

House Bill No. 5129

An act relating to child support enforcement; amending s. 61.046, F.S.; defining the term “health insurance” for purposes of provisions establishing and providing for enforcement of medical support obligations in child-support-enforcement cases; amending s. 61.13, F.S.; establishing standards for a presumption of reasonable costs of and accessibility of health insurance; requiring that the court make a written finding before deviating from the presumed reasonable cost; providing method for calculating a child’s health insurance and non-covered medical expenses under certain circumstances; amending s. 61.1301, F.S.; conforming a provision to changes made by the act; amending s. 409.2554, F.S.; defining the term “health insurance” for purposes of provisions establishing and providing for the enforcement of medical support obligations in child-support-enforcement cases that received services under the Social Security Act; amending s. 409.2561, F.S.; conforming provisions to changes made by the act; amending s. 409.2563, F.S.; conforming provisions to changes made by the act; amending s. 409.2572, F.S.; conforming a cross-reference to changes made by the act; amending s. 409.2576, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (7) through (22) of section 61.046, Florida Statutes, are renumbered as subsections (8) through (23), respectively, and a new subsection (7) is added to that section to read:

61.046 Definitions.—As used in this chapter, the term:

(7) “Health insurance” means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

Section 2. Paragraph (b) of subsection (1) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(1)

(b) Each order for support shall contain a provision for health insurance ~~care coverage~~ for the minor child when health insurance the coverage is reasonable in cost and accessible to the child reasonably available. Health insurance is presumed to be reasonable in cost if the incremental cost of adding health insurance for the child or children does not exceed 5 percent of the gross income, as defined in s. 61.30, of the parent responsible for providing health insurance. Health insurance is accessible to the child if the health insurance is available to be used in the county of the child’s primary

residence or in another county if the parent who has the most time under the time-sharing plan agrees. If the time-sharing plan provides for equal time-sharing, health insurance is accessible to the child if the health insurance is available to be used in either county where the child resides or in another county if both parents agree. Coverage is reasonably available if either the obligor or obligee has access at a reasonable rate to a group health plan. The court may require the obligor either to provide health insurance care coverage or to reimburse the obligee for the cost of health insurance care coverage for the minor child when insurance coverage is provided by the obligee. The presumption of reasonable cost may be rebutted by evidence of any of the factors in s. 61.30(11)(a). The court may deviate from what is presumed reasonable in cost only upon a written finding explaining its determination why ordering or not ordering the provision of health insurance or the reimbursement of the obligee's cost for providing health insurance for the minor child would be unjust or inappropriate. In any either event, the court shall apportion the cost of health insurance coverage, and any noncovered medical, dental, and prescription medication expenses of the child, to both parties by adding the cost to the basic obligation determined pursuant to s. 61.30(6). The court may order that payment of noncovered uncovered medical, dental, and prescription medication expenses of the minor child be made directly to the obligee on a percentage basis. In a proceeding for medical support only, each parent's share of the child's health insurance and noncovered medical expenses shall equal the parent's percentage share of the combined net income of the parents. The percentage share shall be calculated by dividing each parent's net monthly income by the combined monthly net income of both parents. Net income is calculated as specified by s. 61.30(3) and (4).

1. In a non-Title IV-D case, a copy of the court order for health insurance care coverage shall be served on the obligor's union or employer by the obligee when the following conditions are met:

a. The obligor fails to provide written proof to the obligee within 30 days after receiving effective notice of the court order that the health insurance care coverage has been obtained or that application for health insurance coverage has been made;

b. The obligee serves written notice of intent to enforce an order for health insurance care coverage on the obligor by mail at the obligor's last known address; and

c. The obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee that the health insurance care coverage existed as of the date of mailing.

