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HB 5129, Engrossed 1

2009 Legislature

1 A bill to be entitled
2 An act relating to child support enforcement; amending s.
3 61.046, F.S.; defining the term "health insurance" for
4 purposes of provisions establishing and providing for
5 enforcement of medical support obligations in child-
6 support-enforcement cases; amending s. 61.13, F.S.;
7 establishing standards for a presumption of reasonable
8 costs of and accessibility of health insurance; requiring
9 that the court make a written finding before deviating
10 from the presumed reasonable cost; providing method for
11 calculating a child's health insurance and noncovered
12 medical expenses under certain circumstances; amending s.
13 61.1301, F.S.; conforming a provision to changes made by
14 the act; amending s. 409.2554, F.S.; defining the term
15 "health insurance" for purposes of provisions establishing
16 and providing for the enforcement of medical support
17 obligations in child-support-enforcement cases that
18 received services under the Social Security Act; amending
19 s. 409.2561, F.S.; conforming provisions to changes made
20 by the act; amending s. 409.2563, F.S.; conforming
21 provisions to changes made by the act; amending s.
22 409.2572, F.S.; conforming a cross-reference to changes
23 made by the act; amending s. 409.2576, F.S.; conforming
24 provisions to changes made by the act; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Subsections (7) through (22) of section 61.046,
 30 Florida Statutes, are renumbered as subsections (8) through
 31 (23), respectively, and a new subsection (7) is added to that
 32 section to read:

33 61.046 Definitions.--As used in this chapter, the term:

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

39 Section 2. Paragraph (b) of subsection (1) of section
 40 61.13, Florida Statutes, is amended to read:

41 61.13 Support of children; parenting and time-sharing;
 42 powers of court.--

43 (1)

44 (b) Each order for support shall contain a provision for
 45 health insurance ~~care coverage~~ for the minor child when health
 46 insurance ~~the coverage~~ is reasonable in cost and accessible to
 47 the child ~~reasonably available~~. Health insurance is presumed to
 48 be reasonable in cost if the incremental cost of adding health
 49 insurance for the child or children does not exceed 5 percent of
 50 the gross income, as defined in s. 61.30, of the parent
 51 responsible for providing health insurance. Health insurance is
 52 accessible to the child if the health insurance is available to
 53 be used in the county of the child's primary residence or in
 54 another county if the parent who has the most time under the
 55 time-sharing plan agrees. If the time-sharing plan provides for
 56 equal time-sharing, health insurance is accessible to the child

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57 if the health insurance is available to be used in either county
 58 where the child resides or in another county if both parents
 59 agree. Coverage is reasonably available if either the obligor or
 60 obligee has access at a reasonable rate to a group health plan.
 61 The court may require the obligor ~~either~~ to provide health
 62 insurance ~~care coverage~~ or to reimburse the obligee for the cost
 63 of health insurance ~~care coverage~~ for the minor child when
 64 insurance coverage is provided by the obligee. The presumption
 65 of reasonable cost may be rebutted by evidence of any of the
 66 factors in s. 61.30(11)(a). The court may deviate from what is
 67 presumed reasonable in cost only upon a written finding
 68 explaining its determination why ordering or not ordering the
 69 provision of health insurance or the reimbursement of the
 70 obligee's cost for providing health insurance for the minor
 71 child would be unjust or inappropriate. In any ~~either~~ event, the
 72 court shall apportion the cost of health insurance coverage, and
 73 any noncovered medical, dental, and prescription medication
 74 expenses of the child, to both parties by adding the cost to the
 75 basic obligation determined pursuant to s. 61.30(6). The court
 76 may order that payment of noncovered ~~uncovered~~ medical, dental,
 77 and prescription medication expenses of the minor child be made
 78 directly to the obligee on a percentage basis. In a proceeding
 79 for medical support only, each parent's share of the child's
 80 health insurance and noncovered medical expenses shall equal the
 81 parent's percentage share of the combined net income of the
 82 parents. The percentage share shall be calculated by dividing
 83 each parent's net monthly income by the combined monthly net
 84 income of both parents. Net income is calculated as specified by

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85 s. 61.30(3) and (4).

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

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

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

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

102 2.a. A support order enforced under Title IV-D of the
103 Social Security Act which requires that the obligor provide
104 health insurance ~~care coverage~~ is enforceable by the department
105 through the use of the national medical support notice, and an
106 amendment to the support order is not required. The department
107 shall transfer the national medical support notice to the
108 obligor's union or employer. The department shall notify the
109 obligor in writing that the notice has been sent to the
110 obligor's union or employer, and the written notification must
111 include the obligor's rights and duties under the national
112 medical support notice. The obligor may contest the withholding

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113 required by the national medical support notice based on a
 114 mistake of fact. To contest the withholding, the obligor must
 115 file a written notice of contest with the department within 15
 116 business days after the date the obligor receives written
 117 notification of the national medical support notice from the
 118 department. Filing with the department is complete when the
 119 notice is received by the person designated by the department in
 120 the written notification. The notice of contest must be in the
 121 form prescribed by the department. Upon the timely filing of a
 122 notice of contest, the department shall, within 5 business days,
 123 schedule an informal conference with the obligor to discuss the
 124 obligor's factual dispute. If the informal conference resolves
 125 the dispute to the obligor's satisfaction or if the obligor
 126 fails to attend the informal conference, the notice of contest
 127 is deemed withdrawn. If the informal conference does not resolve
 128 the dispute, the obligor may request an administrative hearing
 129 under chapter 120 within 5 business days after the termination
 130 of the informal conference, in a form and manner prescribed by
 131 the department. However, the filing of a notice of contest by
 132 the obligor does not delay the withholding of premium payments
 133 by the union, employer, or health plan administrator. The union,
 134 employer, or health plan administrator must implement the
 135 withholding as directed by the national medical support notice
 136 unless notified by the department that the national medical
 137 support notice is terminated.

