Virginia Child Support Guidelines Review: Including Ordinary Medical Expenses in the Schedule

Prepared for:
2012 Virginia Child Support Guidelines Review Panel

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Points of view expressed in this document are those of the author and do not necessarily represent the official position of the Virginia Child Support Guidelines Review Panel, Court or State.

BACKGROUND

The briefing addresses the issue of whether to include ordinary, out-of-pocket medical expenses in the schedule. The intent of including it in the schedule was that some out-of-pocket medical expenses are commonly incurred for all children (e.g., over-the-counter medicines and co-pays for well visits.) The current schedule includes ordinary, out-of-pocket medical expenses of $100 per child per year. At the time the schedule was developed $100 was considered a typical amount of out-of-pocket medical expenses incurred in a year.

The existing Virginia guidelines provide that the parents are also to share the cost of the child's unreimbursed medical expenses above $250 per child per year

> D. Except for good cause shown or the agreement of the parties, in addition to any other child support obligations established pursuant to this section, any child support order shall provide that the parents pay in proportion to their gross incomes, as used for calculating the monthly support obligation, any reasonable and necessary unreimbursed medical or dental expenses that are in excess of $250 for any calendar year for each child who is the subject of the obligation. The method of payment of those expenses shall be contained in the support order. Each parent shall pay his respective share of expenses as those expenses are incurred. Any amount paid under this subsection shall not be adjusted by, nor added to, the child support calculated in accordance with subsection G. For the purposes of this section, medical or dental expenses shall include but not be limited to eyeglasses, prescription medication, prosthetics, orthodontics, and mental health or developmental disabilities services, including but not limited to services provided by a social worker, psychologist, psychiatrist, counselor, or therapist.

The purpose of this provision is to ensure that the parents share in the child's unreimbursed medical expenses. Whether any out-of-pocket medical expenses are incurred for a child varies significantly among children. This is why they are not included in the schedule and addressed as the expense is incurred. Some children may need eyeglasses or orthodontia and other children may not. Some children have medical emergencies and may be treated at a facility outside the area covered by the child's health plan. In 2004, Virginia switched from the $100 to $250 per child per year threshold. The $250 amount is the most common amount used among states. It approximated average out-of-pocket medical expenses incurred for children for the last several years.

ADVANTAGES OF INCLUDING ORDINARY MEDICAL EXPENSES

The schedule in the February 2013 materials included $250 per child per year to cover ordinary, out-of-pocket medical expenses for the child. The advantages of this are:

- It is consistent with the provision that provides that parents are to share in unreimbursed medical and dental expenses exceeding $250 per year; and,

- It reduces the hassle for the parents and the courts of dealing with nominal, out-of-pocket medical expenses incurred for the child. For example, if the custodian incurs $100 in medical expenses during the year and it is included in the schedule, the custodial parent does not have to send the receipt to the noncustodial parent and request that the court reduce it to a judgment if the noncustodial parent fails to pay for child support enforcement remedies to be used.

ADVANTAGE OF INCLUDING NO ORDINARY MEDICAL EXPENSES

The schedule in the June 2013 materials included no medical expenses at all. The advantage of this approach is there is no presumption about what ordinary medical expenses will be in the future. Undoubtedly, average out-of-pocket medical expenses will change once healthcare reform is fully implemented. The $250 per child per year may be outdated in the future. There are no to nominal costs of Medicaid and CHIP (which is called FAMIS in Virginia). Both programs also cover dental and vision. Medicaid has a lower income eligibility threshold and no cost to the family. Children are eligible for FAMIS if family income is 200% or less of the federal poverty level (FPL). For example, 200% of FPL for a family of four is $47,100 per year. About 40% of Virginia children are enrolled in Medicaid or FAMIS.

Regarding children from families whose incomes make them ineligible for Medicaid or CHIP, the future typical amount of unreimbusrsed medical expenses incurred for these children is unknown. Well visits are part of essential health benefits under healthcare reform, which may be the only routine medical service received by healthy children. There is no costsharing for essential health benefits. For families with incomes above 250% FPL, out-of-pocket expenses including co-pays and deductibles, are capped at amounts that relate to Health Savings Account (i.e., $12,700 for a family in 2014). In addition, some families will be eligible for a costsharing subsidy that could further reduce their actual out-of-pocket, unreimbursed medical expense. Whether a family's out-of-pocket medical expenses reach the cap will depend on the utilization of health services by the family, the family's health plan (i.e., whether it's a private, employer-sponsored plan or an health exchange plan and if so, whether it is gold or another ranked plan), and how that particular healthplan structures its costsharing. Exchange-provided healthplans vary in their costsharing structure. A bronze plan is the least generous and assesses a 40% costsharing essentially on average for all enrollees in that particular plan, while a platinum plan is the most generous and assesses 10% costsharing essentially on average for all enrollees in that particular plan. This does not mean that a family enrolled in a bronze plan will pay exactly 40% or a family enrolled in a platinum plan will pay exactly 10%.

