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DATE: October 23, 2002

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-173, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
FINAL ANALYSIS**

BILL #: HB 1687, 1ST ENG. (SUBSTANTIALLY SIMILAR PROVISIONS PASSED IN CS/SB 1272, 2ND ENGROSSED)

RELATING TO: Child Support/Health Care Coverage

SPONSOR(S): Committee on Judicial Oversight, Representatives Crow, Lynn, and others

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This act amends the procedures for enforcing health care coverage obligations contained within a child support order through the use of the national medical support notice. The duties and responsibilities of the Department of Revenue, the obligor, the obligor's union or employer, and health plan administrators related to the national medical support notice are specified. This bill prioritizes the order in which support and medical support obligations are to be withheld.

This act establishes a minimum threshold for requesting a modification of the amount of a child support obligation in cases being reviewed under the three-year review requirement. Direction is provided to persons who have possession or control of securities for liquidating those securities levied upon by the Department of Revenue for payment of a past due or overdue child support obligation.

The act continues an existing user fee for child support obligors related to the State Disbursement Unit until June 30, 2003, and repeals the requirement for performance reviews of the State Disbursement Unit and the State Case Registry.

This act conforms language related to unclaimed property.

This act does not appear to have a fiscal impact on state or local governments.

On March 20, 2002, CS/SB 1272, 1st Engrossed, was substituted for HB 1867, 1st Engrossed, which was laid on the table. CS/SB 1272, 1st Engrossed, was amended, returned to the Senate in messages, and passed by the Senate on March 21, 2002. CS/SB 1272, 2nd Engrossed became law on April 24, 2002, as Chapter 2002-173, Laws of Florida. Except for specified sections, the effective date of the bill is upon becoming law. This analysis is of CS/SB 1272.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain: The act continues a user fee related to child support enforcement.

B. PRESENT SITUATION:

National Medical Support Notice

While there is no single reason why children do not have insurance coverage for health care services, recent studies have indicated that children who grow up in families with parents who are divorced, separated, or never-married are at increased risk for not having health care coverage. Private health care coverage is strongly related to income and most single-parent households have lower incomes than two-parent households. Even if income is not an issue, it can be more difficult for parents who are living apart to work together to provide coverage for the health care needs of their children.

Over the past 35 years, both federal and state governments have responded to the need for health care coverage for uninsured children. Congress authorized publicly subsidized coverage through the Medicaid program in 1965 and, subsequently, through the State Children's Health Insurance Program (SCHIP) in 1999. Both Medicaid and SCHIP are need based programs that primarily serve families with incomes under 200 percent of the poverty level standard of living. Approximately 61 percent of children enrolled in these programs are living in single-parent homes.

In 1984, the federal Child Support Enforcement Amendments gave state child support enforcement (Title IV-D) programs the responsibility for including medical support establishment and enforcement as part of the child support process. States were required to include provisions for health care coverage in their child support guidelines and child support enforcement programs were required to pursue private health care coverage when such coverage was available through a noncustodial parent at a reasonable cost. Florida law complies with both requirements:

Section 61.30(8), Florida Statutes, relating to child support guidelines, provides:

Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b), and any noncovered medical, dental, and prescription medication expenses of the child, shall be added to the basic obligation unless these expenses have been ordered to be separately paid on a percentage basis. After the health insurance costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for health-related costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children.

Section 61.13(1)(b), Florida Statutes, relating to custody and support, currently provides:

Each order for child support shall contain a provision for health insurance for the minor child when the insurance is reasonably available. Insurance is reasonably available if either the obligor or obligee has access at a reasonable rate to group insurance. The court may require the obligor either to provide health insurance coverage or to reimburse the obligee for the cost of health insurance coverage for the minor child when coverage is provided by the obligee. In either event, the court shall apportion the cost of 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 uncovered medical, dental, and prescription medication expenses of the minor child be made directly to the payee on a percentage basis.

