

CHILD SUPPORT ACT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Val K. Potter

LONG TITLE

General Description:

This bill addresses child support requirements.

Highlighted Provisions:

This bill:

- ▶ defines "health care coverage";
- ▶ addresses how health care coverage for medical expenses is treated for purposes of child support; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 30-3-5.4**, as enacted by Laws of Utah 2010, Chapter 285
- 30-3-35.1**, as last amended by Laws of Utah 2017, Chapter 120
- 78B-12-102**, as last amended by Laws of Utah 2015, Chapter 45
- 78B-12-212**, as last amended by Laws of Utah 2010, Chapter 285

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



28 Section 1. Section 30-3-5.4 is amended to read:

29 **30-3-5.4. Designation of primary and secondary health, dental, or hospital**
30 **insurance coverage.**

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

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

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

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

41 (ii) include the following language:

42 "If, at any point in time, a dependent child is covered by the health, hospital, or dental
43 insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's
44 Name) shall be primary coverage for the dependent child and the health, hospital, or dental
45 insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child.
46 If a parent remarries and his or her dependent child is not covered by that parent's health,
47 hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or
48 dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried
49 parent and shall retain the same designation as the primary or secondary plan of the dependent
50 child."

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

53 (d) Notwithstanding Subsection (2)(c), a court may allocate the payment of medical
54 expenses including co-payments, deductibles, and co-insurance not covered by health insurance
55 between the parents in accordance with Subsections 30-3-5(1)(a) and 78B-12-212[~~(6)~~](7).

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

58 (a) the birth dates of the parents;

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

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

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

63 Section 2. Section **30-3-35.1** is amended to read:

64 **30-3-35.1. Optional schedule for parent-time for children 5 to 18 years of age.**

65 (1) The optional parent-time schedule in this section applies to children 5 to 18 years of
66 age. This schedule is 145 overnights. Any impact on child support shall be consistent with
67 Subsection ~~78B-12-102(14)~~(15).

68 (2) The parents and the court may consider the following increased parent-time
69 schedule as a minimum when the parties agree or the noncustodial parent can demonstrate the
70 following:

71 (a) the noncustodial parent has been actively involved in the child's life;

72 (b) the parties are able to communicate effectively regarding the child, or the
73 noncustodial parent has a plan to accomplish effective communications regarding the child;

74 (c) the noncustodial parent has the ability to facilitate the increased parent-time;

75 (d) the increased parent-time would be in the best interest of the child; and

76 (e) any other factor the court considers relevant.

77 (3) In determining whether a noncustodial parent has been actively involved in the
78 child's life, the court shall consider:

79 (a) demonstrated responsibility in caring for the child;

80 (b) involvement in day care;

81 (c) presence or volunteer efforts in the child's school and at extracurricular activities;

82 (d) assistance with the child's homework;

83 (e) involvement in preparation of meals, bath time, and bedtime for the child;

84 (f) bonding with the child; and

85 (g) any other factor the court considers relevant.

86 (4) In determining whether a noncustodial parent has the ability to facilitate the
87 increased parent-time, the court shall consider:

88 (a) the geographic distance between the residences of the parents and the distance
89 between the parents' residences and the child's school;

- 90 (b) the noncustodial parent's ability to assist with after school care;
- 91 (c) the health of the child and the noncustodial parent, consistent with Subsection
- 92 30-3-10(4);
- 93 (d) flexibility of employment or other schedule of the parent;
- 94 (e) ability to provide appropriate playtime with the child;
- 95 (f) history and ability of the parent to implement a flexible schedule for the child;
- 96 (g) physical facilities of the noncustodial parent's residence; and
- 97 (h) any other factor the court considers relevant.

98 (5) An election required to be made in accordance with this section by either parent
99 concerning parent-time shall be made a part of the decree and made a part of the parent-time
100 order. An election may only be changed by mutual agreement, court order, or by the
101 noncustodial parent in the event of a change in the child's schedule.

