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INTRODUCED BY SENATE BILL NO. 411  
Stankler

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT HEALTH INSURANCE COVERAGE PROVIDED TO FULFILL A CHILD SUPPORT ORDER OR AN ORDER OF ENROLLMENT MUST BE AVAILABLE TO THE CHILD AT BOTH RESIDENCES; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CONSIDER ALLOWING AN OBLIGEE TO PROVIDE EMPLOYMENT-BASED OR OTHER HEALTH CARE COVERAGE UPON FAILURE OF AN OBLIGOR TO PROVIDE COVERAGE; AND AMENDING SECTIONS 40-5-208, 40-5-440, AND 40-5-442, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 40-5-208, MCA, is amended to read:

**"40-5-208. Medical support -- obligation enforcement -- sanctions.** (1) (a) (i) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain for each child health insurance coverage for each child that is available and accessible to the child at all times, at both the residence of the obligor and the residence of the obligee, if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(ii) The health maintenance organization, health care service provider, or insurer service area of the plan must be available in this state in order for the obligor to fulfill the requirements of this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

1 (iii) a failure or omission of the court order or modification of an order to require health insurance  
2 coverage.

3 (2) (a) If the department is providing child support enforcement services and the obligor is required  
4 by an existing district court order or an administrative order under this section to provide health insurance  
5 coverage for a child, the department shall also enforce the health insurance obligation.

6 (b) To ensure that health insurance coverage is available for the child, the obligor, upon written  
7 request by the department, shall provide the name of the insurance carrier, the policy identification name  
8 and number, the names of the persons covered, the service area covered by the plan, and any other  
9 pertinent information regarding coverage.

10 (3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by  
11 the department and show cause why a sum of not more than \$100 should not be assessed for each month  
12 that health insurance coverage is not secured or maintained if the department determines an obligor has  
13 failed to:

14 (i) obtain or maintain health insurance coverage as required under this section; or

15 (ii) provide information required under this section.

16 (b) If the department finds, after hearing or the obligor's failure to appear, that health insurance  
17 coverage has not been obtained or maintained or that the obligor has failed to provide the information  
18 required, the department may assess against the obligor not more than \$100 for each month that health  
19 insurance coverage has not been obtained or maintained or for each month that information has not been  
20 provided. The amounts may be enforced by any administrative remedy available to the department for the  
21 enforcement of child support obligations, including warrant for distraint provided for in 40-5-247 and  
22 income withholding provided for in Title 40, chapter 5, part 4.

23 (4) The health insurance coverage must be provided under this section even though it may reduce  
24 the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

25 (5) Any amounts collected pursuant to this section must be returned to the general fund to help  
26 offset expenditures for medicaid."

27

28 **Section 2.** Section 40-5-440, MCA, is amended to read:

29 **"40-5-440. Health insurance coverage -- order of enrollment.** (1) Whenever the obligor is required  
30 by a court or administrative order or is required under 40-5-208(1)(b) to provide health insurance coverage

1 for a child and the obligor fails to provide the coverage or lets it lapse, the department may enforce the  
2 obligation under this section if a payor of income to an obligor has a health insurance plan that can be  
3 extended to cover the obligor's child at all times at both the residence of the obligor and the residence of  
4 the obligee.

5 (2) (a) Prior to service of an initial order of enrollment on a payor, the department shall serve the  
6 obligor, by certified mail or by personal service, a notice of its intent to order an enrollment, ~~by certified~~  
7 ~~mail or by personal service.~~

8 (b) Within 20 days after service of the notice, the obligor may provide written proof to the  
9 department that health insurance coverage ~~for the child~~ that provides full coverage for the child at the  
10 residence of the obligor and the residence of the obligee has been obtained or applied for. If proof is  
11 received by the department within 20 days after service, further action may not be taken by the department  
12 except in the event of a lapse of coverage as provided in subsection (3). If proof of health insurance  
13 coverage is not timely received by the department, an order of enrollment may be issued in accordance with  
14 subsection (3).

15 (3) If the obligor fails to timely provide proof of coverage or if after timely proof of coverage the  
16 obligor lets the coverage lapse, the department may, without further notice to the obligor, serve an order  
17 of enrollment on the payor. The payor may be the same payor who is subject to an order to withhold under  
18 this part or any other payor or subsequent payor.

