WEST VIRGINIA CODE CHAPTER 48 ARTICLE 12

WV Legislature

§48-12-101. Definitions applicable to medical support enforcement.

For the purposes of this article:

(1) "Appropriate health insurance coverage" means insurance coverage that is reasonable in cost, comprehensive in nature and reasonably accessible to the child to be covered.

(2) "Cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another person through employment or otherwise, or for other medical costs not covered by insurance.

(3) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of a child or children for whom child support is ordered.

(4) Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay for insurance coverage and medical care, or some portion thereof, for his or her child.

(5) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, prescription pharmaceuticals, psychological, psychiatric or other health care services.

(6) "Child" means a child to whom a duty of child support is owed.

(7) "Medical care" means medical, dental, optical, prescription pharmaceuticals, psychological, psychiatric or other health care service for children in need of child support.

(8) "Insurer" means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29 U.S.C. §1167, Section 607(1) of the Employee Retirement Income Security Act of 1974 or other entity which provides insurance coverage or offers a service benefit plan.

(9) "National medical support notice" means the written notice described in 29 U.S.C. §1169 (a)(5)(C) and 42 U.S.C. §666(a)(19) and issued as a means of enforcing the health care coverage provisions in a child support order for children whose parent or parents are required to provide health-care coverage through an employment-related group health plan. This notice is consider under ERISA to be a qualified medical child support order (QMSO).

(10) "Qualified medical child support order" means a medical child support order which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits from which a participant or beneficiary is eligible under a group health plan. A qualified medical child support order must include the name and the last known mailing address, if any, of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of the IV-D agency may be

WV Legislature

substituted for the mailing address of any alternate recipient, a reasonable description of the type of coverage provided to each alternate recipient or the manner in which the type of coverage is determined and the time period for which the order applies.

(11) "Reasonably accessible health insurance coverage" means that the coverage will provide payment for the primary health care services within a reasonable distance from the child's primary residence.

(12) "Reasonable costs" means the child's portion of the medical insurance premiums not exceeding five percent of the gross income of the parent who provides the coverage.

WV Legislature

§48-12-102. Court-ordered medical support.

In every action to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide medical care for the children of the parties. In any temporary or final order establishing an award of child support or any temporary or final order modifying a prior order establishing an award of child support, the court shall address the provision of medical support through one or more of the following methods:

(1) The court shall determine whether appropriate medical insurance coverage as defined in section one hundred one of this article is available to either parent. If such insurance coverage exists, the court shall order the appropriate parent to enroll the child in that coverage and the cost of providing appropriate medical insurance shall be entered on line 5b of worksheet A for the basic shared parenting child support calculation as provided in section two hundred four, article thirteen of this code or line 12b of worksheet B for the extended shared parenting child support calculation as provided in said section.

(2) If the court does not include the cost of the medical insurance in the child support calculation, the court may order the other parent to contribute to the cost of the premium through an award of medical support. If the amount of the award of child support in the order is determined using the child support guidelines, the court shall order that nonrecurring or subsequently occurring uninsured medical expenses in excess of $250 per year per child shall be separately divided between the parties in proportion to their adjusted gross incomes.

(3) If neither parent currently has access to appropriate medical insurance coverage, the court shall take the following actions:

(a) The court shall order the parties to provide appropriate medical insurance coverage if it becomes available in the future; and

(b) The court shall order the payment of cash medical support by either or both parties. The amount of the cash medical support to be awarded is within the discretion of the court but the total of the cash medical support and cost of the insurance premiums shall not exceed five percent of the payor's gross income.

(c) In setting a cash medical support award, the court may consider the costs of uncovered medical expenses for the child, the relative percentages of the parties' incomes or the cost to the government to provide medical coverage for the child.

(d) If the support obligor's adjusted gross income is less than two hundred percent of the federal poverty level, the court shall set the cash medical support amount at zero.

(e) Cash medical support shall be collected and enforced in the same manner as child support payments.

WV Legislature

(4) The order shall require the obligor to continue to provide the Bureau for Child Support Enforcement with information as to his or her employer's name and address and information as to the availability of employer-related insurance programs providing medical care coverage so long as the child continues to be eligible to receive support.

WV Legislature

§48-12-103. Cost of medical support considered in applying support guidelines.