102 (6) If the parties agree or the court enters an order for the optional parent-time schedule
103 as set forth in this section, a parenting plan in compliance with Sections 30-3-10.7 through
104 30-3-10.10 shall be filed with any order incorporating the following optional parent-time
105 schedule:

106 (a) The noncustodial parent or the court may specify one weekday for parent-time. If
107 no day is specified, weekday parent-time shall be on Wednesday from 5:30 p.m. until the
108 following day when delivering the child to school, or until 8 a.m., if there is no school the
109 following day. Once the election of the weekday is made, it may only be changed in
110 accordance with Subsection (5). At the election of the noncustodial parent, weekday
111 parent-time may commence:

- 112 (i) from the time the child's school is regularly dismissed; or
- 113 (ii) if school is not in session, and the parent is available to be with the child, at
114 approximately 8 a.m., accommodating the custodial parent's work schedule.

115 (b) Beginning on the first weekend after the entry of the decree, the noncustodial parent
116 shall be entitled to alternating weekends beginning on the first weekend after the entry of the
117 decree from 6 p.m. on Friday until Monday when delivering the child to school, or until 8 a.m.
118 if there is no school on Monday. At the election of the noncustodial parent, weekend
119 parent-time may commence:

- 120 (i) from the time the child's school is regularly dismissed on Friday; or

121 (ii) if school is not in session, and the parent is available to be with the child, at
122 approximately 8 a.m. on Friday, accommodating the custodial parent's work schedule.

123 (c) Subsections 30-3-35(2)(f) through (p) are incorporated into this section and
124 constitute the parent-time schedule with the exception that all instances that require the
125 noncustodial parent to return the child at any time after 6 p.m. be changed so that the
126 noncustodial parent is required to return the child to school the next morning or at 8 a.m., if
127 there is no school.

128 (7) A stepparent, grandparent, or other responsible adult designated by the noncustodial
129 parent may pick up the child if the custodial parent is aware of the identity of the individual,
130 and if the noncustodial parent will be with the child by 7 p.m.

131 (8) Weekends include any "snow" days, teacher development days, or other days when
132 school is not scheduled and that are contiguous to the weekend period.

133 (9) Holidays include any "snow" days, teacher development days after the child begins
134 the school year, or other days when school is not scheduled, contiguous to the holiday period,
135 and take precedence over weekend parent-time. Changes may not be made to the regular
136 rotation of the alternating weekend parent-time schedule.

137 (a) If a holiday falls on a school day, the noncustodial parent shall be responsible for
138 the child's attendance at school for that school day.

139 (b) If a holiday falls on a weekend or on a Friday or Monday and the total holiday
140 period extends beyond that time so that the child is free from school and the parent is free from
141 work, the noncustodial parent shall be entitled to this lengthier holiday period.

142 (c) At the election of the noncustodial parent, parent-time over a scheduled holiday
143 weekend may begin from the time the child's school is dismissed at the beginning of the
144 holiday weekend or, if school is not in session, and if the noncustodial parent is available to be
145 with the child, parent-time over a scheduled holiday weekend may begin at approximately 8
146 a.m., accommodating the custodial parent's work schedule, unless the court directs the
147 application of Subsection (6)(a).

148 (10) Birthdays take precedence over holidays and extended parent-time, except
149 Mother's Day and Father's Day. Birthdays do not take precedence over uninterrupted
150 parent-time if the parent exercising uninterrupted time is out of town for the uninterrupted
151 extended parent-time. At the discretion of the noncustodial parent, other siblings may be taken

152 along for birthdays.

153 (11) Notwithstanding Subsection (9)(b), the Halloween holiday may not be extended
154 beyond the hours designated in Subsection 30-3-35(2)(g)(vi).

155 (12) If there are children aged 5 to 18 and children under the age of five who are the
156 natural or adopted children of the parties, the parents and the court should consider an upward
157 deviation for parent-time with all the minor children so that parent-time is uniform based on a
158 schedule pursuant to this section.

159 Section 3. Section 78B-12-102 is amended to read:

160 **78B-12-102. Definitions.**

161 As used in this chapter:

162 (1) "Adjusted gross income" means income calculated under Subsection
163 78B-12-204(1).

164 (2) "Administrative agency" means the Office of Recovery Services or the Department
165 of Human Services.

166 (3) "Administrative order" means an order that has been issued by the Office of
167 Recovery Services, the Department of Human Services, or an administrative agency of another
168 state or other comparable jurisdiction with similar authority to that of the office.

169 (4) "Base child support award" means the award that may be ordered and is calculated
170 using the guidelines before additions for medical expenses and work-related child care costs.

171 (5) "Base combined child support obligation table," "child support table," "base child
172 support obligation table," "low income table," or "table" means the appropriate table in Part 3,
173 Tables.

