

CIVIL RULE 90.3

COMMENTARY

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VII. HEALTH CARE COVERAGE

A. Health Insurance. Rule 90.3(d) requires that the court address coverage of the children's health care needs including expenses not covered by insurance. The court must require health insurance if the insurance is available to either party at a reasonable cost. There is a rebuttable presumption that the cost of health insurance is reasonable if the cost does not exceed five percent of the adjusted annual income of the parent who may be required to purchase the insurance. In determining whether the presumption has been rebutted, the court should consider any evidence relevant to its conclusion, including the cost of any health insurance for the children that either parent was paying before the action was commenced. This recognizes that a cost that a parent voluntarily paid for a child's insurance before an action was commenced was likely a cost that the parent considered to be reasonable.

The health insurance will be paid by the party to whom it is available. However, the court must allocate the cost of insurance between the parties. Note that the cost to be allocated is limited to that portion of the total cost necessary to insure the children involved - not the parent, the parent's new spouse or children of another relationship. If the insurance for the children also covers other members of the purchaser's family, and evidence is unavailable on the specific cost of insuring only the children subject to the order, the cost of covering the children must be determined by allocating the total cost of coverage pro rata among all covered family members. See *Rusenstrom v. Rusenstrom*, 981 P.2d 558 (Alaska 1999). If there is no additional cost to the employee for adding children to the coverage - that is, the cost of coverage is the same whether there are no dependants or several dependants - no portion of the cost of coverage may be allocated to the children. In such cases, no adjustment may be made to the child support obligation because none of the cost of coverage can be allocated to the children.

The allocation of the cost of the children's insurance between the parents should be 50/50 unless the court finds good cause to change that percentage. A substantial difference in the parties' relative financial circumstances may constitute good cause. The rule requires the court to adjust child support either upward or downward to reflect the allocation.

Paragraph (h)(1) provides that payments for health care insurance are included in deciding whether there has been a 15% change in support which constitutes a material change of circumstances.

The court must also determine if the health insurance is accessible. Health insurance is accessible if the plan pays for health care services reasonably available to the child. “Accessibility” is broadly applied in the rule. Due to the geographical expanse of the state, “accessibility” is not limited to health care services available in the child’s home town or village; some health care plans will pay for transportation to receive services from a health care provider in another city. If the health insurance pays for health care services in another city and transportation to the city, the insurance is considered accessible to the children.

B. Uncovered Health Care Expenses. Rule 90.3(d)(2) provides that the court also allocate reasonable health expenses not covered by insurance. The rule requires the party who did not obtain the health care to reimburse the other party within 30 days of receiving the necessary paperwork. The paperwork should include the medical bill, payment verification, and, if medical insurance applies, an insurance statement indicating any uncovered health care expenses. These materials should be sent to the other party within a reasonable time. The rule should be read to require prepayment of allowable uncovered medical cost when prepayment is required by the health care provider.

The rule provides that the usual 50/50 presumption does not apply for any amount in excess of \$5,000 per calendar year. In such a situation, the excess expenses should be allocated based on the parties' relative financial circumstances during the approximate time period when the expenses occurred.

C. Definition of Health Care Expenses. Paragraph (f) defines health care expenses to include medical, dental, vision and mental health counseling expenses.