or request additional information. We have added a second sentence that reads: "Sanctions or penalties may be imposed under State law against an employer for failure to respond and/or for non-compliance with this Notice."

## **NOTICE OF TERMINATION OF EMPLOYMENT**

*1. Comment:* Employers are required to notify the issuing agency when an employee named in the notice separates from service. Employers should be notified that a copy of Part A of the Notice may be used to notify the Issuing Agency when the noncustodial parent/employee has left employment. Recommend that the second sentence of the paragraph be amended to include: "This requirement may be satisfied by sending to the Issuing Agency a copy of **[add] Part A** with response 3 checked or..."

*Response:* In the second sentence, we added the words, "...Part A with response 4 checked or..." Check box 3 was renumbered to 4.

## **CONTACT FOR QUESTIONS**

*1. Comment:* Revise Part A to capture the name, address, and telephone number of the Plan Administrator to whom Part B is forwarded for completion.

*Response:* We added a new second paragraph that reads: "Indicate below to the issuing Agency the requested information on your Plan Administrator to whom Part B – Plan Administrator Response is forwarded for completion." We also added at the bottom of this page the word "(Required):" after Plan Administrator and added fields for the Plan Administrator's information: "Name, Telephone Number, Contact Person, and FAX Number".

## **GENERAL COMMENTS**

*1. Comment:* Add case number and employee name to all pages of the NMSN. In the event of page separation, case identity can be confirmed.

*Response:* The instructions in the Employer Response section instruct the employer to return Part A to the Issuing Agency. The face sheet of Part A (page one) contains all the information that is mentioned in this comment. Due to other additions to the NMSN, we were unable to find space on the Employer Response page to add employee name and case number, to include the headers and footers.



2. *Comment:* Remove the requirement to include the instructions as part of the NMSN. Removal of this requirement would be a great cost savings for States.

*Response:* PIQ-02-03 dated Dec 20, 2002, provides States the following guidance: "States may provide the instructions in an alternate printed format, such as a brochure, as long as the language in the instructions appears verbatim. Should an employer request that the IV-D agency send Part A and Part B without the instructions, the agency may send that employer the NMSN without instructions. States may develop a web site or other format for posting the instructions. Again, the agency must continue to mail the hard copy of the instructions with each NMSN unless the employer has requested otherwise."

3. *Comment:* The Notice requires the employer to enroll the child if insurance is available, but does not request Group Name; Group Number; Policy Number; Effective Date; Insurance Company Name & Address. Another form had to be created to ask for this necessary information.

*Response:* PIQ-02-03 dated Dec 20, 2002, provides that States may include with the NMSN their own cover letter or a separate document to provide or request additional information.

4. *Comment:* Is it possible for States to make any changes and/or add items to the NMSN to clarify a State's option to enforce against a custodial parent?

*Response:* PIQ-02-03 dated Dec 20, 2002, is clear and reads: "No, the NMSN may not be changed. The NMSN was developed to provide employers and plan administrators with a document that is consistent across the country. However, States may include with the NMSN their own cover letter or a separate document to provide or request additional information."