The Bureau for Child Support Enforcement or the parties to the case may bring a petition to modify the medical support obligations upon notification of any new source of insurance coverage or any change in circumstances as set forth in section one hundred six, article fourteen of this chapter.

WV Legislature

§48-12-104. Use of national medical support notice; employer to enroll child and withhold premium.

(a) All child support orders which include a provision for health care coverage of a child shall be enforced, where appropriate, through the use of the national medical support notice, as set forth in 42 U.S.C. §666 (a)(19) and 29 U.S.C. §1169 (a)(5)(C) et seq.

(b) Unless alternative coverage is permitted in any order by a court of competent jurisdiction, in any case in which a parent is required pursuant to a child support order to provide the health care coverage and the employer of the parent is known to the IV-D agency, the IV-D agency shall use the national medical support notice to give notice of the provision for the health care coverage of the child to the employer. The employer shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent's income or wages, and remit any amount withheld for the premium directly to the plan.

WV Legislature

§48-12-105. Employer's obligation to transfer notice to appropriate plan.

Within twenty business days after the date of receipt of the national medical support notice, the employer shall transfer the notice, excluding the severable employer withholding notice described in section 401 (b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan providing any health care coverage for which the child is eligible.

WV Legislature

§48-12-106. Notice requirements for certain newly-hired employees.

In any case in which the parent is a newly hired employee who is reported to the state directory of new hires pursuant to section 18-125 of this chapter, and if the Bureau for Child Support enforcement is currently providing services for this case, the agency shall issue, where appropriate, the national medical support notice, together with an income withholding notice issued pursuant to section 14-405 of this chapter, within two days after the date of the entry of the employee in the directory.

WV Legislature

§48-12-107. Notice requirement upon termination of parent.

In any case in which the employment of the parent with any employer who received a national medical support notice is terminated, the employer is required to notify the IV-D agency of the termination, within fourteen days of the termination, and shall provide the Bureau for Child Support enforcement with the obligor's last known address at the time of termination.

WV Legislature

§48-12-108. Certain liabilities of parent for contributions under the plan subject to enforcement; exceptions.

Any liability a parent may have for employee contributions required under the plan for enrollment of the child is subject to appropriate enforcement unless the parent contests the enforcement based upon a mistake of fact, except that if enforcement of both the full amount of cash child support and the full amount of medical support violates the application provisions of 15 U.S.C. §1673, Section 303(b) of the Consumer Credit Protection Act, then the current month's cash child support shall receive priority, and shall be deducted in full prior to any deduction being made for payment of either current medical support or health insurance premiums. If the employee contests the withholding in the manner prescribed within the notice, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

WV Legislature

§48-12-109. Custodial parent to receive coverage information, documents.

Within forty business days after the date of the national medical support notice, the plan administrator shall provide to the custodial parent a description of the coverage available and any forms or documents, including an insurance enrollment card, to effectuate the coverage.

WV Legislature

§48-12-110. Employer, union to notify IV-D agency within forty days of receipt of notice.

Within forty days of receipt of a national medical support notice, the obligated parent's employer, multiemployer trust or union shall notify the IV-D agency with respect to whether coverage for the child is available, and if so, whether the child is covered under the plan, the effective date of the coverage and the name of the insurer.

WV Legislature

§48-12-111. Employer's duties upon service of national medical support notice; notice from another state.

(a) Upon service of the national medical support notice requiring insurance coverage for the children, the employer, multiemployer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent's income or wages, unless the child is already enrolled in this plan.

(b) If more than one plan is offered by the employer, multiemployer trust or union, the child shall be enrolled in the same plan as the obligated parent. If the obligated parent is not enrolled for insurance coverage, the employer shall promptly report the availability of plans to the IV-D agency. The IV-D agency, in consultation with parent, shall promptly select the most appropriate plan, considering both the health needs of the child and the cost to the parents, and shall notify the plan administrator and the parties of the selection.

(c) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in section one hundred fifteen of this article.

(d) A medical support notice issued by the appropriate IV-D agency of another state may be sent directly to an employer in this state without the necessity of first filing a petition or similar pleading or registering the order with the IV-D agency of this state. The medical support notice shall have the same force and effect as if the notice had been issued by the IV-D agency of this state. Upon receipt of a medical support notice from the IV-D agency of another state, the employer shall immediately provide a copy of the notice to the obligor.