Rather, a family could pay more or less depending on how the plan decides to structure its costsharing (e.g., co-pays and deductibles) and the family's utilization.

OTHER STATES

Most states have a provision for the child's unreimbursed medical expenses similar to Virginia's provision. Nonetheless, practitioners in other states note that the enforcement of order provisions addressing extraordinary, out-of-pocket medical expenses incurred for the child can be challenging and sorely needed when there are high unreimbursed medical expenses incurred for the child and the insurance plan includes a high deductible.

A few states (e.g., Indiana, Texas, and Utah) provide more detail about how to address enforcement. Indiana's provision is excerpted below. In reading Indiana's commentary, it is important to note that Indiana assumes 6% of the basic obligation is for the child's unreimbursed medical expenses instead of $250 per child per year like many states.

> Apportionment of Uninsured Health Care Expenses. Six percent (6%) of the support amount is for health care. The noncustodial parent is, in effect, prepaying health care expenses every time a support payment is made. Consequently, the Guidelines require that custodial parent bear the cost of uninsured health care expenses up to six percent (6%) of the Basic Child Support Obligation found on Line 4 of the Child Support Obligation Worksheet and, if applicable, the child support obligation attributable to a student living away from home (Section Two Line I of the Post-Secondary Education Worksheet).
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> That computation is made by multiplying the total of Line 4 and Line I by 52 (weeks) and multiplying the product of that multiplication by .06 to arrive at the amount the custodial parent must spend on the uninsured health care costs of the parties' child(ren) in any calendar year before the noncustodial parent is required to contribute toward payment of those uninsured costs. For example, if Line 4 is $150.00 per week and Line I is $25.00 per week, the calculation would be as follows: $150.00 + $25.00 = $175.00 x 52 = $9,100.00 x .06 = $546.00.
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> Thus, on an annual basis, the custodial parent is required to spend $546.00 for health care of the child(ren) before the noncustodial parent is required to contribute. The custodial parent must document the $546.00 spent on health care and provide the documentation to the noncustodial parent.
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> After the custodial parent's obligation for ordinary uninsured health care expenses is computed, provision should be made for the uninsured health care expenses that may exceed that amount. The excess costs should be apportioned between the parties according to the Percentage Share of Income computed on Line 2 of the Worksheet. Where imposing such percentage share of the uninsured costs may work an injustice, the court may resort to the time‐honored practice of splitting uninsured health care costs equally, or by using other methods. The court may prorate the custodial parent's uninsured health care expense contribution when appropriate.
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> As a practical matter, it may be wise to spell out with specificity in the order what uninsured expenses are covered and a schedule for the periodic payment of these expenses. For example, a

chronic long-term condition might necessitate weekly payments of the uninsured expense. The order may include any reasonable medical, dental, hospital, pharmaceutical and psychological expenses deemed necessary for the health care of the child(ren). If it is intended that such things as aspirin, vitamins and band-aids be covered, the order should specifically state that such non‐prescription health care items are covered.

There are also situations where major health care costs are incurred for a single event such as orthodontics or major injuries. For financial reasons, this may require the custodial parent to pay the provider for the amount not covered by insurance over a number of years. The 6% rule applies to expenses actually paid by the custodial parent each year.

OTHER INFORMATION

The following statistics are useful toward understanding the status of Virginia children eligible for child support, their health insurance coverage, and the cost of healthcare incurred on their behalf. The statistics are from various sources as footnoted and from the most recent year in which the data are available.

