

AMENDED IN SENATE JANUARY 13, 2010

AMENDED IN SENATE DECEMBER 15, 2009

SENATE BILL

No. 580

Introduced by Senator Wright

February 27, 2009

~~An act to add Sections 3753.5 and 4059.5 to the Family Code, relating to child support. An act to amend Sections 3751, 4061, 4063, and 17422 of the Family Code, relating to child support.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 580, as amended, Wright. Child support: health insurance.

Existing law provides that in a case in which an amount is set for child support, the court is required to order either or both parties to provide health insurance coverage for the supported child, if the cost of the insurance is reasonable. Under existing law, health insurance is rebuttably presumed to be reasonable in cost if it is employment-related or other group health insurance.

This bill would instead require that the court determine that the cost of health insurance is reasonable if it does not exceed 5% of the obligor's gross income, as specified, unless the obligor is entitled to a low-income adjustment, as defined, in which case the court would be required to determine that the cost of health insurance is not reasonable.

Existing law provides that when either parent uses a health care provider other than the preferred provider designated by the health care insurance coverage, the parent obtaining that care is solely responsible for any nonreimbursable health care costs in excess of the costs that would have been incurred under the court-ordered health care insurance coverage had the preferred provider been used. Existing law requires a court, in evaluating a motion based on this provision,

to consider the geographic access and reasonable availability of necessary health care for the child which complies with the terms of the health care insurance coverage paid for by either parent pursuant to a court order.

This bill would require the court to apply a rebuttable presumption that health care insurance is accessible if medical services to be provided are within 50 miles of the residence of the supported child. The bill would require the court, if it determines that health care insurance is not accessible, to state the reason on the record.

~~The federal Deficit Reduction Act of 2005 mandated new requirements for states to follow regarding the assignment of preassistance support due to a family prior to the family being aided. The Department of Child Support Services administers all services and performs all functions necessary to establish, collect, and distribute child support.~~

~~This bill would require the Department of Child Support Services to issue regulations to define the terms reasonable cost, accessibility, and cash medical.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3751 of the Family Code is amended to
2 read:

3 3751. (a) (1) Support orders issued or modified pursuant to
4 this chapter shall include a provision requiring the child support
5 obligor to keep the agency designated under Title IV-D of the
6 Social Security Act (42 U.S.C. Sec. 651 et seq.) informed of
7 whether the obligor has health insurance coverage at a reasonable
8 cost and, if so, the health insurance policy information.

9 (2) In any case in which an amount is set for current support,
10 the court shall require that health insurance coverage for a
11 supported child shall be maintained by either or both parents if
12 that insurance is available at no cost or at a reasonable cost to the
13 parent. Health insurance coverage shall be rebuttably presumed
14 to be reasonable in cost if ~~it is employment-related group health~~
15 ~~insurance or other group health insurance, regardless of the service~~
16 ~~delivery mechanism. The actual cost of the health insurance to the~~
17 ~~obligor shall be considered in determining whether the cost of~~
18 ~~insurance is reasonable. the cost to the responsible parent providing~~

1 *medical support does not exceed 5 percent of his or her gross*
2 *income. In applying the 5 percent for the cost of health insurance,*
3 *the cost is the difference between self-only and family coverage.*
4 *If the obligor is entitled to a low-income adjustment as provided*
5 *in paragraph (7) of subdivision (b) of Section 4055, medical*
6 *support shall be deemed not reasonable. If the court determines*
7 *that the cost of health insurance coverage is not reasonable, the*
8 *court shall state its reasons on the record.*

9 (b) If the court determines that health insurance coverage is not
10 available at no cost or at a reasonable cost, the court's order for
11 support shall contain a provision that specifies that health insurance
12 coverage shall be obtained if it becomes available at no cost or at
13 a reasonable cost. Upon health insurance coverage at no cost or at
14 a reasonable cost becoming available to a parent, the parent shall
15 apply for that coverage.

16 (c) The court's order for support shall require the parent who,
17 at the time of the order or subsequently, provides health insurance
18 coverage for a supported child to seek continuation of coverage
19 for the child upon attainment of the limiting age for a dependent
20 child under the health insurance coverage if the child meets the
21 criteria specified under Section 1373 of the Health and Safety Code
22 or Section 10277 or 10278 of the Insurance Code and that health
23 insurance coverage is available at no cost or at a reasonable cost
24 to the parent or parents, as applicable.

25 *SEC. 2. Section 4061 of the Family Code is amended to read:*

26 4061. The amounts in Section 4062, ~~if ordered to be paid,~~ shall
27 be considered additional support for the children and shall be
28 computed in accordance with the following:

29 (a) If there needs to be an apportionment of expenses pursuant
30 to Section 4062, the expenses shall be divided one-half to each
31 parent, unless either parent requests a different apportionment
32 pursuant to subdivision (b) and presents documentation which
33 demonstrates that a different apportionment would be more
34 appropriate.

