



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 707, 708, and 709 (as enrolled)
House Bills 5168, 5174, and 5175 (as enrolled)
Sponsor: Senator John J.H. Schwarz, M.D. (S.B. 707)
Senator Dave Honigman (S.B. 708) Senator
Dale L. Shugars (S.B. 709)
Representative John T. Llewellyn (H.B. 5168)
Representative Gregory E. Pitoniak (H.B. 5174)
Representative Martha G. Scott (H.B. 5175)
Senate Committee: Health Policy and Senior Citizens
House Committee: Insurance

PUBLIC ACTS 236 to 238 of 1995
PUBLIC ACTS 239 to 241 of 1995

Date Completed: 4-1-96

RATIONALE

The Federal Omnibus Budget Reconciliation Act (OBRA) of 1993 contains various child support legislation requirements that states must meet as a condition of receiving Federal funding. Section 13623 of the OBRA includes a number of medical child support mandates that are required to be placed in state law. These requirements focus on those instances in which a court issues a child support order to a parent to provide health care coverage for a child, by placing specific requirements on insurers to provide coverage and employers to permit parents to enroll for coverage, when a parent is eligible for family health care insurance. According to the Department of Social Services (DSS), the Federal Department of Health and Human Services, Health Care Financing Administration, had placed the DSS on a national noncompliance register for failure to enact the OBRA requirements. It was suggested that the State adopt legislation to conform to the Federal law.

CONTENT

The bills amended various laws and created a new law to do the following:

- Require the local Friend of the Court offices to initiate enforcement, and take other actions, to force the compliance of a parent who fails to obtain or maintain health care coverage for a child as ordered by the court.
- Provide for the enrollment of a child in a parent's health care coverage under

- certain circumstances if the parent is ordered by a court to provide coverage.
- Require Friend of the Court offices to notify the DSS if the offices identify situations in which health care coverage has been obtained or maintained for a child who is receiving public or medical assistance.
- Require an insurer to allow a parent to enroll a child, or the Friend of the Court to enroll the child, under the parent's coverage, if the parent is required by a court or administrative order to provide health care coverage and the parent is eligible for dependent coverage.
- Assign to the DSS an individual's rights to insurance payments, to the extent that payment is made by the DSS's medical assistance program.
- Prohibit an insurer from considering an individual's eligibility for Medicaid when considering eligibility for coverage.
- Prohibit an insurer that offers dependent coverage from denying enrollment to an insured's child on the ground that the child was born out of wedlock, is not claimed as a dependent on the insured's Federal income tax return, or does not reside with the insured or in the insurer's service area.

Senate Bill 707 amended the Support and Visitation Enforcement Act and House Bill 5175 amended the Friend of the Court Act to provide for

the enforcement of court-ordered health care coverage for children. Senate Bill 708 amended the chapter of the Insurance Code that governs disability insurers and Senate Bill 709 amended the Nonprofit Health Care Corporation Reform Act and applies to a health care corporation (Blue Cross and Blue Shield of Michigan). House Bill 5168 created the "Group Health Plan Act" and applies to group health plans as defined in the Federal Employee Retirement Income Security Act; and House Bill 5174 amended the Public Health Code and applies to health maintenance organizations. Senate Bills 708 and 709 and House Bills 5168 and 5174 require access to health care coverage for children under certain conditions. Following is a detailed description of the bills.

Senate Bill 707 and House Bill 5175

Senate Bill 707 provides that if a parent fails to obtain or maintain health care coverage for the parent's child as ordered by the court, the Office of the Friend of the Court (FOC) must do either of the following:

- Petition the court for an order to show cause why the parent should not be held in contempt for failure to obtain or maintain dependent health care coverage that is available at a reasonable cost.
- Send notice of noncompliance to the parent, stating that the Office will notify the parent's employer to deduct premiums for, and to notify the insurer or plan administrator to enroll the child in, dependent health care coverage unless the parent, within 14 days after the mailing of the notice, either submits written proof to the FOC of the child's enrollment in a coverage plan, or requests a hearing to determine the availability or reasonable cost of the coverage.

If a parent is eligible for health care coverage through an employer doing business in the State, the employer must notify its insurer or plan administrator and take other action as required to enroll that parent's child in its health care coverage plan or plans, without regard to any enrollment period restrictions, when all of the following exist:

- The parent is required by a court or administrative order to provide health care coverage.
- The child is eligible for coverage under the plan. A child may not be denied enrollment or coverage on the ground that he or she was born out of wedlock, is not claimed as a dependent on the parent's Federal income

tax return, does not reside with the parent or in the insurer's service area, or is eligible for or receiving medical assistance.

- The employee applies for coverage for the child or, if the employee fails to apply, the Friend of the Court or child's other parent through the FOC applies for coverage for the child.