174 (6) "Cash medical support" means an obligation to equally share all reasonable and
175 necessary medical and dental expenses of children.

176 (7) "Child" means:

177 (a) a son or daughter under the age of 18 years who is not otherwise emancipated,
178 self-supporting, married, or a member of the armed forces of the United States;

179 (b) a son or daughter over the age of 18 years, while enrolled in high school during the
180 normal and expected year of graduation and not otherwise emancipated, self-supporting,
181 married, or a member of the armed forces of the United States; or

182 (c) a son or daughter of any age who is incapacitated from earning a living and, if able

183 to provide some financial resources to the family, is not able to support self by own means.

184 (8) "Child support" means a base child support award, or a monthly financial award for
 185 uninsured medical expenses, ordered by a tribunal for the support of a child, including current
 186 periodic payments, ~~and~~ arrearages ~~which~~ that accrue under an order for current periodic
 187 payments, and sum certain judgments awarded for arrearages, medical expenses, and child care
 188 costs.

189 (9) "Child support order" or "support order" means a judgment, decree, or order of a
 190 tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable,
 191 whether incidental to a proceeding for divorce, judicial or legal separation, separate
 192 maintenance, paternity, guardianship, civil protection, or otherwise ~~which~~ that:

193 (a) establishes or modifies child support;

194 (b) reduces child support arrearages to judgment; or

195 (c) establishes child support or registers a child support order under Chapter 14, Utah
 196 Uniform Interstate Family Support Act.

197 (10) "Child support services" or "IV-D child support services" means services provided
 198 pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. ~~[Section]~~ Sec. 651 et seq.

199 (11) "Court" means the district court or juvenile court.

200 (12) "Guidelines" means the directions for the calculation and application of child
 201 support in Part 2, Calculation and Adjustment.

202 (13) "Health care coverage" means coverage under which medical services are
 203 provided to a dependent child through:

204 (a) fee for service;

205 (b) a health maintenance organization;

206 (c) a preferred provider organization;

207 (d) any other type of private health insurance; or

208 (e) public health care coverage.

209 ~~(13)~~ (14) (a) "Income" means earnings, compensation, or other payment due to an
 210 individual, regardless of source, whether denominated as wages, salary, commission, bonus,
 211 pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and
 212 incentive pay.

213 (b) "Income" includes:

214 ~~[(a)]~~ (i) all gain derived from capital assets, labor, or both, including profit gained
215 through sale or conversion of capital assets;

216 ~~[(b)]~~ (ii) interest and dividends;

217 ~~[(c)]~~ (iii) periodic payments made under pension or retirement programs or insurance
218 policies of any type;

219 ~~[(d)]~~ (iv) unemployment compensation benefits;

220 ~~[(e)]~~ (v) workers' compensation benefits; and

221 ~~[(f)]~~ (vi) disability benefits.

222 ~~[(14)]~~ (15) "Joint physical custody" means the child stays with each parent overnight
223 for more than 30% of the year, and both parents contribute to the expenses of the child in
224 addition to paying child support.

225 ~~[(15)]~~ (16) "Medical expenses" means health and dental expenses and related insurance
226 costs.

227 ~~[(16)]~~ (17) "Obligee" means an individual, this state, another state, or another
228 comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of
229 child support or public assistance.

230 ~~[(17)]~~ (18) "Obligor" means ~~[any]~~ a person owing a duty of support.

231 ~~[(18)]~~ (19) "Office" means the Office of Recovery Services within the Department of
232 Human Services.

233 ~~[(19)]~~ (20) "Parent" includes a natural parent, or an adoptive parent.

234 ~~[(20)]~~ (21) "Split custody" means that each parent has physical custody of at least one
235 of the children.

236 ~~[(21)]~~ (22) "State" includes ~~[any]~~ a state, territory, possession of the United States, the
237 District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other
238 comparable domestic or foreign jurisdiction.

239 ~~[(22)]~~ (23) "Temporary" means a period of time that is projected to be less than 12
240 months in duration.

241 ~~[(23)]~~ (24) "Third party" means an agency or a person other than the biological or
242 adoptive parent or a child who provides care, maintenance, and support to a child.

243 ~~[(24)]~~ (25) "Tribunal" means the district court, the Department of Human Services,
244 Office of Recovery Services, or court or administrative agency of ~~[any]~~ a state, territory,

245 possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico,
 246 Native American Tribe, or other comparable domestic or foreign jurisdiction.

