To Child Support Task Force: Please Fix How Medical Insurance is Treated Under the Guidelines

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Categories: Child Support, Family Law

Task Force has opportunity to correct 2021 mistake in new Child Support Guidelines

Many moons ago (way back in 2015), a young and handsome lawyer wrote a blog in which he argued that “the treatment of medical insurance costs under the [Massachusetts Child Support] Guidelines is arbitrary and often profoundly unfair." The blog provided a detailed analysis of how the Child Support Guidelines gave little or no financial benefit for the parent paying for medical insurance coverage for the children. If a child-support-paying parent was paying for medical insurance for the children, they might receive 20% of the premium cost back through an adjustment for child support. For child support recipients paying for medical insurance, the returns were often much weaker – in many cases, a recipient paying hundreds of dollars per week for medical insurance would simply "eat" the cost under the Guidelines, with no adjustment to child support.

In the aftermath of the 2015 blog, something unique happened: the Massachusetts Child Support Task Force *listened*. The 2017 Child Support Guidelines retooled the child support formula to provide a substantial child support credit for the party paying for medical insurance. Under the 2017 Guidelines, recipients and payors would see a significant change in child support (in the form of an increase or decrease) based on that party paying for medical insurance.

Case closed, right? Wrong. In 2021, the Task Force took it back, returning to the bad old days of medical insurance-paying parties receiving almost no credit for their payments. With the 2024 Task Force readying itself for another review of the Child Support Guidelines, this author hopes the Task Force corrects the mistake of 2021.

What Happened to Medical Insurance Under the 2021 Child Support Guidelines

The 2021 Child Support Guidelines got a lot of things right. They included a badly needed increase in combined income (up from $250,000 to $400,000), generous increases to parents with multiple children, and clarification of the relationship between child support and alimony. However, when it came to medical insurance premiums, however, the 2021 Guidelines took a step backward.

The 2017 Guidelines largely fixed the problems identified in my 2015 blog. After years of simply deducting the medical insurance premium cost from the paying party's income – often resulting in little or no change to child support – the 2017 Guidelines apportioned medical insurance costs differently. The 2017 Guidelines compared the gross income of the two parties, then assigned a larger share of the medical insurance premium to the party who earns a greater share of income. If parties earned the same or similar income, then the 2017 Guidelines adjusted child support to share the medical insurance premium costs close to equally. If one party earned 80% of the income, then the Guidelines adjusted child support so the higher-earning party paid a larger share of the premium cost – even if the lower-earning party was paying for the insurance.

The 2017 Guidelines used this apportionment method for both health insurance premiums and child care costs—two major out-of-pocket costs affecting parents. In 2021, something odd happened: the Task Force left the cost-apportioning approach from the 2017 Guidelines in place for childcare costs but dropped cost-sharing for medical insurance premiums. Thus, the 2021 Guidelines returned to simply deducting the medical insurance premium costs from the paying party's income.

With this change, the problem articulated in my 2015 blog returned with a vengeance in 2021:

As said above, the parents have one child and each earn $1,000 per week, resulting in child support $206 per week under the Guidelines. Now, let’s assign $200 per week in medical insurance expenses to the *payor*. After plugging the figures into the Guidelines, the resulting order is: $165 per week. In other words: for our payor, a $200 per week medical insurance cost results in a $41 per week reduction in child support under the Guidelines. This amounts to a child support reduction for the payor of roughly $0.20 for every $1.00 spent on medical insurance.

Now, let’s assign our $200 per week medical insurance cost to the *recipient*. Plugging the new figures into the Guidelines, the resulting order is: $210 per week. Translation: for our recipient, adding a $200 per week medical insurance cost results in just a $4 per week increase in child support under the Guidelines. This amounts to a child support increase for the recipient of roughly $0.02 for every $1.00 spent on medical insurance. Thus, the Guidelines reward the payor with a 20% change in child support for the $200/wk cost, while the recipient only receives a 2% change for the same $200/wk cost.

The real world economic consequences of the hypothetical above are stark. For the recipient, a $206 per week child support is almost entirely consumed by his or her $200 week medical

insurance cost (it should be noted that this scenario could entitle an individual to a deviation under the Child Support Guidelines). Although our payor seems to be doing better under the Guidelines, a closer looks reveals that he or she is now paying combined child support ($165/week) and medical insurance ($200/wk) of $365 per week. Even for the payor, the Guidelines provide little relief from the burden posed by a substantial medical insurance cost.

That's right, under the 2021 Guidelines, we returned to the bad old days of a typical payor only receiving a child support credit for about 20% of his or her medical insurance cost. For a child support recipient paying for medical insurance, the child support credit is more like 20% of the premium. In short, for a recipient who is forced to provide medical insurance for a child, the premium cost can easily consume all of their weekly child support – even though the other parent should be equally obligated to provide medical insurance for the child.

Medical Insurance Has Gotten More Expensive – and Worse – Since 2015

On the ground, the result of the 2021 Guidelines change has been stark. While the formula for a base child support order for one child has not changed since 2012, medical insurance costs have skyrocked. Meanwhile, even as insurance costs have risen, the quality of medical insurance coverage has declined sharply since 2015, with many employer-based coverages now including large (often huge) deductibles. While there used to be some consistency between employer-based medical insurance plans that each parent might have, the current environment is much different. One parent's plan might have a $7,000 per year deductible that results in substantial uninsured costs, while another parent often has a much lower deductible.

The elimination of medical insurance cost apportionment under the 2021 Guidelines came with a steep price. Attorneys now see parties playing more games with medical insurance, with one parent often using their high-deductible plan—often the higher-earning party—to force the other parent to insure the child through a plan the lower-earning party must pay for. For child support recipients, this change has been particularly ruinous. Many such parents dedicate a substantial chunk of the child support they receive to buying insurance for the child.

Complexity is the Enemy: The Dreaded 4-Page Guidelines Worksheet

Another change that came in 2021 was the advent of a four-page Child Support Guidelines worksheet that contains a lot of very complex math. The new worksheet represented a stark change from the 2009 Guidelines worksheet, which took up half a page and had calculations that could be performed by hand. Against this backdrop, it is reasonable to argue that the last thing the 2024 Guidelines need is *another* page of calculations for medical insurance.

So what is the solution?

Split the Cost of the Child's Portion of the Insurance 50/50

Back in 2015, we suggested a simple solution to the problem of apportioning medical insurance premium costs: Make each party responsible for the cost of their own medical insurance, then split the cost of insuring the children equally (50/50). In this scenario, if a spouse provides coverage for themselves, the other spouse, and the children, the parties would share equally (50/50) in the cost to ensure the two parents and the children.

The logic behind equal sharing of the child's medical insurance costs lies in its simplicity. Such a method reduces the advantage that one party gains by forcing the other party to provide insurance by instead dividing the cost equally. Similarly, it incentivizes the parties to make the wisest choice based on coverage and price.

Like any blunt approach, the 50/50 apportionment of children's medical insurance costs will not be a good fit in every case. However, it would result in a fair apportionment of the insurance cost in far *more* cases than the current formula – thus requiring deviations in fewer cases.

The Child Support Task Force can't turn back the clock any better than I can – that young and handsome lawyer from 2015 is gone forever – but it can course correct for the future. Equally apportioning the child's medical insurance cost will result in better, fairer outcomes in substantially more cases than the current formula.

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