

Affordable Care Act in Child Support Cases

19th Annual AB 1058 Child Support
Training Conference
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Affordable Care Act in Child Support Cases

- Hon. Louise Bayles-Fightmaster (Sonoma)
- Hon. Jana Kast-Davids (Santa Cruz)

Overview of Covered Topics

- What is ACA?
- Options to satisfy ACA?
- Exempt "Excused" from ACA mandate
- Penalties
- Health insurance premium subsidies
- Why should courts care about ACA?
- Court's role in ACA
- Links to information resources

ACA: What is it and Who is Required to Meet it?

- Effective January 1, 2014, the Affordable Care Act (ACA) provides that most individuals and their dependents who are U.S. citizens, U.S. nationals, or “lawfully present immigrants” must have minimum, essential health insurance coverage or pay a tax penalty.



Options to Satisfy ACA Mandate

- Medicaid Expansion (MediCal)
- Employer Mandate
- Health Insurance Marketplace (Covered California)
- Health Insurance obtained on the open market
- Other Governmental Care (TriCare (military), Indian Health, Medicare, etc.)



Options to Satisfy ACA Mandate

- Employer Mandate
- Health Insurance Marketplace (Covered California)
- Health Insurance obtained on the Fed'l open market



Employer Mandate

- Eff. Jan 2015, employers with 50 or more full-time equivalent employees must provide minimal essential coverage for full-time employees and dependents
- At affordable cost for employee's self-only coverage defined as no more than 9.5% of household. Dependent coverage is not subject to affordability test.
- Employers face substantial penalties (employer shared responsibility) if offer no insurance or deemed not at an affordable rate



Employer Mandate (flow chart)

- <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>



Health Insurance Marketplaces

- Covered California
 - www.coveredca.com/
- Federal Open Market
 - 37 states subscribe
 - www.healthcare.gov



“Excused” from ACA mandate

- **Hardship exemption**
- Financial or domestic circumstances, including an unexpected natural or human-caused event such that individual had a significant, unexpected increase in essential expenses that prevented him/her from obtaining coverage;
- Expense of coverage would have resulted individual to experience serious deprivation of food, shelter, clothing or other necessities;
- Other circumstances that prevented the individual from obtaining coverage



“Excused” from ACA mandate

- **Special Medical Support Order Exemption**

“You expect to claim a child as a tax dependent who’s been denied coverage in Medicaid and CHIP, and another person is required by court order to give medical support to the child. In this case, you don’t have to pay the penalty for the child.”

Taken from OMB Form No. 0938-1190



“Excused” from ACA mandate

- **Special Medical Support Order Exemption EXAMPLE:**

1. The CP has primary custody of the child;
2. The CP claims the child as a dependent for income tax purposes;
3. The NCP has been ordered to provide health insurance for the child;
4. The NCP is NOT providing the ordered coverage



"Excused" from ACA mandate

• Special Medical Support Order Exemption EXAMPLE (cont.) :

5. The CP may be determined by the IRS to be exempt from obtaining health insurance for the dependent
6. The CP must have applied for MediCal/CHIP for the dependent and have been denied
7. The CP must make application to the IRS and provide factual support for the exemption claim



Individual Penalty

Tax Year	
2014	1% of annual income or \$95, whichever is higher. Maximum = \$285
2015	2% of annual income or \$325 \$162.50 per uninsured child Maximum = \$975
2016 & thereafter	2.5% of annual income or \$695, whichever is higher \$347.50 per uninsured child Maximum = \$2,085



Individual Penalty

- Penalty must be paid when an individual's tax return is due
- Penalty is assessed & collected like most other taxes except that taxpayers who fail to pay the penalty are subject to neither criminal penalties nor liens nor levies
- The IRS may reduce the amount of the individual's tax refund in the future



Health Insurance Tax Subsidies

- Subsidies are determined by IRS, based on **projected** household income for current year of coverage, **estimated at the time of application for insurance.**
- Apply only to Exchange/Silver Plan policies



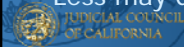
Health Insurance Subsidies

- The subsidy amount is "trued up" at time of filing.
- You can adjust subsidy amounts periodically through the Exchange
- Filers either owe or are given a refund.



Health Insurance Subsidy Eligibility

- 1 - \$15,000 - \$45,960
- 2 - \$21,400 - \$62,040
- 3 - \$26,950 - \$78,120
- 4 - \$32,500 - \$94,200
- 5 - \$38,050 - \$119,280
- Less may qualify for Medical



Subsidy Depends On Income

- 66.66% of cost if 100-200% of FPL
 - 50% of cost if 200-300% of FPL
 - 33% of cost if 300-400% of FPL
- (1 person 100% FPL = 11,670; 200% = 23,340)
(4 family 100% FPL = 23,850; 200% = 47,700)



Why should courts care about ACA?

