

1 **HEALTH REFORM - ADMINISTRATIVE**

2 **SIMPLIFICATION**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Merlynn T. Newbold**

6 Senate Sponsor: Peter C. Knudson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to administrative simplification of the coordination
11 of health insurance benefits as provided in divorce decrees, child support orders, and
12 the Insurance Code.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides uniform language for divorce decrees and child support orders related to
16 the coordination of health insurance benefits when a dependent child of the
17 marriage is covered by both parents' health insurance policies;
- 18 ▶ establishes a coordination of benefits process for health insurance claims based
19 primarily on national standards;
- 20 ▶ provides uniform educational material for the public regarding the coordination of
21 health insurance benefits; and
- 22 ▶ repeals the coordination of the health insurance benefits process that was to take
23 effect July 1, 2010.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **30-3-5**, as last amended by Laws of Utah 2005, Chapter 129
- 31 **31A-22-619**, as last amended by Laws of Utah 2009, Chapter 11
- 32 **63I-2-231**, as last amended by Laws of Utah 2009, Chapter 11
- 33 **62A-11-326**, as last amended by Laws of Utah 2009, Chapter 142
- 34 **78B-12-212**, as last amended by Laws of Utah 2009, Chapter 142

35 ENACTS:

36 **30-3-5.5**, Utah Code Annotated 1953

37 REPEALS:

38 **31A-22-619.5 (Effective 07/01/10)**, as enacted by Laws of Utah 2009, Chapter 11



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **30-3-5** is amended to read:

42 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
 43 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
 44 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

45 (1) When a decree of divorce is rendered, the court may include in it equitable orders
 46 relating to the children, property, debts or obligations, and parties. The court shall include the
 47 following in every decree of divorce:

48 (a) an order assigning responsibility for the payment of reasonable and necessary
 49 medical and dental expenses of the dependent children including responsibility for health
 50 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

51 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
 52 purchase and maintenance of appropriate health, hospital, and dental care insurance for the
 53 dependent children; and

54 (ii) a designation of which health, hospital, or dental insurance plan is primary and
 55 which health, hospital, or dental insurance plan is secondary in accordance with the provisions
 56 of Section 30-3-5.5 which will take effect if at any time a dependent child is covered by both
 57 parents' health, hospital, or dental insurance plans;

58 (c) pursuant to Section 15-4-6.5:

59 (i) an order specifying which party is responsible for the payment of joint debts,
60 obligations, or liabilities of the parties contracted or incurred during marriage;

61 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
62 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
63 current addresses; and

64 (iii) provisions for the enforcement of these orders; and

65 (d) provisions for income withholding in accordance with Title 62A, Chapter 11,
66 Recovery Services.

67 (2) The court may include, in an order determining child support, an order assigning
68 financial responsibility for all or a portion of child care expenses incurred on behalf of the
69 dependent children, necessitated by the employment or training of the custodial parent. If the
70 court determines that the circumstances are appropriate and that the dependent children would
71 be adequately cared for, it may include an order allowing the noncustodial parent to provide
72 child care for the dependent children, necessitated by the employment or training of the
73 custodial parent.

74 (3) The court has continuing jurisdiction to make subsequent changes or new orders
75 for the custody of the children and their support, maintenance, health, and dental care, and for
76 distribution of the property and obligations for debts as is reasonable and necessary.

77 (4) Child support, custody, visitation, and other matters related to children born to the
78 mother and father after entry of the decree of divorce may be added to the decree by
79 modification.

80 (5) (a) In determining parent-time rights of parents and visitation rights of
81 grandparents and other members of the immediate family, the court shall consider the best
82 interest of the child.

83 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
84 court may include in an order establishing a parent-time or visitation schedule a provision,
85 among other things, authorizing any peace officer to enforce a court-ordered parent-time or

86 visitation schedule entered under this chapter.

87 (6) If a petition for modification of child custody or parent-time provisions of a court
88 order is made and denied, the court shall order the petitioner to pay the reasonable attorneys'
89 fees expended by the prevailing party in that action, if the court determines that the petition
90 was without merit and not asserted or defended against in good faith.

91 (7) If a petition alleges noncompliance with a parent-time order by a parent, or a
92 visitation order by a grandparent or other member of the immediate family where a visitation
93 or parent-time right has been previously granted by the court, the court may award to the
94 prevailing party costs, including actual attorney fees and court costs incurred by the prevailing
95 party because of the other party's failure to provide or exercise court-ordered visitation or
96 parent-time.

97 (8) (a) The court shall consider at least the following factors in determining alimony:

98 (i) the financial condition and needs of the recipient spouse;

99 (ii) the recipient's earning capacity or ability to produce income;

100 (iii) the ability of the payor spouse to provide support;

101 (iv) the length of the marriage;

102 (v) whether the recipient spouse has custody of minor children requiring support;

103 (vi) whether the recipient spouse worked in a business owned or operated by the payor
104 spouse; and

105 (vii) whether the recipient spouse directly contributed to any increase in the payor
106 spouse's skill by paying for education received by the payor spouse or allowing the payor
107 spouse to attend school during the marriage.