247 ~~[(25)]~~ (26) "Work-related child care costs" means reasonable child care costs for up to
 248 a full-time work week or training schedule as necessitated by the employment or training of a
 249 parent under Section 78B-12-215.

250 ~~[(26)]~~ (27) "Worksheets" means the forms used to aid in calculating the base child
 251 support award.

252 Section 4. Section 78B-12-212 is amended to read:

253 **78B-12-212. Medical expenses.**

254 (1) A child support order issued or modified in this state on or after July 1, 2018, shall
 255 require compliance with this section as of the effective date of the child support order unless
 256 the court makes specific findings as to good cause to deviate from the requirements of this
 257 section.

258 ~~[(1)]~~ (2) (a) The court shall order that ~~[insurance]~~ health care coverage for the medical
 259 expenses of ~~[the minor children]~~ a minor child be provided by a parent ~~[if it is available at a~~
 260 ~~reasonable cost]~~.

261 (b) The court shall order that a parent provide insurance for the medical expenses of a
 262 minor child if insurance is available to that parent at a reasonable cost.

263 ~~[(b)]~~ (c) The court shall, in accordance with Section 30-3-5, designate which health,
 264 hospital, or dental insurance plan is primary and which health, hospital, or dental insurance
 265 plan is secondary if at any time a dependent child is covered by both parents' health, hospital,
 266 or dental insurance plans.

267 ~~[(2)]~~ (3) In determining which parent shall be ordered to maintain insurance for
 268 medical expenses, the court or administrative agency may consider the:

- 269 (a) reasonableness of the cost;
- 270 (b) availability of a group insurance policy;
- 271 (c) coverage of the policy; and
- 272 (d) preference of the custodial parent.

273 ~~[(3)]~~ (4) The order shall require each parent to share equally the out-of-pocket costs of
 274 the premium actually paid by a parent for the ~~[children's]~~ child's portion of insurance unless the
 275 court finds good cause to order otherwise.

276 ~~[(4)]~~ (5) The parent who provides the insurance coverage may receive credit against the
277 base child support award or recover the other parent's share of the ~~[children's]~~ child's portion of
278 the premium. ~~[In cases in which]~~ If the parent does not have insurance but another member of
279 the parent's household provides insurance coverage for the ~~[children]~~ child, the parent may
280 receive credit against the base child support award or recover the other parent's share of the
281 ~~[children's]~~ child's portion of the premium.

282 ~~[(5)]~~ (6) The ~~[children's]~~ child's portion of the premium is a per capita share of the
283 premium actually paid. The premium expense for ~~[the children]~~ a child shall be calculated by
284 dividing the premium amount by the number of persons covered under the policy and
285 multiplying the result by the number of children in the instant case.

286 ~~[(6)]~~ (7) The order shall, in accordance with Subsection 30-3-5(1)(b), include a cash
287 medical support provision that requires each parent to equally share all reasonable and
288 necessary uninsured and unreimbursed medical and dental expenses incurred for ~~[the]~~ a
289 dependent ~~[children]~~ child, including ~~[but not limited to]~~ deductibles and copayments unless
290 the court finds good cause to order otherwise.

291 ~~[(7)]~~ (8) The parent ordered to maintain insurance shall provide verification of
292 coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social
293 Security Act, 42 U.S.C. ~~[Section]~~ Sec. 601 et seq., upon initial enrollment of the dependent
294 ~~[children]~~ child, and ~~[thereafter]~~ after initial enrollment on or before January 2 of each calendar
295 year. The parent shall notify the other parent, or the Office of Recovery Services under Title
296 IV of the Social Security Act, 42 U.S.C. ~~[Section]~~ Sec. 601 et seq., of any change of insurance
297 carrier, premium, or benefits within 30 calendar days of the date the parent first knew or should
298 have known of the change.

299 ~~[(8)]~~ (9) A parent who incurs medical expenses shall provide written verification of the
300 cost and payment of medical expenses to the other parent within 30 days of payment.

301 ~~[(9)]~~ (10) In addition to any other sanctions provided by the court, a parent incurring
302 medical expenses may be denied the right to receive credit for the expenses or to recover the
303 other parent's share of the expenses if that parent fails to comply with Subsections ~~[(7)]~~ (8) and
304 ~~[(8)]~~ (9).

305 Section 5. **Effective date.**

306 This bill takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel