

1 SENATE BILL 224

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PARENTAL SUPPORT; AMENDING PORTIONS OF THE
12 MANDATORY MEDICAL SUPPORT ACT; ALLOWING PARENTS TO SATISFY
13 THEIR OBLIGATION OF PROVIDING MEDICAL SUPPORT TO THEIR CHILDREN
14 BY ENROLLING THEIR CHILDREN IN MEDICAID.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 40-4C-3 NMSA 1978 (being Laws 1990,
18 Chapter 78, Section 3, as amended) is amended to read:

19 "40-4C-3. DEFINITIONS.--As used in the Mandatory Medical
20 Support Act:

21 A. "carrier" means an entity that offers, delivers
22 or administers an employment-related or other group health care
23 coverage plan, a health maintenance organization, a nonprofit
24 health care plan or other type of health care coverage plan
25 under which medical or dental services are provided, regardless

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1 of service delivery mechanism;

2 B. "cash medical support" means an amount ordered
3 to be paid toward the cost of health care coverage provided by
4 ~~[a public entity or by]~~ another parent through employment or
5 otherwise, or for other medical costs not covered by health
6 care coverage;

7 C. "court" means any district court ordering
8 support by a medical support obligor;

9 D. "department" means the human services
10 department;

11 E. "employer" means an individual, organization,
12 agency, business or corporation hiring a medical support
13 obligor for pay;

14 F. "gross income" means income from any source and
15 includes income from salaries, wages, tips, commissions,
16 bonuses, dividends, severance pay, pensions, interest, trust
17 income, annuities, capital gains, social security benefits,
18 workers' compensation benefits, unemployment insurance
19 benefits, disability insurance benefits, significant in-kind
20 benefits that reduce personal living expenses, prizes and
21 alimony or maintenance received; provided that:

22 (1) "gross income" does not include benefits
23 received from:

24 (a) means-tested public assistance
25 programs, including temporary assistance for needy families,

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1 supplemental security income and general assistance;

2 (b) the earnings or public assistance
3 benefits of a child who is the subject of a child support
4 award; or

5 (c) child support received by a parent
6 for the support of other children;

7 (2) for income from self-employment, rent,
8 royalties, proprietorship of a business or joint ownership of a
9 partnership or closely held corporation, "gross income" means
10 gross receipts minus ordinary and necessary expenses required
11 to produce such income, but ordinary and necessary expenses do
12 not include expenses determined by the court to be
13 inappropriate for purposes of calculating child support;

14 (3) "gross income" does not include the amount
15 of alimony payments actually paid in compliance with a court
16 order;

17 (4) "gross income" does not include the amount
18 of child support actually paid by a parent in compliance with a
19 court order for the support of prior children; and

20 (5) "gross income" does not include a
21 reasonable amount for a parent's obligation to support prior
22 children who are in that parent's custody. A duty to support
23 subsequent children is not ordinarily a basis for reducing
24 support owed to children of the parties but may be a defense to
25 a child support increase for the children of the parties. In

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1 raising such a defense, a party may use Table A as set forth in
2 Subsection M of Section 40-4-11.1 NMSA 1978 to calculate the
3 support for the subsequent children;

4 G. "health care coverage" means fee-for-service,
5 health maintenance organization, preferred provider
6 organization and other types of private health insurance and
7 public health care coverage under which medical services may be
8 provided to minor children;

9 H. "medical support obligee" means a person to whom
10 a duty of medical support is owed or a person ~~[including the~~
11 ~~department]~~ who has commenced a proceeding for enforcement of a
12 duty to provide health support for each minor child or for
13 registration of a support order that includes a provision for
14 such support for each minor child;

15 I. "medical support obligor" means a person owing a
16 duty to provide ~~[health]~~ medical support or against whom a
17 proceeding for the enforcement of such a duty of support is
18 commenced or for registration of a support order that includes
19 provisions for such support for each minor child;

20 J. "minor child" means a child younger than
21 eighteen years of age who has not been emancipated; and

22 K. "national medical support notice" means a notice
23 to an employer that an employee's child must be covered by the
24 employment-related group health and dental care coverage plan
25 pursuant to a court order."

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1 SECTION 2. Section 40-4C-4 NMSA 1978 (being Laws 1990,
2 Chapter 78, Section 4, as amended) is amended to read:

3 "40-4C-4. MEDICAL SUPPORT--ORDER.--

4 A. The court shall determine a parent or both
5 parents to be a medical support obligor based on the following:

6 (1) the availability of health care coverage
7 that meets or exceeds the minimum standards required under the
8 Mandatory Medical Support Act; ~~and~~

9 (2) the availability of health care coverage
10 through an employment-related or other group health and dental
11 care coverage plan; and

12 (3) the availability of health care coverage
13 through a public entity when either parent meets eligibility
14 requirements.