If coverage is available through the parent's employer, the employer must withhold from the employee's income the employee's share, if any, of premiums for dependent health care coverage not to exceed the amounts allowed under the Support and Visitation Enforcement Act, and pay that amount to the insurer or plan administrator. An employer may not disenroll or eliminate health care coverage of a child eligible and enrolled for coverage unless the employer is provided with satisfactory written evidence that the court or administrative order requiring coverage is no longer in effect; the child is or will be enrolled in comparable coverage that takes effect no later than the effective date of the disenrollment from the existing plan; or the employer has eliminated dependent health care coverage for all of its employees or members.

The Office of the Friend of the Court must notify the DSS if the Office identifies health care coverage that has been obtained or is being maintained by a parent for a child who is a recipient of public assistance or medical assistance. The notice must include available information on the name and address of the insurance company, health care organization, or health maintenance organization; the policy, certificate, or contract number; the effective date of the coverage; the name and birth date of the individual for whose benefit the coverage is maintained; and the name and social security number of the policyholder.

An order for dependent health care coverage entered under the bill must include the information required in a qualified order as specified in the Federal Employee Retirement Income Security Act, if the health care coverage plan of the individual responsible for providing a child with coverage is subject to that Act. (Under the Federal law, a qualified medical child support order must specify the name and address of the parent and each child covered by an order; a reasonable description of the type of coverage to be provided to each child; the time period to which the order applies; and each health group plan to which it applies.) An order for dependent health care coverage served on an employer must direct the employer to withhold from the employee's income

the employee's share, if any, of premiums for coverage and pay that amount to the insurer or plan administrator. The order also must direct that the amount withheld for support, fees, and health care premiums not exceed the amount allowed under the Federal Consumer Credit Protection Act. An order for coverage under the bill may be combined with an order of income withholding. (Under the Support and Visitation Enforcement Act, the circuit court may enter an order of income withholding providing for the withholding of a person's income to enforce a support order.)

Under the Act, if there is more than one order to withhold income for support, the employer must comply with all the orders to the extent that the total amount withheld does not exceed limits established in the Federal Consumer Credit Protection Act. The bill provides also that if the total amounts allocated to current and past due support do not exceed the amounts available for withholding, the employer must allocate the remaining income to the parent's portion of health care coverage premiums attributable to coverage of the children specified in the order, if the remaining income is sufficient to cover the cost of the premium. This provision does not require an employer to pay the parent's portion of health care premiums.

Under House Bill 5175, if a parent fails to obtain or maintain health care coverage for a child as ordered by the court, the Friend of the Court must initiate enforcement at the following times: within 60 days after the entry of a support order; upon written complaint from a party; upon written complaint from the DSS if the child is a recipient of public assistance or medical assistance; and when a review is conducted as required under the Friend of the Court Act. (The Act prescribes the circumstances under which the Friend of the Court must review a child support order.)

**Senate Bills 708 and 709 and
House Bills 5168 and 5174**

The bills provide for the enrollment of a child in a parent's health care coverage under certain circumstances, if the parent is ordered by a court to provide coverage. (In this analysis, group health plans, health maintenance organizations, and a health care corporation are included in references to an "insurer", and their subscribers are included in references to an "insured".)

Required Health Coverage

If a parent is required by a court or administrative order to provide health coverage for a child, the insurer is notified of the order, and the parent is eligible for dependent coverage, the insurer must do all of the following:

- Permit the parent to enroll, under the dependent coverage, a child who is otherwise eligible for coverage without regard to any enrollment season restrictions.
- If the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under dependent coverage upon application by the Friend of the Court, or by the child's other parent through the FOC.
- Not eliminate the child's coverage unless premiums have not been paid as required by the policy or certificate, or the insurer is provided with satisfactory written evidence that the court or administrative order is no longer in effect, or the child is or will be enrolled in comparable health coverage through another insurer or self-funded plan that takes effect no later than the effective date of the cancellation of the existing coverage.

If a child has health coverage through an insurer of a noncustodial parent, the insurer must provide the custodial parent with information necessary for the child to obtain benefits through that coverage; permit the custodial parent or, with the custodial parent's approval, the provider to submit a claim for coverage services without the noncustodial parent's approval; and make payment on claims submitted for covered services directly to the custodial parent or medical provider.

Medicaid Eligibility

An insurer may not consider whether an individual is eligible for or has available medical assistance under Title 19 of the Social Security Act (which governs Medicaid) in this or another state when considering eligibility for coverage or making payments under its health plan for eligible insureds.

If an insurer has a legal liability to make payments, and payment for coverage services for health care items or services furnished to an individual has

been made under the State's medical assistance program, the DSS has the rights of the individual to payment by the insurer to the extent that payment was made by the DSS for those health care items or services. An insurer may not impose on the DSS requirements that are different from requirements that apply to an agent or assignee of any other covered insured.