WV Legislature

§48-12-112. Employer's duties where court-ordered coverage available.

(a) Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer is required:

(1) To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage upon application by the child's other parent, by the state agency administering the Medicaid program or by the Bureau for Child Support enforcement;

(3) Not to disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect;

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(C) The employer eliminated family health coverage for all of its employees; and

(4) To withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer: Provided, That the amount so withheld may not exceed the maximum amount permitted to be withheld under 15 U.S.C. §1673, Section 303(b) of the consumer credit protection act.

WV Legislature

§48-12-113. Signature of custodian of child is valid authorization to insurer; insurer's obligations.

(a) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

(b) No insurer, employer or multiemployer trust in this state may refuse to honor a claim for a covered service when the custodian for the child or the obligated parent submits proof of payment for medical bills for the child.

(c) The insurer shall reimburse the custodian for the child or the obligated parent who submits copies of medical bills for the child with proof of payment.

(d) All insurers in this state shall comply with the provisions of section 33-15-16 and section 33-16-11 of this code and shall provide insurance coverage for the child of a covered employee notwithstanding the amount of support otherwise ordered by the court and regardless of the fact that the child may not be living in the home of the covered employee.

WV Legislature

§48-12-114. Notice to be transferred on parent's change of employment.

Where an obligated parent changes employment and the new employer provides the obligated parent's health care coverage, the Bureau for Child Support enforcement shall transfer to the new employer notice of the obligated parent's duty to provide health care coverage by use of the national medical support notice.

WV Legislature

§48-12-115. Insurer to notify custodian when obligated parent's employment is terminated or coverage is denied, modified or terminated; explanation of conversion privileges; employer to notify bureau of termination.

When an order for insurance coverage for a child pursuant to this article is in effect and the obligated parent's employment is terminated or the insurance coverage for the child is denied, modified or terminated, the insurer shall in addition to complying with the requirements of article sixteen-a, chapter thirty-three of this code, within ten days after the notice of change in coverage is sent to the covered employee, notify the custodian for the child and provide an explanation of any conversion privileges available from the insurer. In any case in which the employment of the obligated parent to provide insurance is terminated, the employer shall notify the Bureau for Child Support enforcement of the termination.

WV Legislature

§48-12-116. Child is eligible for coverage until emancipated; remedies available if obligated parent fails to provide ordered coverage; failure to maintain coverage is basis for modification of support order.

(a) A child of an obligated parent shall remain eligible for insurance coverage until the child is emancipated or until the insurer under the terms of the applicable insurance policy terminates said child from coverage, whichever is later in time, or until further order of the court.

(b) If the obligated parent fails to comply with the order to provide insurance coverage for the child, the court shall:

(1) Hold the obligated parent in contempt for failing or refusing to provide the insurance coverage or for failing or refusing to provide the information required in subdivision (4) of this subsection;

(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child and any insurance premiums paid or provided for the child during any period in which the obligated parent failed to provide the required coverage;

(3) In the alternative, other enforcement remedies available under sections 14-2, 14-3 and 14-4 of this chapter, or otherwise available under law, may be used to recover from the obligated parent the cost of medical care or insurance coverage for the child;

(4) In addition to other remedies available under law, the Bureau for Child Support enforcement may initiate an income withholding against the wages, salary or other employment income of, and withhold amounts from state tax refunds to any person who:

(A) Is required by court or administrative order to provide coverage of the cost of health services to a child; and

(B) Has received payment from a third party for the costs of the services but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services, to the extent necessary to reimburse the state Medicaid agency for its costs: Provided, That claims for current and past due child support shall take priority over these claims.

(c) Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need, and provides a basis for modification of the child support order.

WV Legislature

§48-12-117. Mandatory date for use of the national medical support notice.

Provisions of this article which require the use of the national medical support notice are not mandatory until April 1, 2002.

WV Legislature

§48-12-118. Failure of employer to comply with medical insurance coverage; penalties.

For the failure of any employer, multiemployer trust or employee's union to comply with the requirements of this article the Bureau for Child Support enforcement may assess a civil penalty of not more than $100. If a court of competent jurisdiction determines that the employer, multiemployer trust or the employee's union wilfully failed to comply with the provisions of this article the employer, multiemployer trust or employee's union shall be found guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000.

WV Legislature