35 (b) If requested by either parent, and the court determines it is
36 appropriate to apportion expenses under Section 4062 other than
37 one-half to each parent, the apportionment shall be as follows:

38 (1) The basic child support obligation shall first be computed
39 using the formula set forth in subdivision (a) of Section 4055, as

1 adjusted for any appropriate rebuttal factors in subdivision (b) of
2 Section 4057.

3 (2) Any additional child support required for expenses pursuant
4 to Section 4062 shall thereafter be ordered to be paid by the parents
5 in proportion to their net disposable incomes as adjusted pursuant
6 to subdivisions (c) and (d).

7 (c) In cases where spousal support is or has been ordered to be
8 paid by one parent to the other, for purposes of allocating additional
9 expenses pursuant to Section 4062, the gross income of the parent
10 paying spousal support shall be decreased by the amount of the
11 spousal support paid and the gross income of the parent receiving
12 the spousal support shall be increased by the amount of the spousal
13 support received for as long as the spousal support order is in effect
14 and is paid.

15 (d) For purposes of computing the adjusted net disposable
16 income of the parent paying child support for allocating any
17 additional expenses pursuant to Section 4062, the net disposable
18 income of the parent paying child support shall be reduced by the
19 amount of any basic child support ordered to be paid under
20 subdivision (a) of Section 4055. However, the net disposable
21 income of the parent receiving child support shall not be increased
22 by any amount of child support received.

23 *SEC. 3. Section 4063 of the Family Code is amended to read:*

24 4063. (a) When making an order pursuant to paragraph (2) of
25 subdivision (a) of Section 4062, the court shall:

26 (1) Advise each parent, in writing or on the record, of his or her
27 rights and liabilities, including financial responsibilities.

28 (2) Include in its order the time period for a parent to reimburse
29 the other parent for the reimbursing parent's share of the reasonable
30 additional child support costs subject to the requirements of this
31 section.

32 (b) Unless there has been an assignment of rights pursuant to
33 Section 11477 of the Welfare and Institutions Code, when either
34 parent accrues or pays costs pursuant to an order under this section,
35 that parent shall provide the other parent with an itemized statement
36 of the costs within a reasonable time, but not more than 30 days
37 after accruing the costs. These costs shall then be paid as follows:

38 (1) If a parent has already paid all of these costs, that parent
39 shall provide proof of payment and a request for reimbursement
40 of his or her court-ordered share to the other parent.

1 (2) If a parent has paid his or her court-ordered share of the
2 costs only, that parent shall provide proof of payment to the other
3 parent, request the other parent to pay the remainder of the costs
4 directly to the provider, and provide the reimbursing parent with
5 any necessary information about how to make the payment to the
6 provider.

7 (3) The other parent shall make the reimbursement or pay the
8 remaining costs within the time period specified by the court, or,
9 if no period is specified, within a reasonable time not to exceed
10 30 days from notification of the amount due, or according to any
11 payment schedule set by the health care provider for either parent
12 unless the parties agree in writing to another payment schedule or
13 the court finds good cause for setting another payment schedule.

14 (4) If the reimbursing parent disputes a request for payment,
15 that parent shall pay the requested amount and thereafter may seek
16 judicial relief under this section and Section 290. If the reimbursing
17 parent fails to pay the other parent as required by this subdivision,
18 the other parent may seek judicial relief under this section and
19 Section 290.

20 (c) Either parent may file a noticed motion to enforce an order
21 issued pursuant to this section. In addition to the court's powers
22 under Section 290, the court may award filing costs and reasonable
23 attorney's fees if it finds that either party acted without reasonable
24 cause regarding his or her obligations pursuant to this section.

25 (d) There is a rebuttable presumption that the costs actually paid
26 for the uninsured health care needs of the children are reasonable,
27 except as provided in subdivision (e).

28 (e) Except as provided in subdivision (g):

29 (1) The health care insurance coverage, including, but not
30 limited to, coverage for emergency treatment, provided by a parent
31 pursuant to a court order, shall be the coverage to be utilized at all
32 times, consistent with the requirements of that coverage, unless
33 the other parent can show that the health care insurance coverage
34 is inadequate to meet the child's needs.

35 (2) If either parent obtains health care insurance coverage in
36 addition to that provided pursuant to the court order, that parent
37 shall bear sole financial responsibility for the costs of that
38 additional coverage and the costs of any care or treatment obtained
39 pursuant thereto in excess of the costs that would have been

1 incurred under the health care insurance coverage provided for in
2 the court order.