19 (4) (a) Upon receipt of an order of enrollment, the payor shall respond to the department within  
20 20 days and confirm that the child:

21 (i) has been enrolled in and is covered at both the residence of the obligor and the residence of the  
22 obligee by the health insurance plan;

23 (ii) will be enrolled in the next enrollment period and the plan will cover the child at the residence  
24 of the obligor and the residence of the obligee; or

25 (iii) cannot be covered because the child resides outside the plan's service area or the contracted  
26 terms of the plan do not permit an extension of coverage to the child.

27 (b) Upon enrollment of the child, the payor shall withhold from the obligor's income an amount  
28 equal to the required premium, if any, and apply the withheld amount to the premium as necessary.

29 (c) If more than one plan is offered by the payor and each plan may be extended to the child, the  
30 child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that

1 is accessible to the child, the child must be enrolled in the least expensive plan available to the obligor that  
2 is available at the residence of the obligor and the residence of the obligee.

3 (d) Once an initial order of enrollment is authorized under this section, the authority to issue orders  
4 to subsequent payors and to bind payors to the orders terminates only when:

5 (i) the department is no longer providing enforcement services;

6 (ii) the obligation to provide health insurance coverage is terminated according to law; or

7 (iii) the department finds under subsection (5) that the premium charged to the obligor is not  
8 reasonable under the circumstances of the obligor's case.

9 (e) A payor served with an order of enrollment shall inform the department of the name of the  
10 health insurance coverage provider or insurer ~~and~~, the extent of the coverage, and the service area of the  
11 plan. The payor shall make available to the department or obligee any necessary claim forms or enrollment  
12 membership cards. If coverage is terminated for any reason, the payor shall inform the department of the  
13 termination within 20 days of the termination date.

14 (5) (a) Whenever an obligor is being charged with a premium under subsection (4) and the obligor  
15 believes the amount of the premium to be unreasonable under the circumstances, the obligor may make  
16 a written request to the department for an administrative hearing to determine the reasonableness of the  
17 premium charge.

18 (b) The department shall schedule the hearing within 20 days after receipt of the obligor's request.  
19 The hearing must be conducted by telephone conferencing methods unless the hearing officer determines  
20 that an in-person hearing is appropriate.

21 (c) If the hearing officer finds that the premium charged the obligor is causing an undue hardship  
22 on the obligor or the child, the department shall withdraw any order of enrollment served on a payor. A  
23 withdrawal is temporary and remains in effect only until a significant change in circumstances occurs, such  
24 as an improvement in the obligor's ability to pay the premium or an increase in the child's need for health  
25 insurance coverage. Upon a change of circumstances, the department may again serve the order of  
26 enrollment on the payor. After service of the order, the obligor may request an administrative hearing to  
27 determine the reasonableness of premiums considering the new circumstances.

28 (d) If the hearing officer finds that the premium is reasonable under the circumstances, the obligor  
29 may not request any further hearings under this subsection (5) unless there is a significant change in  
30 circumstances from that existing at the time the finding was made.

1 (6) A notice under this section may be combined with a notice of intent to withhold income under  
2 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.

3 (7) This section may not be construed to limit the right of an obligee or the department to bring  
4 any other action available under the law to enforce an obligation to provide health insurance coverage for  
5 a child.

6 (8) This section may not be construed to require a health maintenance organization, health care  
7 service provider, or insurer to extend coverage to a child who resides outside its service area or to deviate  
8 from contractual provisions and restrictions.

9 (9) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate  
10 with the insurer, health care service provider, department, and child's custodian to obtain and use the  
11 health insurance plan."

12  
13 **Section 3.** Section 40-5-442, MCA, is amended to read:

14 **"40-5-442. Health insurance coverage -- notice of intent to purchase or allow obligee purchase.**

15 (1) The department may serve a notice of intent to purchase health insurance coverage on an obligor, by  
16 certified mail or personal service, when:

17 (a) the obligor is ordered by a court or administrative order or is required under 40-5-208(1)(b) to  
18 provide health insurance coverage for a child;

19 (b) the obligor fails to provide ~~such~~ health insurance coverage or lets it lapse;

20 (c) there is no payor upon whom an order of enrollment under 40-5-440 is applicable; and

21 (d) the child is currently eligible for medical assistance benefits under Title 53.