108 (b) The court may consider the fault of the parties in determining alimony.

109 (c) As a general rule, the court should look to the standard of living, existing at the
110 time of separation, in determining alimony in accordance with Subsection (8)(a). However,
111 the court shall consider all relevant facts and equitable principles and may, in its discretion,
112 base alimony on the standard of living that existed at the time of trial. In marriages of short
113 duration, when no children have been conceived or born during the marriage, the court may

114 consider the standard of living that existed at the time of the marriage.

115 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
116 respective standards of living.

117 (e) When a marriage of long duration dissolves on the threshold of a major change in
118 the income of one of the spouses due to the collective efforts of both, that change shall be
119 considered in dividing the marital property and in determining the amount of alimony. If one
120 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
121 the marriage, the court may make a compensating adjustment in dividing the marital property
122 and awarding alimony.

123 (f) In determining alimony when a marriage of short duration dissolves, and no
124 children have been conceived or born during the marriage, the court may consider restoring
125 each party to the condition which existed at the time of the marriage.

126 (g) (i) The court has continuing jurisdiction to make substantive changes and new
127 orders regarding alimony based on a substantial material change in circumstances not
128 foreseeable at the time of the divorce.

129 (ii) The court may not modify alimony or issue a new order for alimony to address
130 needs of the recipient that did not exist at the time the decree was entered, unless the court
131 finds extenuating circumstances that justify that action.

132 (iii) In determining alimony, the income of any subsequent spouse of the payor may
133 not be considered, except as provided in this Subsection (8).

134 (A) The court may consider the subsequent spouse's financial ability to share living
135 expenses.

136 (B) The court may consider the income of a subsequent spouse if the court finds that
137 the payor's improper conduct justifies that consideration.

138 (h) Alimony may not be ordered for a duration longer than the number of years that
139 the marriage existed unless, at any time prior to termination of alimony, the court finds
140 extenuating circumstances that justify the payment of alimony for a longer period of time.

141 (9) Unless a decree of divorce specifically provides otherwise, any order of the court

142 that a party pay alimony to a former spouse automatically terminates upon the remarriage or
143 death of that former spouse. However, if the remarriage is annulled and found to be void ab
144 initio, payment of alimony shall resume if the party paying alimony is made a party to the
145 action of annulment and his rights are determined.

146 (10) Any order of the court that a party pay alimony to a former spouse terminates
147 upon establishment by the party paying alimony that the former spouse is cohabitating with
148 another person.

149 Section 2. Section **30-3-5.5** is enacted to read:

150 **30-3-5.5. Designation of Primary and Secondary Health, Dental, or Hospital**
151 **Insurance Coverage.**

152 (1) For purposes of this section, "health, hospital, or dental insurance plan" has the
153 same meaning as "health care insurance" as defined in Section 31A-1-301.

154 (2) (a) A decree of divorce rendered in accordance with Section 30-3-5, an order for
155 medical expenses rendered in accordance with Section 78B-12-212, and an administrative
156 order under Section 62A-11-326 shall, in accordance with Subsection (2)(b)(ii), designate
157 which parent's health, hospital, or dental insurance plan is primary coverage and which
158 parent's health, hospital, or dental insurance plan is secondary coverage for a dependent child.

159 (b) The provisions of the court order required by Subsection (2)(a) shall:

160 (i) take effect if at any time a dependent child is covered by both parents' health,
161 hospital, or dental insurance plans; and

162 (ii) include the following language:

163 "If, at any point in time, a dependent child is covered by the health, hospital, or dental
164 insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's
165 Name) shall be primary coverage for the dependent child and the health, hospital, or dental
166 insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child.
167 If a parent remarries and his or her dependent child is not covered by that parent's health,
168 hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or
169 dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried

170 parent and shall retain the same designation as the primary or secondary plan of the dependent
171 child."

172 (c) A decree of divorce or related court order may not modify the language required by
173 Subsection (2)(b)(ii).

174 (d) Notwithstanding Subsection (2)(c), a court may allocate the payment of medical
175 expenses including co-payments, deductibles, and co-insurance not covered by health
176 insurance between the parents in accordance with Subsections 30-3-5(1)(a) and
177 78B-12-212(6).

178 (3) In designating primary coverage pursuant to Subsection (2), a court may take into
179 account:

180 (a) the birth dates of the parents;

181 (b) a requirement in a court order, if any, for one of the parents to maintain health
182 insurance coverage for a dependent child;

183 (c) the parent with physical custody of the dependent child; or

184 (d) any other factor the court considers relevant.

