

Health Care Savings Plan (HCSP)

Marriage Dissolution Guide



Sample Domestic Relations Order to Divide a Health Care Savings Plan Account

Below is a sample domestic relations order (DRO) for Health Care Savings Plan (HCSP) accounts. This sample should be used in conjunction with an attorney's advice. Nothing contained in this sample shall be construed as tax, financial, or legal advice. The applicable sample provisions and the terms of the order will vary in each case, but the information summarized in each box should be included. Please submit a draft of the DRO to Minnesota State Retirement System (MSRS) for review prior to filing with the court.

The Minnesota state courts generally use a format such as this for a domestic relations order issued in addition to the Judgment and Decree.

Introduction (1-2)

This section identifies the date of the hearing or motion for the domestic relations order, the date of the divorce decree, and the basis for the Court's order.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF (County where the order will be filed) [Number] JUDICIAL DISTRICT

In Re the Marriage of

[Name],

Court File No. []
Hon. [Name of Judge]

Petitioner,

DOMESTIC RELATIONS ORDER
Health Care Savings Plan (HCSP)

and

[Name],

Respondent.

1. The above matter came before the undersigned on [date]. Based upon all the files, records and proceedings herein, the Court makes the following Order:
2. The Judgment and Decree ("Decree") of dissolution in this matter was entered on [month, day, year].

3. This Order applies to the Health Care Savings Plan (“HCSP” or “Plan”) administered by the Minnesota State Retirement System (“MSRS”).
4. [Petitioner or Respondent] (hereinafter “Participant”) has an HCSP account.
5. The Decree requires a transfer of a portion of the Participant’s HCSP account to [Petitioner or Respondent] (hereinafter “Alternate Payee”) pursuant to a Domestic Relations Order.
6. The Participant’s current address is [] and [his/her] date of birth is [].
7. The Alternate Payee’s current address is [] and [his/her] date of birth is [].
8. The Participant and the Alternate Payee must notify MSRS, 60 Empire Drive, Suite 300, St. Paul, MN 55103-3000, of any change of address.

Identifying information (3-8)

This section identifies which MSRS account is to be divided by the court order. If there are multiple MSRS plans to be divided, separate language is required for each plan. This section also identifies the Participant and the Alternate Payee and requires them to keep a current address on file with MSRS.

9. This Order assigns to the Alternate Payee an amount equal to **[insert option 1, 2, or 3.]**

Option 1: [number] percent of the Participant’s total HCSP account balance as of [date], which is the date of division. The total HCSP account balance shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 2: \$ [dollar amount] of the Participant’s total HCSP account balance as of [date], which is the date of division. The total HCSP account balance shall not include any contributions to the Plan that occur after the date of division. Any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the Participant and the Alternate Payee.

-OR-

Option 3: \$ [dollar amount] of Participant’s total HCSP account balance. The total HCSP account balance shall not include any contributions, gains or losses to the Plan.

10. A separate HCSP account in the name of the Alternate Payee shall be established by MSRS. The amount or percentage specified in paragraph 9 shall be transferred and deposited into the Alternate Payee’s account using the same investment option percentages as the Participant’s account.

Assignment of benefits and account structure (9-10)

This section is critical because the terms of the division are detailed. The benefit awarded can be a percentage or a dollar amount. If the award specifies a division date, any investment gains or losses from the date of division to the date of transfer shall be pro-rated between the two parties. If no division date is specified, the awarded dollar amount will be transferred with no investment gains or losses.

NOTE: Due to recordkeeper changes, MSRS only has access to quarter-end balances for the MNDCP, Unclassified Plan and HCSP accounts prior to July 1, 2009. The order must specify a quarter-end division date after June 30, 1999, because MSRS cannot determine investment gains or losses before that date.

Each party’s birth record and Social Security number must be provided separate from the order.

11. The Alternate Payee shall have control over the investment allocation of their HCSP account, once established.

Beneficiary designation (12)

Informs the Participant and the Alternate Payee that they are able to name the beneficiary of their respective accounts.

12. The Participant and Alternate Payee may designate a beneficiary of their respective HCSP accounts, but a current spouse or legal tax dependent will supersede a designated beneficiary.

Benefits after death (13-15)

Specifies what occurs upon the death of the Participant or Alternate Payee.

13. If the heir(s) of the Participant or Alternate Payee is a spouse or a legal dependent, the account balance is used for tax-free reimbursement of eligible medical expenses. If there is no spouse or legal dependent(s), the account is transferred to the designated beneficiary to be used for reimbursement of eligible medical expenses. Reimbursements to a designated beneficiary are taxed as ordinary income. The Alternate Payee or his/her heir(s) may receive reimbursement of eligible healthcare expenses once the final domestic relations order has been accepted by MSRS.
14. In the event of the Alternate Payee's death prior to receiving the full amount assigned under this Order, the remaining amount shall be paid to the Alternate Payee's beneficiary(ies) as designated to MSRS, or, in the absence of a beneficiary designation, in accordance with the terms of the Plan.
15. Should the Participant predecease the Alternate Payee, the Participant's death shall in no way affect the Alternate Payee's right to the portion of the HCSP account as ordered herein.

Limitations on order (16)

Ensures that the Order will be administered consistently with federal and state law and the terms of the Plan.

