HEALTH INSURANCE FOR MINOR CHILDREN IN FAMILY LAW CASES

BY ALEX H. SITZ III

Although it is mandatory in child support related cases for a court to order medical support for the minor children, there is, once again, wide discretion provided to the district court judge on how to fashion that order. It all begins with Wyoming Statute § 20-2-401(a), which states:

(a) In any action to establish or modify a child support obligation, the court shall order either or both parents to provide medical support, which may include dental, optical or other health care needs for their dependent children. The court shall:

(i) Require in the support order:

(A) That one (1) or both parents shall provide insurance coverage for the children if insurance can be obtained at a reasonable cost and the benefits under the insurance policy are accessible to the children; and

(B) That both parents be liable to pay any medical expenses not covered by insurance and any deductible amount on the required insurance coverage as cash medical support; or

(ii) Specify in the court order the proportion for which each parent will be liable for any medical expenses as cash medical support, which may include dental, optical or other health care expenses incurred by any person or agency on behalf of a child if the expenses are not covered by insurance.

When considering the above-statute on medical support, there are a few issues that often arise or need addressed by the parties and the district court. First, is there a financial limit on how much a parent should be required to pay for covering their children with insurance? For example, what if it costs that parent an extra $500 per month to provide their children insurance on their insurance plan, but they only earn a minimum wage income? Is that considered reasonable? These questions are answered in the definition section of this article. "Reasonable cost" is defined in Wyoming Statute § 20-2-406(a)(xiii), as "the cost to provide health care coverage or to provide cash medical support for children at no more than five percent (5%) of the providing party's income..." Therefore, if insurance coverage cannot be provided at 5% or less of that party's income then it is not mandatory per statute for that parent to provide it. However, a court can still order that a party provide insurance but can account for it in a different fashion. Some of the creative ways courts can account for the costs of insurance coverage above the 5% mark is by making the parties share in that monthly premium expense or by allowing the providing party a deviation in their child support obligation per Wyoming Statute § 20-2-307(b)(viii), which specifically allows for a deviation for furnishing insurance through employment benefits.

A second issue that I have encountered, and also a good practical pointer, is what to do with expenses that are outside of the normal "dental, optical or other health care expenses." Does that include orthodontia care which may only be considered cosmetic in the eyes of your local district court judge? Does that include mental health counseling expenses that we most often see children participating in to deal with coming from a broken home? One particular district court judge I encountered early in my practice took the stance that orthodontia expenses were not to be shared amongst the parents unless specifically agreed upon by them because he considered a child getting braces more of a cosmetic expense than a medical expense. In response to that, I began including specific language into my child custody agreements that specified that the parties agreed to share costs including orthodontia expenses. The same can be said and argued regarding mental health expenses and whether they are a necessity to be shared amongst the parties; so, be sure to also include that detail into your custody agreements as well.

One last and final issue that often comes up when dealing with children's medical expenses, that is not specifically addressed by our statutes, relate to notification and payment timeframes for a non-covered expense. I have experienced scenarios where a custodial parent incurs an out-of-pocket expense on behalf of their child but fails to inform the non-custodial parent of that expense until a year or more later (ironically, often after non-custodial parent enters a new relationship, gets remarried or files some action with the court). Is it reasonable to accumulate thousands of dollars of non-covered expenses and then, all at once, a year later expect the other parent to make reimbursement? Not likely. Therefore, what family law practitioners and courts often do is place specific time parameters within their medical support provisions on how this is to be addressed. A time frame of 30 to 90 days to notify the other parent of a non-covered expense is typically considered reasonable, and that same time frame is also considered reasonable for reimbursement or payment of that expense too. It is also helpful to add a couple additional provisions such as, 1) notifications not made within that 30 to 90 days requirement will result in that party being 100% liable for the expense; and, 2) that parties may also make payment arrangements directly with the medical care provider especially for those larger expenses which may take more than 90 days to get paid in full.

At the end of the day, the medical support statutes provide a good starting point and guidance on issues related to medical insurance and costs but incorporating some of the above pointers will help for you to provide that higher quality of legal service to your clients on potential issues that seem to arise more often than not in family law cases.