An insurer that delivers, issues for delivery, or renews in Michigan an expense-incurred hospital, medical, or surgical policy or certificate that offers dependent coverage may not deny enrollment to an insured's child on any of the following grounds:

- The child was born out of wedlock.
- The child is not claimed as a dependent on the insured's Federal income tax return.
- The child does not reside with the insured or in the insurer's service area.

MCL 552.602 et al. (S.B. 707)
500.3406g-500.3406i (S.B. 708)
550.1419-550.1419b (S.B. 709)
550.1801-550.1811 (H.B. 5168)
333.21054v-333.21054x (H.B. 5174)
552.509 & 552.511 (H.B. 5175)

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BACKGROUND

Additional legislation enacted in Michigan to comply with the 1993 OBRA requirements includes Public Acts 115 and 116 of 1993, which amended the Public Health Code to establish a hospital-based program for the voluntary acknowledgement of paternity immediately before or after birth; Public Act 387 of 1994, which amended the Revised Judicature Act to change the procedures for acknowledgement of paternity of a child born out of wedlock; and Public Act 388 of 1994, which amended the Paternity Act to require the entry of a default judgment if an alleged father does not appear in a paternity action, and to recognize the establishment of paternity under other states' laws.

Under Public Act 233 of 1995, the Department of Social Services has been renamed the Family Independence Agency.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Federal OBRA of 1993 requires the states to adopt certain laws regarding medical coverage for the children of individuals who are subject to court support orders, or face the prospect of losing Federal funds. Reportedly, the OBRA requirements were adopted in response to a U.S. General Accounting Office (GAO) report, which stated that many states are not doing enough to see that children obtain private health insurance available to them under child support orders, particularly from the insurance coverage of noncustodial parents ("Medicaid: Ensuring that Noncustodial Parents Provide Health Insurance Can Save Cost", June 1992). The OBRA requirements then, in effect, shift some of the health care costs for children from Medicaid to available private insurance. The OBRA requirements place certain mandates on insurers and employers, but only in those instances in which a parent has been ordered by a court to provide coverage and the parent is eligible for dependent coverage. By conforming to the OBRA requirements, the bills will help to facilitate the enrollment of children in dependent care plans by: 1) providing for the enrollment of a child under a parent's coverage if ordered by the court; 2) requiring the local FOC to initiate enforcement to obtain the compliance of a parent who fails to get coverage for a child as ordered; 3) requiring an insurer to allow a parent to enroll a child, or the FOC to enroll the child, under the parent's coverage if the parent is eligible for dependent coverage; 4) requiring an employer, under certain circumstances, to facilitate the enrollment of a parent's child in its health care coverage plan, without regard to enrollment period restrictions; and 5) prohibiting an insurer that offers dependent coverage from denying enrollment on the basis that the child was born out of wedlock, does not reside with the insured, or is not claimed as dependent on the insured's Federal tax return.

Supporting Argument

According to an article in *Michigan Lawyers Weekly* (3-11-96), Senate Bill 707 answers a question that existed under the prior law: whether an employer is required to withhold up to the limit in the Federal Consumer Credit Protection Act in order to satisfy current and past-due support obligations. Under the bill, maximum withholding is not required. "However, if withholding for current and past-due support falls short of the federal limit, the parent's employer or other income source 'shall allocate' up to the federal limit if doing so is necessary to pay for the child's coverage".

Opposing Argument

Senate Bill 707 allows an employer to stop providing court-ordered coverage if the employer eliminates dependent health care coverage for all employees or members. This provision actually might harm children by tempting some small employers to eliminate this coverage.

FISCAL IMPACT

This series of bills is responsive to Section 13623 of the Omnibus Budget Reconciliation Act of 1993 which mandates that states have in effect laws relating to medical child support consistent with the provision of that Act.

As other State statutes already allow for medical support under child support orders, and as the Department of Social Services already engages in a wide variety of third-party recovery activities, it is unlikely that these bills will produce a measurable amount of additional General Fund/General Purpose savings to the State Medicaid program. It should be noted, however, that since these bills will facilitate the overall medical support coverage and enforcement process, one would expect some level of savings to accrue. As an example, the average annual Medicaid fee-for-service cost for a child between the ages of 1 and 14 is \$720 in Wayne County. Each such child covered by private insurance will save the State about 44% of that amount or \$317 General Fund/General Purpose annually.

In addition, Senate Bill 707 and House Bill 5175 provide for an automatic mechanism whereby all Friend of the Court offices will have to follow the same procedures regarding an order for dependent coverage. Whereas most enforcement by the Friend of the Court previously has been complaint driven, these bills require the Office to enforce an order on the parent or employer without waiting for a complaint. This in effect will result in more paperwork and use of resources by the Friend of the Court. As most of the bills' procedures are already executed in some manner, the fiscal impact on the FOC will be minimal.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.