The medical child support process requires that a state Title IV-D agency issue a notice to the employer of a noncustodial parent who is subject to a child support order issued by a court or administrative agency, informing the parent's employer of the parent's obligation to provide health care coverage for his or her child. The employer must then determine whether family health care coverage is available for which the child may be eligible. If such coverage is available, the employer must notify the administrator of each plan covered by the notice and the plan administrator is then required to determine whether the dependent children are eligible for coverage under a plan. If a child is eligible, the plan administrator is required to enroll the dependent child in an appropriate plan.

While progress has been made in securing health care coverage for children in single-parent families, many children remain uninsured. Even in cases in which a medical support notice is in place, state enforcement agencies and group health plan administrators have experienced difficulties in securing health care coverage for children of noncustodial parents because of multiple problems including:

Prior to the Child Support Performance Incentive Act of 1998 (CSPIA), there was no clearly defined tool to enforce medical support obligations, equivalent to the income withholding notice used to enforce child support obligations.

The Omnibus Budget Reconciliation Act (OBRA) amendments of 1993 contained highly individualized and specific requirements that each order had to contain to be qualified by an Employee Retirement Income Security Act of 1974 (ERISA) plan administrator.

The wide variety of notices and orders that various states use to enforce medical child support obligations, and the failure of many of these orders to comply with ERISA requirements, frequently confuses and frustrates employers, plan administrators, and state IV-D agencies. As a result children face unnecessary delays or denials when attempting to enroll in their noncustodial parent's group health coverage.

Plan administrators often do not agree on which notices and orders satisfy ERISA requirements and state IV-D agency personnel are often unfamiliar with those requirements.

Because a degree of standardization is essential to optimal use of automated systems, the lack of uniformity or standardization among plan requirements and qualified medical support orders also precluded the effective use of automation to facilitate the implementation and enforcement of medical support obligations services by IV-D agencies.

This lack of uniformity or standardization among plan requirements and thus the content of a qualified medical support order, required the IV-D agency staff to invest significant time and effort in determining each plan's standard for qualifying a medical support order and obtaining the information necessary to satisfy that particular standard.

The methods states use for communicating with all the associated parties vary widely.

Where a medical support provision of a child support order has been rejected by the plan administrator, there is presently no streamlined mechanism to appeal that decision. Hence, the working group's focus is on ensuring the document forwarded to the plan administrator is legally sufficient to avoid delay or denial (See Medical Child Support Working Group Report, June 2000).

Health care coverage for children living in single-parent homes can be enforced either through a medical child support order in private domestic relations proceedings or as the result of state child support enforcement agencies establishing and/or enforcing medical child support obligations. Recognizing that problems continue to remain affecting the child medical support process, Congress enacted section 401 of the Child Support Performance and Incentive Act of 1998 (CSPIA) which amended both ERISA and the SSA. Specifically:

the SSA was amended to require states to enact laws requiring the use of the National Medical Support Notice to enforce medical child support obligations of parents; and

ERISA was amended to require group health plans to provide benefits to children according to the applicable requirements and provisions of any "qualified medical child support order" (QMCSO). A QMCSO is a medical child support order issued under state law that creates or recognizes the existence of an alternative recipient's right to receive benefits for which a participant or beneficiary is eligible under a group health plan. An alternate recipient is any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group plan with respect to the participant. This action was not sufficient to effectively improve access of children to group coverage, primarily due to the fact that states are systematically moving to automated, administrative processes to establish obligations.

CSPIA also contained a provision creating the Medical Child Support Working Group to study and provide recommendations for improving the establishment and enforcement of medical support obligations for children. In addition, the Secretaries of Labor and of Health and Human Services were directed to jointly develop and put into effect a uniform National Medical Support Notice (NMSN). The NMSN is intended to simplify the issuance and processing of medical child support orders, provide standardized communication between state child support agencies, employers, and plan administrators, and create a uniform process for enforcement of medical child support.

Liquidation of Securities

The law currently 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 timeframe, 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 or 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, Chapter 717, Florida Statutes, relating to the disposition of unclaimed property, was amended to change references to property from being abandoned to being unclaimed. Section 409.25658, Florida Statutes, 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. Section 409.25658, Florida Statutes, was not amended to be consistent with the changes to Chapter 717, Florida Statutes.

