

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1272

SPONSOR: Committee on Children and Families and Senator Peaden

SUBJECT: Child Support/Health Care Coverage

DATE: February 20, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

CS/SB 1272 provides for Florida’s use of the national medical support notice which implements a standard order and process for notifying the employer of the health care coverage required of a Title IV-D support obligation and instituting the non-custodial parent’s health care coverage for the child. A process and directive is provided for liquidating securities to pay for overdue support. The bill aligns the terminology pertaining to “abandoned property” for the Department of Revenue Child Support Enforcement Program with that provided in ch. 717, F.S. A threshold is set forth for determining when adequate grounds exist for effectuating a modification resulting from the required 3-year review of Title IV-D cases. Statutory revisions establishing the pilot program for the administrative establishment of child support are amended to address a number of issues identified in the first year of operation. The requirement for the Office of Program Policy Analysis and Government Accountability to evaluate the State Disbursement Unit and the State Case Registry every two years is eliminated.

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.13, 61.14, 61.1826, 61.30, 409.2563, 409.25656, 409.25658 and 409.2576.

**II. Present Situation:**

**National Medical Support Notice**

In 1999, 10.8 million children 18 years of age and younger did not have health insurance (*State of America’s Children: The 2001 Yearbook*, Children’s Defense Fund, 2001). Children without health insurance are more likely to experience health problems that could have been prevented. One of the ways the federal and state governments have responded to the need for health care coverage has been to add the establishment and enforcement of medical child support to the

responsibilities of the federal Child Support Program and, in turn, the state programs, under Title IV-D of the Social Security Act. This federal law has required states to include in their state child support guidelines provisions for health care coverage and required the Title IV-D agency to pursue health care coverage when coverage is available to the child through the non-custodial parent at a reasonable cost.

Subsequent legislation strengthened the enforcement of medical child support. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required that all child support orders contain a provision for health care coverage and directed the state Title IV-D agency to notify an employer of the non-custodial parent's medical child support obligation. Each state instituted a medical child support process which, in some manner, notified the employer of the non-custodial parent of the parent's obligation to provide health care coverage for his or her child and required the employer or health plan administrator to enroll the child, if eligible. The wide variation of notices and orders that states used created confusion for the employers which resulted in delays or denials when enrolling children in health plans, impeded the optimal use of automation of medical support obligation services and resulted in health plan administrators often not agreeing on which notices and orders satisfied health plan requirements (Medical Child Support Working Group's Report, June 2000).

The Child Support Performance and Incentive Act of 1998 required that all Title IV-D child support orders which include health care coverage for the child be enforced through the use of a national medical support notice. The intent of the national medical support notice is to standardize the communication between the state child support enforcement agencies, employers and administrators of group health plans regarding non-custodial parents' medical support obligations. All state Title IV-D agencies are required to use the national medical support notice to notify the employer of the health care coverage for the child contained in the child support order. An employer is required to transfer the notice within 20 business days to the appropriate plan providing health care coverage for which the child is eligible, withhold the employee contribution necessary for the coverage and notify the Title IV-D agency if the non-custodial parent's employment is terminated. Health plan administrators are required to notify the Title IV-D agency if the coverage is available for the child, if the child is already covered, the effective date of the coverage and any necessary steps to effectuate coverage. Additionally, the national medical support notice must provide guidelines for employers to follow if the combined monetary support obligation (current support amount and arrearages) and medical insurance contributions exceed that which is allowed under the Consumer Credit Protection Act. The Consumer Credit Protection Act provides for the maximum allowed in garnishing an individual's earnings and the methodologies for determining this amount (15 U.S.C. 1673).

Florida law currently requires that health insurance be provided for each child support order, if the insurance is reasonably available [s. 61.13(1)(b), F.S.]. The court may require the non-custodial parent to either provide the health insurance or to reimburse the custodial parent for the health insurance costs. If the non-custodial parent fails to provide proof that the health insurance has been obtained, notice is served of the intent to enforce the medical support. If proof that the insurance coverage exists is not provided after the notice is received, a copy of the court order for the health insurance is served on non-custodial parent's employer or union. The employer or union is directed to enroll the child in the health insurance plan and to withhold necessary premiums from the non-custodial parent's income. If the non-custodial parent changes

employment and the new employer provides health insurance, the Title IV-D agency is authorized to transfer the notice of the court order to the new employer which shall require the enrollment of the child in the health plan unless the non-custodial parent contests. Section 61.30(8), F.S., provides for incorporating the cost of the health insurance required in s. 61.13(1)(b), F.S., into the calculations of the child support award.