3 (f) Except as provided in subdivision (g):

4 (1) If the health care insurance coverage provided by a parent
5 pursuant to a court order designates a preferred health care
6 provider, that preferred provider shall be used at all times,
7 consistent with the terms and requirements of that coverage.

8 (2) If either parent uses a health care provider other than the
9 preferred provider inconsistent with the terms and requirements
10 of the court-ordered health care insurance coverage, the parent
11 obtaining that care shall bear the sole responsibility for any
12 nonreimbursable health care costs in excess of the costs that would
13 have been incurred under the court-ordered health care insurance
14 coverage had the preferred provider been used.

15 (g) When ruling on a motion made pursuant to this section, in
16 order to ensure that the health care needs of the child under this
17 section are met, the court shall consider all relevant facts, including,
18 but not limited to, the following:

19 (1) The geographic access and reasonable availability of
20 necessary health care for the child which complies with the terms
21 of the health care insurance coverage paid for by either parent
22 pursuant to a court order. *Health insurance shall be rebuttably*
23 *presumed to be accessible if services to be provided are within 50*
24 *miles of the residence of the child subject to the support order. If*
25 *the court determines that health insurance is not accessible, the*
26 *court shall state the reason on the record.*

27 (2) The necessity of emergency medical treatment that may
28 have precluded the use of the health care insurance, or the preferred
29 health care provider required under the insurance, provided by
30 either parent pursuant to a court order.

31 (3) The special medical needs of the child.

32 (4) The reasonable inability of a parent to pay the full amount
33 of reimbursement within a 30-day period and the resulting necessity
34 for a court-ordered payment schedule.

35 *SEC. 4. Section 17422 of the Family Code is amended to read:*

36 17422. (a) The state medical insurance form required in Article
37 1 (commencing with Section 3750) of Chapter 7 of Part 1 of
38 Division 9 shall include, but shall not be limited to, all of the
39 following:

1 (1) The parent or parents' names, addresses, and social security
2 numbers.

3 (2) The name and address of each parent's place of employment.

4 (3) The name or names, addresses, policy number or numbers,
5 and coverage type of the medical insurance policy or policies of
6 the parents, if any.

7 (4) The name, CalWORKs case number, social security number,
8 and Title IV-E foster care case number or Medi-Cal case numbers
9 of the parents and children covered by the medical insurance policy
10 or policies.

11 (b) (1) In any action brought or enforcement proceeding
12 instituted by the local child support agency under this division for
13 payment of child or spousal support, a completed state medical
14 insurance form shall be obtained and sent by the local child support
15 agency to the State Department of Health Services in the manner
16 prescribed by the State Department of Health Services.

17 (2) Where it has been determined under Section 3751 that health
18 insurance coverage is not available at no or reasonable cost, the
19 local child support agency shall seek a provision in the support
20 order that provides for health insurance coverage should it become
21 available at no or reasonable cost.

22 (3) Health insurance coverage shall be considered reasonable
23 in cost if it is ~~employment-related group health insurance or other~~
24 ~~group health insurance, regardless of the service delivery~~
25 ~~mechanism.~~ *the cost to the responsible parent providing medical*
26 *support does not exceed 5 percent of his or her gross income. In*
27 *applying the 5 percent for the cost of health insurance, the cost is*
28 *the difference between self-only and family coverage. If the obligor*
29 *is entitled to a low-income adjustment as provided in paragraph*
30 *(7) of subdivision (b) of Section 4055, health insurance shall not*
31 *be enforced.* As used in this section, "health insurance coverage"
32 also includes providing for the delivery of health care services by
33 a fee for service, health maintenance organization, preferred
34 provider organization, or any other type of health care delivery
35 system under which medical services could be provided to the
36 dependent child or children of an absent parent.

37 (c) (1) The local child support agency shall request employers
38 and other groups offering health insurance coverage that is being
39 enforced under this division to notify the local child support agency
40 if there has been a lapse in insurance coverage. The local child

1 support agency shall be responsible for forwarding information
2 pertaining to the health insurance policy secured for the dependent
3 children for whom the local child support agency is enforcing the
4 court-ordered medical support to the custodial parent.

5 (2) The local child support agency shall periodically
6 communicate with the State Department of Health Services to
7 determine if there have been lapses in health insurance coverage
8 for public assistance applicants and recipients. The State
9 Department of Health Services shall notify the local child support
10 agency when there has been a lapse in court-ordered insurance
11 coverage.

12 (3) The local child support agency shall take appropriate action,
13 civil or criminal, to enforce the obligation to obtain health
14 insurance when there has been a lapse in insurance coverage or
15 failure by the responsible parent to obtain insurance as ordered by
16 the court.

17 (4) The local child support agency shall inform all individuals
18 upon their application for child support enforcement services that
19 medical support enforcement services are available.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, December 15, 2009. (JR11)**