

The Affordable Care Act

Important Information for Divorced or Separated Parents

NOTICE: This fact sheet is for information purposes only. This is not legal advice; only a lawyer can give you advice about your specific case. If you need help finding a lawyer, visit www.legalhelp.wy.gov and select Find a Lawyer or contact the Wyoming State Bar Lawyer Referral Service at 307-432-2107.

***The Affordable Care Act or ACA (commonly referred to as Obamacare) requires most people in the United States to have health insurance coverage or pay a tax penalty (called a shared responsibility payment). The ACA provides financial assistance for many people to help with the cost of buying health insurance on the Marketplace. This financial help makes it possible for many more people to get insured. But there are important things about the ACA that divorced or separated parents need to know.

PENALTIES: The tax penalty for not having health insurance is calculated two ways. If you or your dependents don't have insurance that qualifies as minimum essential coverage you'll pay the **higher** of the penalties. The penalty is being phased in over three years. The penalties for the first three years are:

2014: 1% of your yearly household income OR \$95 per person (\$47.50 per child)

2015: 2% of your yearly household income OR \$325 per person (\$162.50 per child)

2016: 2.5% of your yearly household income OR \$695 per person.

Quick Facts: You need to know a few things about the ACA when you represent yourself in a custody, child support, or divorce case involving children. In a custody, child support, or divorce case that involves a child, one parent must be ordered to provide insurance for the child. In making an agreement with the other parent or asking the court to decide this issue, here are some things about the ACA that you need to know and consider.

- The Affordable Care Act requires almost everyone to have qualifying health insurance.
- There is a tax penalty if you do not have health insurance for yourself or for a dependent in your household.
- The tax penalty for not having insurance for a dependent child is normally taxed to the parent who has the child more than 50% of the time (the custodial parent).
- If the custodial parent (the parent who has the child more than 50% of the time) gives the child deduction and exemption to the non-custodial parent and the non-custodial parent claims the child on his/her tax return, then the non-custodial parent will be responsible for ensuring the child has qualifying insurance and will be responsible for any IRS penalties if the child is not insured.
- Under the tax rules, it does not matter if the other parent is court ordered to provide health insurance for the child. If the child is not insured, the parent who claims the child on his/her taxes will have to pay the penalty.

- If no one claims the child for tax purposes, the custodial parent (the parent who has the child more than 50% of the time) will have to pay the tax penalty.
- A parent may qualify for financial assistance to get health insurance for the child on the Marketplace, but to get this financial assistance, the parent **MUST** claim the child for the child tax deduction on the parent's income tax return.

CAUTION: If you receive advance premium tax credits to help purchase insurance on the insurance marketplace for a child and then do not claim the child as a dependent on your tax return, you may have to repay the advanced tax credits you received. **This can be thousands of dollars.**

- Many individuals who qualify for help paying for insurance premiums on the Marketplace may also qualify for help paying out-of-pocket costs for healthcare, such as deductibles, copays, and coinsurance. (This assistance is called Cost-Sharing Subsidies or Cost-Sharing Reductions.) This added benefit should be considered when deciding whether to purchase insurance through the Marketplace because only qualifying plans purchased on the Marketplace qualify for this financial assistance.
- Because this financial assistance for health insurance and out of pocket healthcare costs is only available to the parent claiming the child for tax purposes, it is usually NOT a good idea for parents to take turns claiming the child on their taxes in alternating years. Alternating the deduction could cause yearly changes in the availability of health insurance and help with out of pocket healthcare costs for the child.
- For these reasons, parents *usually* should NOT agree to take turns claiming the income tax deduction for the child and should follow the IRS rules for claiming the child.

What does this mean for custody and child support?

- Because the parent who has the child for more than 50% of the time may be held responsible for making sure the child has health insurance, in many cases the custodial parent may want to be responsible for providing the child's health insurance and ask that the non-custodial parent pay part of the health insurance premiums as additional cash child support.
- If the custodial parent is going to provide insurance for the child, the custodial parent should also take the dependent tax deductions and credits every year in order to qualify for financial assistance available to help pay for the insurance.
- Some parents agree to take turns claiming the child tax deduction on the income tax return, but that will usually cause problems under the Affordable Care Act.
- Taking turns claiming the child tax deduction will create a situation where the parent's ability to provide insurance under the Affordable Care Act will not qualify for financial assistance to get the insurance every year.

Can the court still order the non-custodial parent to provide health insurance in a divorce or custody case if the non-custodial parent has good insurance?

- Yes, the parties can agree, or the court can order, the non-custodial parent to provide health insurance for a child. BUT, if the non-custodial parent doesn't provide the health

insurance, the custodial parent may be the person who has to pay the tax penalty no matter what the court order says. Usually, this will only be a good idea if the non-custodial parent has a stable job that provides qualifying insurance at an affordable cost and the noncustodial parent can provide proof of the insurance.

What if I have questions about custody and child support or filling out the pro se packets?

- If you have questions about child support or custody or if you need help filling out the pro se packets, you should discuss this with a lawyer. Only a lawyer can give you legal advice. If you need help finding a lawyer, visit www.legalhelp.wy.gov and select Find a Lawyer. If you cannot afford legal services, this website also has information about applying for free legal help through a legal aid provider.
- If you have questions or need help with child support, contact your local child support office or call Child Support Enforcement at 307-777-5831.

What if I have questions about the Affordable Care Act or finding health insurance?

- Call 2-1-1 to speak to a certified navigator who is trained to explain your options, help you find insurance coverage, and find financial help to pay for it. If you have trouble calling 2-1-1, some cell phone/PBX phone systems may need to dial 1-888-425-7138.
- There are several websites that contain useful information about the Affordable Care Act. Be sure to only use trusted websites to avoid scams. Trusted websites include:
 - o www.healthcare.gov
 - o www.hhs.gov/healthcare
 - o www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions
 - o www.cms.gov/Outreach-and-Education/American-Indian-Alaska-Native/AIAN/Affordable_Care_Act.html
 - o www.legalhelp.wy.gov – Go to the Self-Help tab and select Self-Help Information by Topic and click on Health Insurance Marketplace.
 - o <https://marketplace.cms.gov>