### **Liquidation of Securities**

Section 409.25656, F.S., provides that when an individual has a support obligation that is subject to enforcement by the Department of Revenue as the state Title IV-D agency, the executive director or his designee may, after the required notice and within the specified time frame, levy upon any credit, personal property including wages or debts of that person. Those in possession or control of credits, personal property or debts of the obligor are required to transfer them to the department to be used to pay past due support or pay to the department the amount owed to the obligor. Securities are considered personal property to be liquidated for payment of such back due and overdue support.

The Department of Revenue has neither the ability to accept securities, nor the expertise to determine an appropriate market value, determine a fair selling price or liquidate any securities. As a result, security dealers have been hesitant to liquidate securities without more specific direction which has resulted in the inability of the department to effectively utilize this particular collection tool.

### **Unclaimed Property**

During the 2001 legislative session, ch. 717, F.S., relating to the disposition of unclaimed property, was amended to change references to property from being “abandoned” to being “unclaimed.” Section 409.25658, F.S., authorizes a data match between the Department of Revenue Child Support Enforcement Program and the Department of Banking and Finance in order to identify persons with support obligations who are presumed to have abandoned property under ch. 717, F.S. Section 409.25658, F.S., was not amended to be consistent with the terminology changes to ch. 717, F.S.

### **Modification of Support**

Section 61.14(1)(a), F.S., provides that when the financial circumstances of either the custodial or non-custodial parent changes or a child who is the beneficiary of support reaches majority, either parent may apply to the court for a modification of a support order. Section 61.30(1)(b), F.S., provides that the child support guidelines may serve as a basis for proving substantial change in circumstances upon which a modification of the amount of an existing order of support may be granted if the difference between the existing support obligation and the amount provided for under the guidelines is greater than either 15 percent or \$50.

Federal law [42 U.S.C., section 666(a)(10)(A)] requires Title IV-D agencies to review child support orders in Title IV-D cases at least every 3 years upon the request of either the parent or the agency where there is an assignment of support to the state and seek modification, if appropriate. Florida law provides for this review in both ss. 61.14(1)(b) and 409.2564(12), F.S.

However, neither provision requires that a substantial change of circumstances be proven to warrant a modification. Without a threshold for determining if adequate grounds exist for petitioning for an adjustment to the order, a custodial or non-custodial parent could request that the department file for a modification to an order for as little as \$1 a month. Federal law allows states to set reasonable quantitative standards expressed as either a fixed dollar amount or percentage (45 CFR 303.8). Currently, 14 states provide that the threshold for modification is any change under the guidelines, 9 states require a 10 percent change, 11 states require a 15 percent change and 12 states require a 20 percent (Note: of the states using percent changes, some include an accompanying fixed dollar amount alternative and some do not). (*Developing State Policy on the Payment of Child Support Arrears by Low Income Parents*, Center for Law and Social Policy, 2001)

### **Pilot Program for Administrative Establishment of Child Support Obligations**

Chapter 2001-158, L.O.F., created a pilot program for the administrative establishment of child support in Volusia County. As a result of the first year of operation, the need for a number of revisions to the statutory framework for the pilot program was identified.

- The current financial affidavit form as prescribed by the Florida Family Law Rules of Procedure requests a broad scope of information that is pertinent to the full range of ch. 61 F.S., issues, such as alimony and equitable distribution of marital property, but is not necessary for the establishment of child support. It also requires that the affidavit be notarized which may delay the return of the information.
- If a respondent exercises his or her right to use the circuit court to determine child support obligation, there could potentially be simultaneous proceedings in both the court and the administrative process.
- The statute does not allow for the use of restricted delivery for serving the respondent the notice of proceeding to establish administrative support order.
- The statute requires that the support order issued through the administrative process provide and state separately the amount of the non-custodial parent's monthly support obligation for each child which the department reports is not consistent with the practice used for Title IV-D orders issued by the court.
- The Department of Administration Hearings judges do not have clear authority to issue an income deduction order or to withhold unemployment compensation as part of an administrative support order.
- The statute does not specify the department's authority to suspend or terminate an administrative support order.

