

Child Support: When is Health Insurance Available at a Reasonable Cost?

All civil child support orders **must** order the child's parent or other responsible party to provide health insurance for the child **if** it is available at a reasonable cost. [GS 50-13.11\(a1\)](#). If coverage is not available at a reasonable cost when the support order is entered, the court must order that health insurance be obtained when it becomes available at a reasonable cost. Recent legislation changes how we determine whether insurance is available at a reasonable cost and the [2015 Child Support Guidelines](#) have been amended to reflect the change.

Health Care Expenses Generally

A child support ordered entered in a civil action may require a party to pay all or part of the child's medical, dental, or other health care expenses. [G.S. § 50-13.11\(a\)](#). When a child support obligation is determined under the guidelines, uninsured medical or dental expenses in excess of \$250 per year or other uninsured related health care expenses (including costs related to orthodontia, asthma treatments, physical therapy, treatment of chronic health problems, and counseling or therapy for diagnosed mental disorders) may be apportioned between the parents as the court deems appropriate. [2015 Guidelines](#) (specifies that this provision is applicable to any case, including those where the parent's income falls within the shaded area of the guidelines).

While responsibility for health care costs in general may be assigned to either parent in the discretion of the court, a parent must be ordered to provide health insurance coverage for a child but only if the court determines coverage is available at a reasonable cost. [Ludlam v. Miller, 225 N.C. App. 350 \(2013\)](#) (remanding order requiring mother to continue to provide health and dental insurance without finding that insurance was currently available to mother at a reasonable cost and which did not identify the source of the insurance). [G.S. 50-13.11\(a1\)](#) also allows a court to order either or both parties to maintain dental insurance for a child. It appears from the holding in [Ludlam](#) that this provision also is dependent upon the ability of the court to find that the coverage is available at a reasonable cost.

Employer Provided Coverage

Between 1984 and 2008, regulations from the federal child support enforcement program provided that insurance available through an employer was coverage available at a reasonable cost. [See 71 FR 54965 \(Sept. 20, 2006\)](#) (explaining history of federal medical support regulations). This provision was based on the assumption that employer coverage was widely available and heavily subsidized. To conform to the federal regulations, [GS 50-13.11\(a1\)](#) provided that "health insurance for the benefit of the child is considered reasonable in cost if it is employment related or other group insurance, regardless of service delivery mechanism."

The court of appeals held that this provision did not mean that a trial court could not determine that some other insurance was available at a reasonable cost; it meant only that if coverage was available through an employer or other group plan, insurance coverage must be ordered. [Reams v. Riggan, 224 N.C. App. 78 \(2012\)](#). In addition, the court of appeals held that the employer coverage did not necessarily need to be provided through the parent's employer. See [Ludlam](#) (insurance provided by mother's new husband's employment can be considered reasonably priced insurance if appropriate findings are made; there would be no inherent error in ordering mother to pay insurance premiums for coverage provided through husband's employer).

Recognizing that employer provided insurance has become less available and more expensive, federal regulations were changed in 2008 to remove the requirement that employer coverage be considered coverage available at a reasonable cost. The regulations now provide that cost of coverage is considered reasonable if the cost to the parent "does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law...". [45 CFR 303.31\(b\)\(1\)](#).

Despite the change to federal law, [GS 50-13.11\(a1\)](#) remained unchanged until this legislative session. However, acknowledging the change in the federal rules, the 2015 Child Support Guidelines effective January 1, 2015, removed the statement that employer coverage is coverage available at a reasonable cost and replaced it with the general statement that coverage must be ordered when available to a parent at a reasonable cost.

[S.L. 2015-220 \(H 308\)](#)

For child support orders issued on or after August 18, 2015, [GS 50-13.11\(a1\)](#) now conforms to federal law and provides:

"health insurance for the benefit of the child is considered reasonable in cost if the coverage for the child is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income. In applying this standard, the cost is the cost of (i) adding the child to the parent's existing coverage, (ii) child-only coverage, or (iii) if new coverage must be obtained, the difference between the cost of the self-only and family coverage."

The legislation makes no change to the provision providing that the court also may require one or both parties to maintain dental insurance.

2015 Guidelines Amended

In response to the new legislation, the following language has been added to the [2015 Child Support Guidelines](#):

At the time of the adoption of these Child Support Guidelines, G.S. 50-13.11(a1) specified that

health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of the service delivery mechanism. After the adoption of these Child Support Guidelines, [S.L. 2015-220 amended G.S. 50-13.11\(a1\)](#) and provided that for orders entered on or after August 18, 2015, health insurance is reasonable if the coverage for the child is available at a cost to the parent that does not exceed five percent (5%) of the parent's gross income. In applying this standard, the cost is the cost of (i) adding the child to the parent's existing coverage, (ii) child-only coverage, or (iii) if new coverage must be obtained, the difference between the cost of self-only and family coverage.