2.a. A support order enforced under Title IV-D of the Social Security Act which requires that the obligor provide health insurance care coverage is enforceable by the department through the use of the national medical support notice, and an amendment to the support order is not required. The department shall transfer the national medical support notice to the obligor's union or employer. The department shall notify the obligor in writing that the notice has been sent to the obligor's union or employer, and the

written notification must include the obligor's rights and duties under the national medical support notice. The obligor may contest the withholding required by the national medical support notice based on a mistake of fact. To contest the withholding, the obligor must file a written notice of contest with the department within 15 business days after the date the obligor receives written notification of the national medical support notice from the department. Filing with the department is complete when the notice is received by the person designated by the department in the written notification. The notice of contest must be in the form prescribed by the department. Upon the timely filing of a notice of contest, the department shall, within 5 business days, schedule an informal conference with the obligor to discuss the obligor's factual dispute. If the informal conference resolves the dispute to the obligor's satisfaction or if the obligor fails to attend the informal conference, the notice of contest is deemed withdrawn. If the informal conference does not resolve the dispute, the obligor may request an administrative hearing under chapter 120 within 5 business days after the termination of the informal conference, in a form and manner prescribed by the department. However, the filing of a notice of contest by the obligor does not delay the withholding of premium payments by the union, employer, or health plan administrator. The union, employer, or health plan administrator must implement the withholding as directed by the national medical support notice unless notified by the department that the national medical support notice is terminated.

b. In a Title IV-D case, the department shall notify an obligor's union or employer if the obligation to provide health insurance ~~care coverage~~ through that union or employer is terminated.

3. In a non-Title IV-D case, upon receipt of the order pursuant to subparagraph 1., or upon application of the obligor pursuant to the order, the union or employer shall enroll the minor child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period and withhold any required premium from the obligor's income. If more than one plan is offered by the union or employer, the child shall be enrolled in the group health plan in which the obligor is enrolled.

4.a. Upon receipt of the national medical support notice under subparagraph 2. in a Title IV-D case, the union or employer shall transfer the notice to the appropriate group health plan administrator within 20 business days after the date on the notice. The plan administrator must enroll the child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period, and the union or employer must withhold any required premium from the obligor's income upon notification by the plan administrator that the child is enrolled. The child shall be enrolled in the group health plan in which the obligor is enrolled. If the group health plan in which the obligor is enrolled is not available where the child resides or if the obligor is not enrolled in group coverage, the child shall be enrolled in the lowest cost group health plan that is accessible to available ~~where~~ the child resides.

b. If health insurance ~~care coverage~~ or the obligor's employment is terminated in a Title IV-D case, the union or employer that is withholding premiums for health insurance ~~care coverage~~ under a national medical support

notice must notify the department within 20 days after the termination and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

5.a. The amount withheld by a union or employer in compliance with a support order may not exceed the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended. The union or employer shall withhold the maximum allowed by the Consumer Credit Protection Act in the following order:

- (I) Current support, as ordered.
- (II) Premium payments for health insurance ~~care coverage~~, as ordered.
- (III) Past due support, as ordered.
- (IV) Other medical support or insurance ~~coverage~~, as ordered.

b. If the combined amount to be withheld for current support plus the premium payment for health insurance ~~care coverage~~ exceed the amount allowed under the Consumer Credit Protection Act, and the health insurance ~~care coverage~~ cannot be obtained unless the full amount of the premium is paid, the union or employer may not withhold the premium payment. However, the union or employer shall withhold the maximum allowed in the following order:

- (I) Current support, as ordered.
- (II) Past due support, as ordered.
- (III) Other medical support or insurance ~~coverage~~, as ordered.

6. An employer, union, or plan administrator who does not comply with the requirements in sub-subparagraph 4.a. is subject to a civil penalty not to exceed \$250 for the first violation and \$500 for subsequent violations, plus attorney's fees and costs. The department may file a petition in circuit court to enforce the requirements of this subparagraph.

7. The department may adopt rules to administer the child support enforcement provisions of this section that affect Title IV-D cases.