- Number of Children in Virginia
- In 2011, there were 1.8 million children living in Virginia and 565,062 (30.5%) of Virginia children did not live in a married-couple household.[1] Nonetheless, some of the children living in a married-couple household may be living with a step-parent and still be eligible for child support.
- In state fiscal year 2012, Virginia Division of Child Support Enforcement (DCSE) served 333,150 cases and established 28,162 new child support orders. DCSE cases involve 454,551 children.[2]
- In 2011, there were 13,434 divorces to parents with children in Virginia. The divorces involved at least 22,129 children.[3]
- In 2011, there were 36,390 births to unmarried mothers in Virginia.[4] National research finds that over half of non-marital births are to cohabitating parents and some of the parents will eventually marry.[5]

- Healthcare Coverage among Virginia Children
- The frequency of Virginia children by type of health insurance in 2010 was: 55% were insured by an employer-sponsored plan only; 25% had insurance from a public source such as Medicaid, CHIP or military benefits; 8% had both public and private coverage; 7% were uninsured; and 6% had private insurance from an individual plan only.[6]

[1]U.S. Census 2011 American Community Survey. [Online.] available at: http: census.gov.

[2] Virginia Department of Social Services Division of Child Support Enforcement (2013). *2012-2013 Fact Sheet*. Available at: http://www.dss.virginia.gov/files/about/reports/children/child_support/2013/Fact_Sheet_2012-2013_final.pdf

[3] Calculated from the Virginia Department of Health. (2013) *Recorded divorces and annulments by number of children involved by planning district and city or county of Virginia.* Available at:http://www.vdh.state.va.us/HealthStats/documents/2010/pdfs/DivCC11.pdf

[4] Virginia Department of Health. (2013). *Resident total live births with rates per 1,000 females ages 15-44 by race and non-marital live births with percent non-marital of total births by planning district and city or county.* Available http://www.vdh.state.va.us/HealthStats/documents/2010/pdfs/NonMaritalBirths11.pdf

[5] Child Trends. (July 2013.) *Births to Unmarried Mothers.* [Online.] http://www.childtrends.org/wp-content/uploads/2012/11/75_Births_to_Unmarried_Women.pdf

- Medicaid and CHIP in Virginia
- The family income eligibility threshold for Medicaid is 133% of the federal poverty level for children less than six years old and 100% of the federal poverty level for older children. The Affordable Care Act requires states to set income eligibility at 133% for all children regardless of age beginning in 2014.

- The family income eligibility threshold for Children's Health Insurance Program (CHIP) in Virginia is 200% of the federal poverty level, which is $38,130 per year for a family of three in 2012. FAMIS (Family Access to Medical Insurance Security) is Virginia's state child health insurance program (CHIP).

- In federal fiscal year 2010, 571,980 Virginia children were enrolled in Medicaid.[7]

- In 2011, 182,128 Virginia children were covered by FAMIS.

- Most (86.2%) Virginia children who are eligible for Medicaid or CHIP are enrolled in it.

- There are no insurance premiums for Medicaid or FAMIS. There are no co-pays or costsharing for Medicaid. FAMIS may access $2 or $5 per visit for some out-of-patient services and $15 or $25 for some services received in confinement.

- Virginia's Implementation of the Affordable Care Act (ACA)
- Virginia is not moving forward on Medicaid expansion as of August 2013. The Supreme Court decision in 2012 ruled that states did not have to expand Medicaid to childless adults. ACA called for the expansion for childless adults whose income was less than 133% of the federal poverty level (or 138% when considering adjusted income.)

- Utilization of Healthcare Services among Children in the U.S.
- Information compiled from the 2009 National Medical Expenditure Survey[8] finds that 74.9% of children had at least one office-based visit, 13% of children had at least one emergency room visit, and 7% of children had at least one outpatient room visit.

[6] Annie E. Casey Foundation (2013). "Children Who Have Health Insurance By Health Insurance Type." *Kids Count Data Center*. http://datacenter.kidscount.org/data/tables/6546-children-who-have-health-insurance-by-health-insurance-type?loc=48&loct=2#detailed/2/48/false/133,38,35,18,17/2807,2808,2809,2810,2811/13530,13531

[7] Kaiser Family Foundation. (2013). "Distribution of Medicaid Enrollees by Enrollment Group," *State Health Facts* [Online.] FY2010http://kff.org/medicaid/state-indicator/distribution-by-enrollment-group/

[8] Abdus, Salam and Selden, Thomas. (September 2012.) *Use of Ambulatory Care among Children, 1999 and 2009*. Medical Expenditure Survey Panel Statistical Brief #384. [Online]. Available at: http://meps.ahrq.gov/mepsweb/data_files/publications/st384/stat384.pdf