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

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141 terminated.

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

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

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

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169 ~~coverage~~ under a national medical support notice must notify the
 170 department within 20 days after the termination and provide the
 171 obligor's last known address and the name and address of the
 172 obligor's new employer, if known.

173 5.a. The amount withheld by a union or employer in
 174 compliance with a support order may not exceed the amount
 175 allowed under s. 303(b) of the Consumer Credit Protection Act,
 176 15 U.S.C. s. 1673(b), as amended. The union or employer shall
 177 withhold the maximum allowed by the Consumer Credit Protection
 178 Act in the following order:

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

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

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

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

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

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

208 61.1301 Income deduction orders.--

209 (5) By July 1, 2006, the department shall provide a payor
 210 with Internet access to income deduction and national medical
 211 support notices issued by the department on or after July 1,
 212 2006, concerning an obligor to whom the payor pays income. The
 213 department shall provide a payor who requests Internet access
 214 with a user code and password to allow the payor to receive
 215 notices electronically and to download the information necessary
 216 to begin income deduction and health insurance ~~care~~ ~~coverage~~
 217 enrollment. If a participating payor does not respond to
 218 electronic notice by accessing the data posted by the department
 219 within 48 hours, the department shall mail the income deduction
 220 or medical support notice to the payor.

221 Section 4. Subsections (5) through (14) of section
 222 409.2554, Florida Statutes, are renumbered as subsections (6)
 223 through (15), respectively, and a new subsection (5) is added to
 224 that section to read:

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225 409.2554 Definitions; ss. 409.2551-409.2598.--As used in
 226 ss. 409.2551-409.2598, the term:

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

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

234 409.2561 Support obligations when public assistance is
 235 paid; assignment of rights; subrogation; medical and health
 236 insurance information.--

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

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

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

251 (e) Upon the state Medicaid agency receiving notice from
 252 the ~~obligor's~~ insuring entity that the health insurance ~~coverage~~

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253 is discontinued due to cancellation or other means, the Medicaid
 254 agency shall notify the IV-D agency of such discontinuance and
 255 the effective date. When appropriate, the IV-D agency shall then
 256 take action to bring the obligor before the court for
 257 enforcement.

258 Section 6. Paragraph (e) of subsection (7) of section
 259 409.2563, Florida Statutes, is amended to read:

260 409.2563 Administrative establishment of child support
 261 obligations.--

262 (7) ADMINISTRATIVE SUPPORT ORDER.--

263 (e) An administrative support order must comply with ss.
 264 61.13(1) and 61.30 ~~s. 61.30~~. The department shall develop a
 265 standard form or forms for administrative support orders. An
 266 administrative support order must provide and state findings, if
 267 applicable, concerning:

- 268 1. The full name and date of birth of the child or
 269 children;
- 270 2. The name of the parent from whom support is being
 271 sought and the other parent or caretaker relative;
- 272 3. The parent's duty and ability to provide support;
- 273 4. The amount of the parent's monthly support obligation;
- 274 5. Any obligation to pay retroactive support;
- 275 6. The parent's obligation to provide for the health care
 276 needs of each child, whether through health insurance ~~coverage~~,
 277 contribution towards the cost of health insurance ~~coverage~~,
 278 payment or reimbursement of health care expenses for the child,
 279 or any combination thereof;
- 280 7. The beginning date of any required monthly payments and

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281 health insurance ~~care coverage~~;

282 8. That all support payments ordered must be paid to the
 283 Florida State Disbursement Unit as provided by s. 61.1824;

284 9. That the parents, or caretaker relative if applicable,
 285 must file with the department when the administrative support
 286 order is rendered, if they have not already done so, and update
 287 as appropriate the information required pursuant to paragraph
 288 (13) (b);

289 10. That both parents, or parent and caretaker relative if
 290 applicable, are required to promptly notify the department of
 291 any change in their mailing addresses pursuant to paragraph
 292 (13) (c); and

293 11. That if the parent ordered to pay support receives
 294 unemployment compensation benefits, the payor shall withhold,
 295 and transmit to the department, 40 percent of the benefits for
 296 payment of support, not to exceed the amount owed.

297
 298 An income deduction order as provided by s. 61.1301 must be
 299 incorporated into the administrative support order or, if not
 300 incorporated into the administrative support order, the
 301 department or the Division of Administrative Hearings shall
 302 render a separate income deduction order.

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

305 409.2572 Cooperation.--

306 (5) As used in this section only, the term "applicant for
 307 or recipient of public assistance for a dependent child" refers
 308 to such applicants and recipients of public assistance as

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309 defined in s. 409.2554(8) ~~s. 409.2554(7)~~, with the exception of
 310 applicants for or recipients of Medicaid solely for the benefit
 311 of a dependent child.

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

314 409.2576 State Directory of New Hires.--

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

330 Section 9. This act shall take effect upon becoming a law.
 331