16. This Order is not intended, and shall not be construed in such a manner as to require the Plan to provide any type or form of benefits or any option not otherwise provided under the Plan; to pay more than the amount payable under the terms of the Plan; to assign any benefits or payments previously required to be paid to another alternate payee; or to require any payment or option inconsistent with any federal or state law, rule, regulation, or judicial decision.

Errant payments (17)

Explains how an errant payment will be handled.

17. In the event that the Plan pays to one party any payment or benefit that is assigned to the other party, the party receiving the errant payment shall reimburse the other party within ten days of receipt of the errant payment.

Court jurisdiction (18)

Explains that the Court retains jurisdiction over the domestic relations order.

18. The Court retains jurisdiction over this matter to amend this Order and to enter such further orders as are necessary to enforce the assignment of the Participant's HCSP account to the Alternate Payee as set forth herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

[Name of Judge]

JUDGE OF DISTRICT COURT

Health Care Savings Plan (HCSP)

During a marriage dissolution proceeding, the court may decide to divide the assets of the Health Care Savings Plan (HCSP) account between the parties. Minnesota State Retirement System (MSRS) will provide the value of the HCSP account to the court, the parties to a marriage dissolution, their attorneys, and an appointed actuary upon receipt of a written request pursuant to Minn. Stat. §356.49.

A certified copy of the judgment and decree or domestic relations order (DRO) must be submitted to MSRS. If MSRS is provided with an acceptable judgment and decree, a separate DRO may not be required.

Divorce Checklist - HCSP

The following checklist should assist all parties of a marriage dissolution in addressing the HCSP account during a divorce proceeding. This checklist may help prevent delays in the request for MSRS to divide the HCSP assets. Nothing contained in this checklist should be construed as tax, financial, or legal advice.

- Review sample language.** Sample language that MSRS can administer is included in this publication. If MSRS is provided with a judgment and decree that includes acceptable direction for the division of HCSP assets, a separate DRO may not be required.
- Draft the judgment and decree or the DRO, if any.** To learn what language may be incorporated into the decree or DRO, please refer to the *Sample Domestic Relations Order to Divide a Health Care Savings Plan Account*.
- Prior to filing with the court, provide MSRS with a draft of the proposed judgment and decree and the DRO, if any.** It is critical that MSRS review the draft prior to filing with the court to ensure that MSRS is able to administer the provisions of the order. If MSRS is unable to administer the DRO as written, it may be necessary to return to court for clarification.
- After filing with the court, provide MSRS with a certified copy of the final judgment and decree or the DRO, if any.** The HCSP assets cannot be divided until MSRS has the final court document. To learn more, see *Transferring HCSP assets to the Alternate Payee*.
- Provide MSRS with each party's Social Security number.** This must be separate from the order.
- Complete a *Beneficiary Designation* form if your former spouse was one of your beneficiaries.**

DOMESTIC RELATIONS ORDER

A certified copy of the judgment and decree or domestic relations order (DRO) must be submitted to MSRS.



If MSRS is provided with an acceptable judgment and decree, that MSRS can administer, a separate DRO may not be required.

OUT-OF-STATE ORDERS

MSRS requires a certified copy of the original out-of-state court order and documentation from a district court that the order was filed in Minnesota.

Transferring HCSP assets to the Alternate Payee

If the court order is acceptable, a portion of the HCSP account will be transferred to a new account established solely for the Alternate Payee (former spouse). The HCSP account can be split after the participant has received reimbursements from the account.

A new account will be created for the alternate payee. Upon receipt by MSRS of an acceptable order, the alternate payee's account will be established within four weeks. If the Alternate Payee already has an existing HCSP account, their portion of the split will be transferred to the existing account.

The amount transferred to the Alternate Payee's account is determined by:

- instructions in the divorce decree or DRO;
- the effective date of the division; and
- investment gains or losses in the account since the effective date of the division. Investment gains or losses from the date of division to the date of transfer shall be pro-rated between the participant and alternate payee.

Alternate Payee's rights

Following the division of the HCSP assets, the alternate payee can:

- modify the account investment allocation.
- designate a beneficiary (for more details, see the next section, *Assignment of account balance upon death*).
- request reimbursements of eligible medical expenses incurred since the date of division specified in the order.

Assignment of account balance upon death

Following the death of an HCSP participant or alternate payee, the account is assigned:

- To the surviving spouse, to be used for tax-free reimbursement of health care-related expenses.
- If no spouse, then to the participant or alternate payee's legal tax dependents to be used for tax-free reimbursement of health care-related expenses.
- If no spouse or legal tax dependents, then to the designated beneficiaries. Reimbursements to a designated beneficiary are subject to federal and state income tax.
- If no spouse, legal tax dependents, or designated beneficiary, then the personal representative of the estate must identify individual(s) who will receive the account balance in the form of reimbursements. The estate must be probated and individual(s) designated as the owner of the account.

Contact Us – We're Here To Help!

If you have any questions regarding a marriage dissolution in regards to your HCSP account, please contact an MSRS representative or schedule an appointment at one of our offices.

Questions?    

Phone: 1.800.657.5757 or 651.296.2761 Fax: 651.297.5238
Web: www.msrs.state.mn.us Email: info@msrs.us