Modification of Support

Section 61.14(1)(a), Florida Statutes, provides that when the financial circumstances of either the custodial or noncustodial 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), Florida Statutes, provides that the child support guidelines may serve as a basis for proving a 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 the greater of either at least 15% or \$50.

In addition, section 409.2564(12), Florida Statutes, requires the Department of Revenue to review child support orders in Title IV-D cases at least every 3 years upon request of either parent or the agency where there is an assignment of support to the state and seek modification if appropriate. In these IV-D cases there is no statutory minimum threshold for requesting a modification. Federal law permits states to set reasonable quantitative standards expressed as either a fixed dollar amount, a percentage, or both.

C. EFFECT OF PROPOSED CHANGES:

National Medical Support Notice

This act requires the use of the national medical support notice in support orders that require the obligor to provide health care coverage (See section-by-section).

Liquidation of Securities

This act provides the following direction to persons holding securities that the Department of Revenue has levied upon to satisfy a support obligation:

if the total value of the securities levied upon is less than the past due and/or overdue support obligation, the securities are to be liquidated in a commercially reasonable manner and the proceeds are to be transferred to the Department of Revenue; or

if the total value of such securities is greater than the support obligation in question, the obligor may determine which securities are to be sold. If the obligor does not provide instructions for liquidation, sufficient securities are to be liquidated to net the amount of the support obligation in a commercially reasonable manner starting with the securities purchased most recently and the proceeds are to be transferred to the department.

Monies transferred to the department shall not include amounts for commissions and fees, or both, that are charged in the normal course of business.

Unclaimed Property

This act conforms section 409.25658, Florida Statutes, with Chapter 717, Florida Statutes, by changing references to property from "abandoned" to "unclaimed".

Modification of Support

This act provides for the establishment of a minimum threshold for requesting a modification of the amount of a child support obligation in cases being reviewed under the three-year review requirement.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends §61.046, Florida Statutes, relating to definitions, to provide a definition for the term “national medical support notice”, which means the notice required by §666(a)(19) of Title 42 of the United States Code.

Section 2. Amends §61.13, Florida Statutes, relating to the custody and support of children in a proceeding for dissolution of marriage, to replace references to “insurance” with the term “coverage” to clarify that the health care costs of children may be provided from a number of sources, not solely “insurance”. The section provides that support orders being enforced under Title IV-D that require the obligor to provide health care coverage are enforceable through the use of the national medical support notice. The section also provides for:

- the transfer of the national medical support notice to the obligor’s union or employer;
- notification to the obligor that the notice has been sent;
- notification to the obligor of his or her right to contest the required withholding;
- the process and timeframes for filing a notice of contest; and
- notification to an employer or union if the support obligation is terminated;

In Title IV-D cases, upon receipt of the national medical support notice, the union or employer must transfer the notice to the appropriate group health plan administrator and the plan administrator must enroll the child in the same group health plan in which the obligor is enrolled unless the plan is unavailable where the child lives or the obligor is not covered. The section specifies the order in which support and medical support obligations are to be satisfied from monies withheld

Section 3. Amends §61.14, Florida Statutes, relating to the enforcement or modification of support agreements or orders, to establish a minimum threshold amount of 10% or \$25, whichever is greater, for requesting a modification of a child support amount in cases being reviewed under the required three-year review.

Section 4. Amends §61.181, Florida Statutes, to continue a user fee for child support obligors related to the State Disbursement Unit until June 30, 2003.

Section 5. Repeals §61.1826(5), Florida Statutes, relating to performance reviews of the State Disbursement Unit and the State Case Registry

Section 6. Amends §61.1826, Florida Statutes, to correct a cross reference.

Section 7. Amends §61.30, Florida Statutes, relating to child support guidelines, to establish a minimum threshold amount of 10% or \$25, whichever is greater, for requesting a modification of a child support amount in cases being reviewed under the required three-year review.