22 (2) If the conditions of subsection (1)(b) or (1)(c) occur, the department shall first consider allowing  
23 the obligee to enroll the child in the obligee's health insurance plan if health insurance coverage is available  
24 through the obligee's employment or other group health insurance plan. If the department considers the  
25 plan viable, it shall provide notice to the obligor.

26 (3) The notice required under subsection (1) or (2) must specify the type and cost of the proposed  
27 health insurance coverage.

28 (4) Within 20 days of the date of service of the notice, the obligor shall:

29 (a) provide written proof to the department that the obligor has either applied for or obtained  
30 coverage accessible to the child at the residence of the obligor and the residence of the obligee; or

1 (b) request an administrative hearing to show that the proposed purchase of coverage and the  
2 premium chargeable to the obligor will cause an undue hardship.

3 ~~(3)~~(5) If a hearing is requested, the department shall schedule the hearing within 20 days of the  
4 receipt of the request. The hearing must be held by telephone conferencing methods unless the hearing  
5 officer determines that an in-person hearing is appropriate.

6 ~~(4)~~(6) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds  
7 that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department  
8 shall purchase the health insurance coverage specified in the notice or allow the obligee to provide health  
9 insurance coverage as specified in subsection (2). The amount of the premium for department-purchased  
10 coverage or the amount of the additional premium necessary to cover the child for obligee-purchased  
11 coverage may be added to the obligor's child support debt and may be collected without further notice by  
12 income withholding under this part or by any other remedy available to the department.

13 ~~(5)~~(7) Health insurance coverage purchased under this section must be continued by the  
14 department until:

15 (a) the child is no longer eligible for medical assistance benefits;

16 (b) the obligor is no longer responsible under the law for providing coverage for the child;

17 (c) the obligor provides written proof to the department that other coverage accessible to the child  
18 at both the residence of the obligor and the residence of the obligee has been obtained; or

19 (d) relief is granted under subsection ~~(6)~~ (8).

20 ~~(6)~~(8) (a) If a change of circumstances occurs after health insurance coverage is purchased by the  
21 department or provided by the obligee and the obligor believes the change makes the provision of health  
22 insurance coverage an undue hardship, the obligor may make a written request for an administrative hearing  
23 to reconsider the matter of continuing to ~~purchase~~ pay the premium chargeable for coverage purchased by  
24 the department or obligee ~~coverage~~.

25 (b) If a hearing is requested, the department shall schedule the hearing within 20 days of the  
26 receipt of the request. The hearing must be conducted by telephone conferencing methods unless the  
27 hearing officer determines that an in-person hearing is appropriate.

28 (c) If the hearing officer finds that the continued ~~purchase of~~ payment of premiums chargeable for  
29 coverage will cause an undue hardship on the obligor, the department shall terminate the coverage.

30 (d) If the hearing officer finds that the continued ~~purchase of~~ payment of premiums chargeable for

1 coverage will not cause an undue hardship, the department shall continue to provide for the purchase the  
2 of coverage, as appropriate, under the provisions of subsection ~~(6)~~ (7).

3 ~~(7)~~(9) An obligor whose child is enrolled in a health insurance plan under this section shall  
4 cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the  
5 health insurance plan."

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0411, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

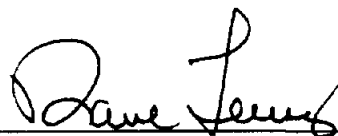
An act requiring health insurance coverage provided to fulfill a child support order or an order of enrollment must be available to the child at both residences and requiring the Department of Social and Rehabilitation Services (SRS) to consider allowing an obligee to provide employment-based or other health care coverage upon failure of an obligor to provide coverage.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The proposed bill would expand accessibility of coverage of children covered by child support orders.
3. Requirements for obligors in obtaining health insurance would be clarified.
4. The Department of Social and Rehabilitation Services is unable to determine the fiscal impact of SB411.

FISCAL IMPACT:

Unknown.

 2-22-95

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

\_\_\_\_\_  
EVE FRANKLIN, PRIMARY SPONSOR      DATE

Fiscal Note for SB0411, as introduced

SB411