• Y2K

1999: The world braces for chaos as midnight approaches. Will computer systems crash when the calendar switches over to 2000?

The crises never materialized



Why should courts care about ACA?

-or did it?
- Federal Marketplace unable to meet consumer demand when it first rolled out.
- Covered California marketplace congested, but accessible



Why should courts care about ACA?

- Do not need to know the differences between Bronze, Silver, Gold and Platinum plans
- Do not need to know how to fill out the application
- Do not need to know anything about the employer mandate



Why should courts care about ACA?

- Do not need to know about ACA eligibility requirements
- Do not need to know if someone is exempt from a penalty
- Do not need to know about tax credits



Why should courts care about ACA?

- Medical Support Orders (Family Code section 3751)
- Releasing dependency exemptions
- Guideline factors
- Penalties/Subsidies



Medical Support Orders Family Code section 3750 et seq,

- In addition to ordering "guideline" child support, courts must require either or both parents to obtain/maintain health insurance coverage if available at no cost or reasonable cost.
- Low-income adjustment: rebuttable presumption that medical support cost is **unreasonable**
- "Reasonable" if difference between individual and family coverage does not exceed 5% of the gross income of the parent responsible for providing medical support (FC 3751(a)(2).



5% Reasonable Health Insurance Rule

Thank you Comm. Norma Castellanos-Perez (Tulare Co.)

Monthly Gross Income:	\$ _____	5% =\$ _____
Cost to cover health insurance for self:	\$ _____	
Cost to cover health insurance for self+dependent(s)	\$ _____	
Difference in cost between self and self + dependent:	\$ _____	
HEALTH INSURANCE COST IS:	REASONABLE/ UNREASONABLE	



5% Reasonable Health Insurance Rule

Thank you Comm. Norma Castellanos Perez (Tulare Co.)

Monthly Gross Income:	\$ 3000	5% =\$150
Cost to cover health insurance for self:	\$ 400	
Cost to cover health insurance for self+dependent(s)	\$ 600	
Difference in cost between self and self + dependent:	\$ 200	
HEALTH INSURANCE COST IS:	UNREASONABLE	



Dependency Exemption on Tax Return

- Parent who claims the tax deduction for the child must :
 - Provide proof of health insurance; or
 - Obtain an exemption; or
 - Pay a penalty ("shared responsibility")



Dependency Exemption on Tax Return

- Potential conflict with prevailing practice in IV-D cases, which usually looks to the obligor for medical support



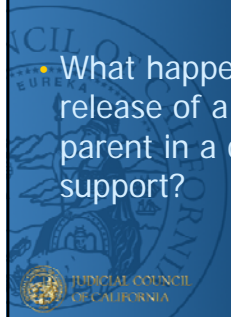
Dependency Exemption/Tax Return

- If DCSS enforces medical support order against NCP
- CP claims dependency exemption
- If NCP fails to provide compliant insurance, CP will have to apply for a hardship exemption to avoid IRS penalties.



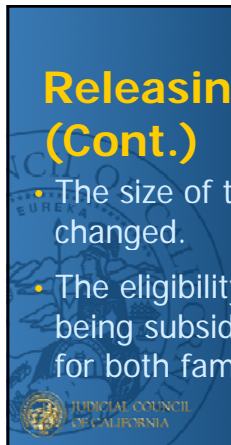
Releasing Dependents

- What happens when you include a release of a dependent to the other parent in a court order for child support?



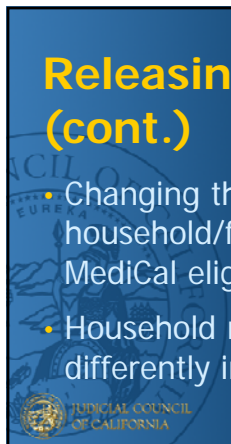
Releasing Dependents (Cont.)

- The size of the household is changed.
- The eligibility for premium costs being subsidized may be effected for both families.



Releasing Dependents (cont.)

- Changing the size of the household/family may also effect MediCal eligibility.
- Household members are counted differently in MediCal.

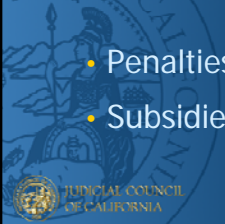


Dependency Exemption/Tax Return

ACA	Child Support
Person with the dependency exemption is responsible for providing health insurance unless exempt. Possible penalty if non-compliance	Allocation of dependency exemption as part determining child support orders
Allocation of the dependency exemption can change household size for purposes of calculating household income and income based eligibility for subsidies, cost sharing, etc.	Possible increase in available pre-support net disposable income of paying parent and thus, an increase in the amount of guideline child support
Person with the dependency exemption is eligible to receive premium subsidy for the dependent, if otherwise qualified	Possible increase in paying parent's post-child support net disposable income leading to increased ability to pay
Change in allocation of dependency exemption could impact dependent's existing or future eligibility for MediCal	Current practice of alternating dependency exemption between the parents from year to year to equalize the tax benefit of the exemption

