March 27, 2023

Dear Muckrock,

The Montana Department of Corrections received your request regarding: All current policies and procedures regarding medical and room & board costs or fees for which incarcerated youth (i.e. juvenile) and/or their parents or legal guardians are or may become liable. Please include all policies and procedures related to how fees are set, accrued, imposed, collected, and enforced (such as those related to per diem fees, ability to pay determinations, penalties for late or non-payment, authorization for civil or criminal action for payment enforcement, etc).

Please see our response below.

**Financial Services Bureau’s cost of care collection process:**

The DOC’s Financial Services Bureau (FSB) collects financial information regarding the parents/guardians of youth committed to the DOC’s custody and supervision once a signed commitment order is received. The DOC obtains court orders authorizing the collection of cost of care contributions from parents/guardians to offset DOC placement costs.

FSB sends the parent/guardian a Financial Affidavit (please see document titled “Financial Affidavit”) along with a Notice Concerning Financial Support letter. Recipients are given 10 working days to return the completed document. If the Financial Affidavit is not returned by the specified date, a Second and Final Notice letter allowing an additional 10 working days for return is sent to the parent/guardian.

If all attempts to obtain the completed Financial Affidavit fail, FSB calculates the cost of care contribution by inputting income using the (a) current minimum wage; (b) using income found from MISTICS or; (c) from other sources. FSB uses the Montana Automated Child Support system work sheet to determine the appropriate contribution using the information obtained from the financial affidavit. The program was developed by Nick Bourdeau of Great Falls, MT. (Authorization is required to obtain and use this program.)

Once a cost of care contribution is calculated, FSB will send a Notification of Contribution letter to the parent/guardian along with copies of the Montana Child Support Guidelines worksheet and notes describing how the cost of care calculation was determined. This notification letter allows 10 days for the parent/guardian to dispute the calculation. This letter is the parent/guardian’s due process. If after 10 days, the parent/guardian has not contacted FSB disputing or providing additional information, FSB prepares the cost of care documents. If the parent/guardian contacts FSB with additional information, FSB will use that information to re-calculate the amount of cost of care. The parent/guardian’s due process would begin again.

FSB may seek an order for cost of care contribution by working through appropriate legal counsel, i.e. the county attorney’s office in the appropriate county where the youth court case is filed or the DOC’s Legal Services Bureau to file the appropriate paperwork. No interest or penalties are attached to the account. Garnishment is not more than 50% of available income.

FSB offers the parent/guardian a Letter of Payment Agreement if the court-ordered monthly amount is a burden on the parent’s fiscal snapshot each month. This is presented to the parent/guardian prior to any garnishment, as it gives the parent/legal guardian control of their monthly financial obligations. If the account continues to be delinquent, FSB then refers the account to the Montana Department of Revenue. The DOR can then intercept a Montana tax refund. DOR charges 8% to do the interception for the DOC.

**FSB’s policies and procedures for determining ability to pay the cost of care fee, including, but not limited to, notice to families, decision-making criteria, due process, and appeal rights:**

**Policies and procedures for determining cost of care**: The DOC was mandated by the Montana Legislature in 1998 to pursue cost of care contributions from the parents whose juvenile child was placed in an out-of-home placement, at the expense of the department:

MCA 41-5-1525 Mont. Code Ann:

1. If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.
2. If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.
3. If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209 .

(4)(a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, parts 3 and 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6)(a) If the court orders the payment of contributions under this section, the department may apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

**Decision-making criteria, due process, and appeal rights:**

The DOC informs the parent/legal guardian of their right to object to the order. Within 10 days of receiving the letter of Due Process, the parent/guardian or their attorney must request a hearing with the 1st Judicial District Youth Court by filing a petition or by mailing a letter to the County Attorney.

Parents are exempt from paying cost of care if they meet the following criteria:

- If the monthly contribution amount is less than twenty dollars ($20) as calculated by the MT automated child support guidelines

- If the parent’s sole source of income is Social Security Disability Income (SSDI).

- If the parent/guardian is a one-half to full-time student in a course of study designed to better the parent/guardian’s economic situation, they are exempt while in school.

- If an unusual emotional and or physical need of a legal dependent requires the parent/guardian’s presence in the home full time or (b) the parent/guardian has made diligent efforts to find and accept suitable work to return to customary self-employment to no avail, appropriate documentation from the parent/legal guardian supporting the unusual circumstance must be obtained.

- If the legal guardian/s became legal caretakers for the youth after the youth offended, or it was known the youth was troubled and the legal guardians were not primarily responsible for the youth’s pre-adolescent environment and supervision.

- If the parent/legal guardian is receiving TANF or SNAP benefits he/she is exempt from contributing toward the cost of care.

- If the parent/legal guardian is in prison at the time the youth goes into placement. When and if they are released, and if the youth is still in placement, the process to calculate cost of care will begin.

Thank you for reaching out. Please let us know if there is anything else we can do to assist in this request.

Sincerely,

Alexandria Klapmeier

Public Information Officer

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