Section 8. Amends §120.80, Florida Statutes, relating to exceptions and special requirements for agencies under the administrative procedures act, to clarify that in proceedings for

administrative child support orders, all final orders in cases referred to the Division of Administrative Hearings are to be entered by the division's administrative law judge and transmitted to the Department of Revenue for filing and rendering.

Section 9. Amends §409.2557, Florida Statutes, relating to rulemaking, to provide the Department of Revenue with the authority to adopt rules for administrative proceedings to establish child support obligations.

Section 10. Amends §409.2563, Florida Statutes, relating to the pilot program for the administrative establishment of child support obligations. The section:

creates a definition for the term "financial affidavit";

clarifies that neither the Department of Revenue nor the Division of Administrative Hearings has the jurisdiction to award or modify custody or visitation rights of parents;

provides that if the noncustodial parent files an action in circuit court, the administrative process ends without prejudice and the action must proceed in circuit court;

clarifies the notice process;

requires the withholding and transmittal of 40% of any unemployment compensation benefits received by the obligor; and

provides that orders established through the administrative process have the same force and effect as court orders.

Section 11. Amends §409.25656, Florida Statutes, relating to garnishment, to require persons in possession or control of securities levied upon by the Department of Revenue to liquidate those securities. The securities are to be liquidated either by direction from the owner or, absent such direction, according to specified statutory procedures.

Section 12. Amends §409.25658, Florida Statutes, relating to the use of unclaimed property for past due support, to replace the term "abandoned" with the term "unclaimed" to correct a glitch created by legislative changes to chapter 717, Florida Statutes, relating to the disposition of unclaimed property, during the 2001 session (See Chapter #200-36, Laws of Florida).

Section 13. Amends §409.2576, Florida Statutes, relating to the State Directory of New Hires, to add the requirement that a national medical support notice be sent to the State Directory of New Hires with the already required wage withholding notice, unless the support order does not contain a provision for the employee to provide health care coverage. Such national medical support notice shall direct the employer to withhold premiums for health care coverage.

Section 14. Amends §827.06, Florida Statutes, to clarify the notice provisions related to prosecutions for nonsupport of dependents.

Section 12. Except as otherwise specified, provides for an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The economic analysis done by the federal Office of Management and Budget (OMB) to determine the cost to implement the uniform medical support notice determined that the benefits of the regulation will substantially exceed the costs and reported two types of economic effects of the regulation:

the general and primarily indirect societal welfare gains associated with facilitating access to health care for dependent children; and

the direct administrative benefits and costs associated with implementing uniform notices.

The social welfare loss that comes as a result of uninsured children is well documented in both the economic and child welfare literature. The development and implementation of a standardized, uniform medical support notice should improve the quality of health care for children by preventing delays and denials for enrollment in group health care plans. This can be anticipated to encourage and increase early intervention and treatment of illness and disease. The lack of private coverage is known to generally increase the likelihood that necessary medical treatment will be delayed or neglected and as a result ultimately those costs will be shifted to public funding sources. It is not known how many children are uninsured as a result of shortcomings in the medical support notice process, nonetheless, any reduction in the number of uninsured children that results from the use of a uniform notice will improve the health of those children. This will in turn save public resources for those without access to private coverage (65 FR 82139, December 27, 2000).

The OMB analysis indicates that during the first year of use of a standardized notice, the total cost to private employer group health plans for processing medical child support orders is expected to drop from \$62.3 million to \$35.7 million nationally. This estimate is based on the assumption that plans will invest in new procedures to process the uniform notices which will cut their processing time. Specifically:

plans with fewer than 10 participants will probably not invest in new procedures but will continue to incur baseline costs annually;

plans with 10 to 99 participants will invest in new procedures when they receive their first notice and will recover their costs and realize net savings within three years or less, with savings increasing every year; and

plans with 100 or more participants will invest in new procedures and will recover their costs and realize a net savings in that same year (65 FR 82139, December 27, 2000).

While the OMB analysis reflects national estimates, the use of a standardized medical notice is anticipated to have a similar fiscal effect in Florida.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Carol Preston

Staff Director:

Nathan L. Bond, J.D.

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

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