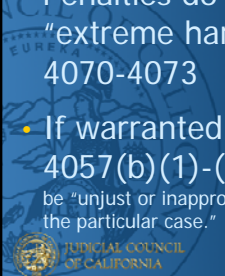
Why should courts care? Does ACA Affect Guideline Factors:

- Penalties
- Subsidies



Why should courts care? ACA & Guideline Factors

- Penalties do not appear to be a "extreme hardship" factor under FC 4070-4073
- If warranted, deviate per FC 4057(b)(1)-(5). Application of the formula would be "unjust or inappropriate due to special circumstances in the particular case."

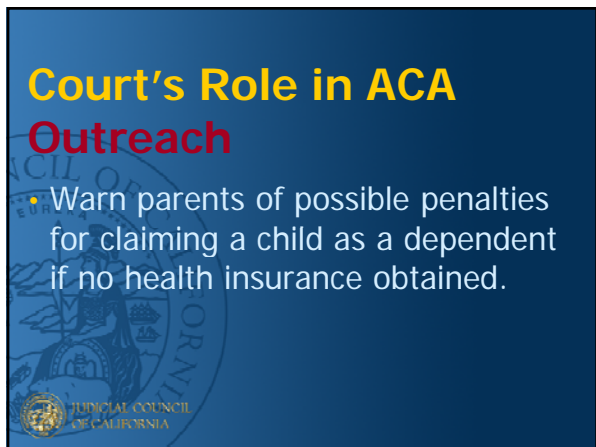


Why should courts care about ACA Subsidies

Treatment depends on option	
Pay full unsubsidized price of premium payment each month & receive tax credit in full as part of tax return in form of a tax refund	DCSS will capture subsidy in obligor's tax refund.
Have all of the premium assistance sent directly to health plan provider, thus lowering monthly premium payments	Need-based assistance. Not taxable by IRS. Not income for purposes of calculating support.
Have part of the premium assistance sent directly to the plan provider to lower monthly payments with balance as a tax refund – would use if have fluctuating income	Need-based assistance. Not taxable by IRS. Not income for purposes of calculating support. DCSS will capture subsidy in obligor's tax refund

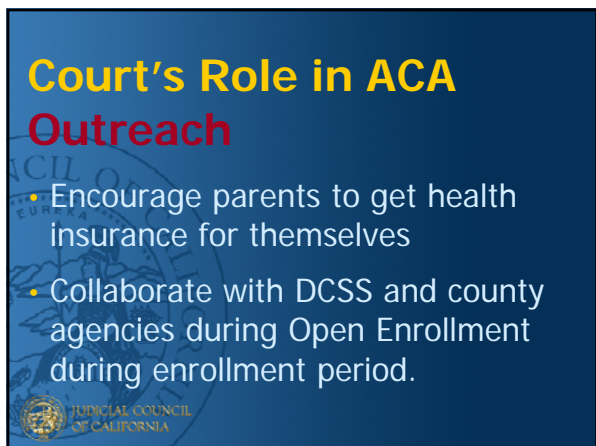
Court's Role in ACA Outreach

- Warn parents of possible penalties for claiming a child as a dependent if no health insurance obtained.



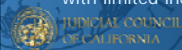
Court's Role in ACA Outreach

- Encourage parents to get health insurance for themselves
- Collaborate with DCSS and county agencies during Open Enrollment during enrollment period.



Court's Role in ACA Outreach

- Open Enrollment for 2016 coverage starts November 1, 2015 – December 15th (eff Jan 1st 2015)
- Open Enrollment for 2016 ends January 31, 2016
- Until then, 2015 coverage may be available :
 - For a [Special Enrollment Period](#) due to a life change like marriage, having a baby, or losing other coverage
 - Through [Medicaid and the Children's Health Insurance Program](#), which provide coverage to families and individuals with limited income or other reasons.



Court's Role in ACA Outreach, "Life changing event"

- *"You are required by court order to provide health insurance for a child who has been determined ineligible for Medi-Cal and CHIP, even if you are not the party who expects to claim the child as a tax dependent. "*
- <http://www.coveredca.com/individuals-and-families/getting-covered/special-enrollment/qualifying-life-events/>



Court's Role in ACA Outreach

- Make enrollment information available in/near courtroom or self-help center
- Examples (Cards, bookmarks, posters)



Outreach: Health Insurance Explained

- A useful tool for people who have never had insurance
- <http://kff.org/health-reform/video/health-insurance-explained-youtoons/>



Federal Office of Child Support Enforcement

- Fact sheets which provide the child support community with information and resources about the Affordable Care Act

<http://www.acf.hhs.gov/programs/css/resource/child-support-health-care-connections>