### **Performance Reviews of the State Disbursement Unit and State Case Registry**

With the legislative direction to the Department of Revenue to contract with the Florida Association of Court Clerks to operate the State Disbursement Unit and State Case Registry, ch. 98-397, L.O.F., required a comprehensive performance review of the State Disbursement Unit and State Case Registry to be conducted by the Office of Program Policy Analysis and Government Accountability. It also required that subsequent reviews be completed every two years. To date, a performance review has been completed on both the State Disbursement Unit and the State Case Registry with follow-up reviews either completed or being finalized. The

reviews conducted indicate that these components of the Child Support Program are operating satisfactorily with the issues identified in the first review being found in the second review to adequately addressed. These reviews provide no indication that frequent re-evaluations are necessary.

### **III. Effect of Proposed Changes:**

CS/SB 1272 provides for Florida's use of the national medical support notice which implements a standard order and process for notifying the employer of the health care coverage required of a Title IV-D support obligation and instituting the non-custodial parent's health care coverage for the child. A process and directive is provided for liquidating securities to pay for overdue support. The bill aligns the terminology pertaining to "abandoned property" for the Department of Revenue Child Support Enforcement Program with that provided in ch. 717, F.S. A threshold is set forth for determining when adequate grounds exist for effectuating a modification resulting from the required 3-year review of Title IV-D cases. Statutory revisions establishing the pilot program for the administrative establishment of child support are amended to address a number of issues identified in the first year of operation. The requirement for the Office of Program Policy Analysis and Government Accountability to evaluate the State Disbursement Unit and the State Case Registry every 2 years is eliminated.

#### **National Medical Support**

Section 61.046, F.S., which provides for the definitions used in the ch. 61, F.S., is amended to add a definition of "national medical support notice." Section 61.13,(1)(b), F.S., is amended to convert the terms "health insurance" to "health care coverage" and to separate and provide distinct provisions for the securing of health care coverage in non-Title IV-D cases and in Title IV-D cases. The requirements for the ordering of health care coverage for non-Title IV-D cases remains basically the same, with the stipulation that the current requirement of employers and unions to enroll a child as a beneficiary in the group health plan be imposed regardless of enrollment period restrictions.

A Title IV-D support order which requires the non-custodial parent to provide health care coverage is enforced through the use of the national medical support notice by this bill. The specific requirements set forth in using the national medical support notice are as follows:

- The department is to transfer the national medical support notice to the non-custodial parent's employer or union.
- The department is required to notify the non-custodial parent that the notice has been sent and of his or her rights and responsibilities.
- The non-custodial parent may contest the withholding for health care insurance, but this requires the filing of a written notice within stipulated time frames and the scheduling of an informal conference. If the informal conference does not resolve the non-custodial parent's dispute, an administrative hearing under ch. 120, F.S., may be requested. The employer, union or health plan administrator must implement the withholdings directed by the national medical support notice to provide the health care coverage during any period of contest.
- The department is required to notify the union or employer if the obligation for health care coverage is terminated.

- The union or employer, upon receipt of the national medical support notice, is required to send the notice to the health plan administrator within the stipulated time frames.
- The health plan administrator is required to enroll the child as a beneficiary in the group health plan, without regard to any restrictions on the enrollment period.
- The union or employer is required to withhold the required premium for the health care coverage.
- The child is to be enrolled in the health plan in which the non-custodial parent is enrolled, unless the plan is not available where the child resides or the non-custodial parent is not enrolled in group coverage.
- The union or employer is required to notify the department if the non-custodial employment or health care coverage is terminated.
- The amount withheld from a non-custodial parent's wages cannot exceed the amount allowed by the Consumer Credit Protection Act. In the event the amount to be withheld exceeds this allowed amount, the following order of priority is established for the employer or union to withhold ordered amounts: the current support, premiums for health care coverage, past due support and other medical support or coverage. If the combined amount of the support ordered and health care coverage premiums exceeds the amount allowed by the Consumer Credit Protection Act, the employer or union is directed to withhold the following in the designated order: current support ordered, past due support and other medical support or coverage.
- The wage withholding notice sent to employers upon entry of a new hire in the State Directory of New Hires, pursuant to s. 409.2576, F.S., directing employers to withhold income in accordance with the income deduction order is amended to provide that the national medical support notice is sent with the income deduction order and directs employers to withhold premiums for health care coverage.