Section 3. Subsection (5) of section 61.1301, Florida Statutes, is amended to read:

61.1301 Income deduction orders.—

(5) By July 1, 2006, the department shall provide a payor with Internet access to income deduction and national medical support notices issued by the department on or after July 1, 2006, concerning an obligor to whom the payor pays income. The department shall provide a payor who requests Internet access with a user code and password to allow the payor to receive notices electronically and to download the information necessary to begin income deduction and health insurance ~~care coverage~~ enrollment. If a participating payor does not respond to electronic notice by accessing the data

posted by the department within 48 hours, the department shall mail the income deduction or medical support notice to the payor.

Section 4. Subsections (5) through (14) of section 409.2554, Florida Statutes, are renumbered as subsections (6) through (15), respectively, and a new subsection (5) is added to that section to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5) “Health insurance” means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

Section 5. Paragraphs (b), (c), and (e) of subsection (5) of section 409.2561, Florida Statutes, are amended to read:

409.2561 Support obligations when public assistance is paid; assignment of rights; subrogation; medical and health insurance information.—

(5) With respect to cases for which there is an assignment in effect:

(b) When ~~the obligor receives~~ health insurance is obtained coverage for the dependent child, the IV-D agency shall provide health insurance policy information, including any information available about the health insurance policy which would permit a claim to be filed or, in the case of a health maintenance or preferred provider organization, service to be provided, to the state Medicaid agency.

(c) The state Medicaid agency, upon receipt of the health insurance coverage information from the IV-D agency, shall notify the ~~obligor’s~~ insuring entity that the Medicaid agency must be notified within 30 days after the health insurance ~~when such coverage~~ is discontinued.

(e) Upon the state Medicaid agency receiving notice from the ~~obligor’s~~ insuring entity that the health insurance coverage is discontinued due to cancellation or other means, the Medicaid agency shall notify the IV-D agency of such discontinuance and the effective date. When appropriate, the IV-D agency shall then take action to bring the obligor before the court for enforcement.

Section 6. Paragraph (e) of subsection (7) of section 409.2563, Florida Statutes, is amended to read:

409.2563 Administrative establishment of child support obligations.—

(7) ADMINISTRATIVE SUPPORT ORDER.—

(e) An administrative support order must comply with ss. 61.13(1) and 61.30 ~~s. 61.30~~. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;
2. The name of the parent from whom support is being sought and the other parent or caretaker relative;
3. The parent's duty and ability to provide support;
4. The amount of the parent's monthly support obligation;
5. Any obligation to pay retroactive support;
6. The parent's obligation to provide for the health care needs of each child, whether through health insurance coverage, contribution towards the cost of health insurance coverage, payment or reimbursement of health care expenses for the child, or any combination thereof;
7. The beginning date of any required monthly payments and health insurance care coverage;
8. That all support payments ordered must be paid to the Florida State Disbursement Unit as provided by s. 61.1824;
9. That the parents, or caretaker relative if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);
10. That both parents, or parent and caretaker relative if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and
11. That if the parent ordered to pay support receives unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 7. Subsection (5) of section 409.2572, Florida Statutes, is amended to read:

409.2572 Cooperation.—

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(8) ~~s. 409.2554(7)~~, with the exception of applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 8. Subsection (7) of section 409.2576, Florida Statutes, is amended to read:

409.2576 State Directory of New Hires.—

(7) WAGE WITHHOLDING NOTICE AND NATIONAL MEDICAL SUPPORT NOTICE.—The department shall transmit a wage withholding notice consistent with s. 61.1301 and, when appropriate, a national medical support notice, as defined in s. 61.046, to the employee's employer within 2 business days after entry of the new hire information into the State Directory of New Hires' database, unless the court has determined that the employee's wages are not subject to withholding or, for purposes of the national medical support notice, the support order does not contain a provision for the employee to provide health insurance ~~care coverage~~. The withholding notice shall direct the employer to withhold income in accordance with the income deduction order, and the national medical support notice shall direct the employer to withhold premiums for health insurance ~~care coverage~~.

Section 9. This act shall take effect upon becoming a law.

Approved by the Governor May 27, 2009.

Filed in Office Secretary of State May 27, 2009.