185 Section 3. Section **31A-22-619** is amended to read:

186 **31A-22-619. Coordination of benefits.**

187 (1) The commissioner shall: [~~(a) convene a group of health insurers and health care~~
188 ~~providers for the purpose of making recommendations to the Legislature regarding an efficient~~
189 ~~method of coordination of benefits to increase the timeliness and accuracy of coordination of~~
190 ~~benefits;(b) report to the Legislature's Health Reform Task Force before November 15, 2009~~
191 ~~regarding legislation to enact the recommendations developed under Subsection (1)(a); and~~
192 ~~(c)]~~

193 (a) adopt rules concerning the coordination of benefits between accident and health
194 insurance policies[;];

195 (b) publish a coordination of benefits guide;

196 (c) post the coordination of benefits guide on the state insurance exchange; and

197 (d) work with the Health Data Authority, health care provider groups, and with state

198 and national organizations that are developing uniform standards for the electronic exchange
199 of health insurance claims to develop standardized language regarding coordination of benefits
200 for the purpose of including the standardized language in an insurer's explanation of benefits.

201 (2) Rules adopted by the commissioner under Subsection (1):

202 (a) may not prohibit coordination of benefits with individual accident and health
203 insurance policies; ~~and~~

204 (b) shall apply equally to all accident and health insurance policies without regard to
205 whether the policies are group or individual policies[-]; and

206 (c) shall include standardized language regarding the coordination of benefits process
207 that shall be included in each insurer's accident and health insurance policy.

208 Section 4. Section **62A-11-326** is amended to read:

209 **62A-11-326. Medical and dental expenses of dependent children.**

210 In any action under this part, the office and the department in their orders shall:

211 (1) ~~shall~~ include a provision assigning responsibility for cash medical support; ~~and~~

212 (2) ~~shall~~ include a provision requiring the purchase and maintenance of appropriate
213 medical, hospital, and dental care insurance for those children, if:

214 (a) insurance coverage is or becomes available at a reasonable cost; and

215 (b) the insurance coverage is accessible to the children[-]; and

216 (3) include a designation of which health, dental or hospital insurance plan, is primary
217 and which is secondary in accordance with the provisions of Section 30-3-5.5 which will take
218 effect if at any time the dependent children are covered by both parents' health, hospital, or
219 dental insurance plans.

220 Section 5. Section **63I-2-231** is amended to read:

221 **63I-2-231. Repeal dates, Title 31A.**

222 ~~[(+)]~~ Section 31A-23a-415 is repealed July 1, 2011.

223 ~~[(2) Section 31A-22-619 is repealed July 1, 2010.]~~

224 Section 6. Section **78B-12-212** is amended to read:

225 **78B-12-212. Medical expenses.**

226 (1) (a) The court shall order that insurance for the medical expenses of the minor
227 children be provided by a parent if it is available at a reasonable cost.

228 (b) The court shall, in accordance with Section 30-3-5, designate which health,
229 hospital, or dental insurance plan is primary and which health, hospital, or dental insurance
230 plan is secondary if at any time a dependent child is covered by both parents' health, hospital,
231 or dental insurance plans.

232 (2) In determining which parent shall be ordered to maintain insurance for medical
233 expenses, the court or administrative agency may consider the:

- 234 (a) reasonableness of the cost;
- 235 (b) availability of a group insurance policy;
- 236 (c) coverage of the policy; and
- 237 (d) preference of the custodial parent.

238 (3) The order shall require each parent to share equally the out-of-pocket costs of the
239 premium actually paid by a parent for the children's portion of insurance unless the court finds
240 good cause to order otherwise.

241 (4) The parent who provides the insurance coverage may receive credit against the
242 base child support award or recover the other parent's share of the children's portion of the
243 premium. In cases in which the parent does not have insurance but another member of the
244 parent's household provides insurance coverage for the children, the parent may receive credit
245 against the base child support award or recover the other parent's share of the children's
246 portion of the premium.

247 (5) The children's portion of the premium is a per capita share of the premium actually
248 paid. The premium expense for the children shall be calculated by dividing the premium
249 amount by the number of persons covered under the policy and multiplying the result by the
250 number of children in the instant case.

251 (6) The order shall, in accordance with Subsection 30-3-5(1)(b), include a cash
252 medical support provision that requires each parent to equally share all reasonable and
253 necessary uninsured and unreimbursed medical and dental expenses incurred for the

254 dependent children, including but not limited to deductibles and copayments unless the court
255 finds good cause to order otherwise.

256 (7) The parent ordered to maintain insurance shall provide verification of coverage to
257 the other parent, or to the Office of Recovery Services under Title IV of the Social Security
258 Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and
259 thereafter on or before January 2 of each calendar year. The parent shall notify the other
260 parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C.
261 Section 601 et seq., of any change of insurance carrier, premium, or benefits within 30
262 calendar days of the date the parent first knew or should have known of the change.

263 (8) A parent who incurs medical expenses shall provide written verification of the cost
264 and payment of medical expenses to the other parent within 30 days of payment.

265 (9) In addition to any other sanctions provided by the court, a parent incurring medical
266 expenses may be denied the right to receive credit for the expenses or to recover the other
267 parent's share of the expenses if that parent fails to comply with Subsections (7) and (8).

268 **Section 7. Repealer.**

269 This bill repeals:

270 **Section 31A-22-619.5 (Effective 07/01/10), Coordination of benefits.**