With these amendments, Florida will be in compliance with federal law in its mandate to use the national medical support notice. The use of this notice will provide a defined tool that should provide clear direction and further simplify and streamline the process. While the stipulation of the notice provisions above delineates a number of specific requirements of the parties involved, those aspects which differ from the current process are as follows:

- Clear direction is provided for situations where a non-custodial parent is not enrolled in a health plan or the plan is not available in the geographical area in which the child resides.
- The department is allowed to send the employer or union the notice to enforce the medical support obligation at the same time the non-custodial parent is noticed.
- The department is required to promptly notify the employer or union when there is no longer a support obligation.
- The department is required to schedule an informal conference with the non-custodial parent within 5 business days, if they contest the notice.
- Statutory time frames are provided, based on federal law, for
  - Employers to transfer the national medical support notice to the appropriate health care provider within 20 days of receipt;
  - Employers to notify the department within 20 business days if the non-custodial parent is terminated; and

- Health plan administrators to notify the department within 40 days of receipt of the national medical support notice as to whether coverage is available for the child, whether the child is already covered, the effective date of the coverage and any steps necessary to effectuate the coverage.
- A priority for withholding funds is provided for those situations where the available funds are insufficient to provide for both the monetary support obligations and the medical support contributions.
- The department is required to issue the national medical support notice within 2 business days of receiving non-custodial parent employment information through the State Directory of New Hires.

### **Liquidation of Securities**

Section 409.25656(3), F.S., is amended to provide for a process and direction to security dealers for liquidating securities. If the amount of the past due or overdue support is greater than the value of the securities, the person possessing or controlling the securities is directed to liquidate the securities in a commercially reasonable manner and transfer the proceeds to the department, less any applicable commission fee. If the amount of the support owed is less than the value of the securities, the non-custodial parent may instruct the security dealer within the time frame provided as to which securities to sell. If the non-custodial parent fails to provide any instruction, the security dealer is directed to liquidate the securities necessary, beginning with those purchased most recently, to provide for the amount of past due or overdue support and applicable commission fees. This amendment sets forth the specific process and a clear directive to persons with possession or control of securities for the liquidation of securities to pay for overdue support.

### **Unclaimed Property**

Reference to “abandoned property” is amended to “unclaimed property” in s. 409.25658, F.S. This provides for terminology that is consistent with ch. 717, F.S.

### **Modification of Support**

Sections 61.14(1)(b) and 61.30(1)(c), F.S., are amended to direct the Title IV-D agency in conducting its reviews of Title IV-D cases, pursuant to the 3-year review requirement, to seek modification of support orders if the child support award would differ by at least 10 percent or \$25. This amendment provides a specific threshold for when the department must proceed to modify support orders. This threshold balances enabling modifications of amounts that would make a difference to the custodial or non-custodial parent with the costs to the department of pursuing modifications to child support orders.

### **Pilot Program for Administrative Establishment of Child Support Obligations**

Section 409.2563, F.S., is amended to address a number of issues identified in the first year operation of the pilot program for the administrative establishment of child support. The change:

- Allows the department to develop a financial affidavit form that is more specific to information needed for determining the child support amount and to provide for a written declaration that the facts ascribed are true.
- Provides that if the respondent files action in circuit court and notifies the department within the prescribed time frames, the administrative process would end and, thus, prevent simultaneous proceedings through the court and through the administrative venue.
- Allows the use of restricted delivery when serving the notice of proceeding to establish child support.
- Eliminates the requirement that the amount for each child be specified in the administrative support order.
- Clarifies that the administrative law judge in the ch. 120, F.S., hearings may issue an income deduction order as part of the administrative support order. It also provides that the administrative support order may include deductions from unemployment compensation benefits and that such deductions cannot exceed 40 percent of the benefits.
- Allows the department to suspend and terminate the administrative support order.

### **Performance Reviews of the State Disbursement Unit and State Case Registry**

The bill repeals subsection (5) of s. 61.1826, F.S., eliminating the requirement for the Office of Program Policy Analysis and Government Accountability to continue to evaluate the State Disbursement Unit and State Case Registry Unit every 2 years.

The legislation is effective upon becoming law, unless expressly provided in the bill.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.



**B. Private Sector Impact:**

Additional requirements will be imposed on employers and health plan administrators with the national medical support notice, in particular, specific time frames in which existing actions must be taken. However, the adoption of uniform processes should also simplify the tasks.

**C. Government Sector Impact:**

The Department of Revenue reports this bill will not result in a fiscal impact to the department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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