15 B. When a medical support obligor is ordered to
16 provide health care coverage, the medical support obligor shall
17 properly name each minor child on behalf of whom medical
18 support is owed as an eligible dependent enrolled in health
19 care coverage.

20 C. The court may consider the impact of the cost of
21 health care coverage on the payment of the base child support
22 amounts in determining whether the coverage shall be ordered;
23 provided that:

24 (1) the health care coverage for the minor
25 child shall be available to the parent responsible for

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1 providing medical support at a reasonable cost;

2 (2) cash medical support or the cost of health
3 care coverage for the minor child is considered reasonable in
4 cost if the cost to the parent responsible for providing
5 medical support does not exceed five percent of the parent's
6 gross income; and

7 (3) the court shall allocate the cost of
8 coverage between the minor child's parents by including the
9 costs in the child support worksheet as set forth in Section
10 40-4-11.1 NMSA 1978.

11 D. The court may order the medical support obligor
12 to obtain health care coverage for each minor child to whom
13 medical support is owed if the court finds that health care
14 coverage for each minor child is not available to the medical
15 support obligor through an employment-related or other group
16 health care coverage plan.

17 E. The court shall require the medical support
18 obligor to pay cash medical support in specific dollar amounts
19 when:

20 [~~(1) a public entity provides health care~~
21 ~~coverage;~~

22 ~~(2)] (1) the court finds that health care~~

23 coverage is not available at the time an order is entered or

24 modified and until such time that health care coverage becomes

25 available; or

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1 [~~3~~] (2) the court finds that the health care
2 coverage required to be obtained by a medical support obligor
3 does not pay all the medical or dental expenses of each minor
4 child.

5 F. The court shall require the medical support
6 obligor to be liable to the custodial parent [~~or the~~
7 ~~department~~] for all or a portion of the uninsured or uncovered
8 medical and dental expenses of each minor child.

9 G. The court shall require the medical support
10 obligor to provide health care coverage or dental care coverage
11 for the benefit of the medical support obligee if it is
12 available at no additional cost to the medical support obligor.

13 H. The court in any proceeding for the
14 establishment, enforcement or modification of a child support
15 obligation may modify an existing order of support or establish
16 child support, as applicable, for each minor child to
17 incorporate the provisions for medical and dental support
18 ordered pursuant to the Mandatory Medical Support Act.

19 I. The court shall consider health care coverage
20 provided by a public entity as meeting the standards required
21 under the Mandatory Medical Support Act."

22 SECTION 3. Section 40-4C-6 NMSA 1978 (being Laws 1990,
23 Chapter 78, Section 6, as amended) is amended to read:

24 "40-4C-6. OBLIGATIONS--EMPLOYERS, UNIONS AND CARRIERS--
25 PLAN.--

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1 A. Upon receipt of a national medical support
2 notice or the court order for health care coverage pursuant to
3 Section 40-4C-5 NMSA 1978 or upon application of the medical
4 support obligor pursuant to the court order, the employer or
5 union shall enroll the minor child as an eligible dependent in
6 the health care coverage plan and withhold any required premium
7 from the medical support obligor's income or wages. If more
8 than one health care coverage plan and dental care coverage
9 plan is offered by the employer, union or carrier, the minor
10 child shall be enrolled in the plan in which the medical
11 support obligor is enrolled. If the medical support obligor is
12 not enrolled in a plan, the child shall be enrolled in a plan
13 that meets the minimum coverage criteria required pursuant to
14 the Mandatory Medical Support Act. If the medical support
15 obligor is not enrolled in a plan, the premiums charged for the
16 child or children of the medical support obligor shall be those
17 charged for the enrollment of the medical support obligor only.

18 B. In any instance in which the medical support
19 obligor is required by a court order to provide health care
20 coverage for each minor child and the medical support obligor
21 is eligible for health care coverage through an employment-
22 related or other group health care coverage plan, the employer,
23 union or carrier shall do the following:

24 (1) permit the medical support obligor to
25 enroll for health care coverage each minor child who is

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1 otherwise eligible for coverage without regard to any
2 enrollment season restrictions;

3 (2) enroll each minor child for health care
4 coverage if the medical support obligor fails to enroll each
5 minor child upon application by the medical support obligee or
6 the department;

7 (3) not disenroll or eliminate coverage of any
8 minor child so enrolled unless:

9 (a) the employer is provided with
10 satisfactory written evidence that the court order is no longer
11 in effect;

12 (b) the minor child is or will be
13 enrolled in comparable health care coverage that meets the
14 health care coverage criteria required pursuant to the
15 Mandatory Medical Support Act and that will take effect not
16 later than the effective date of the disenrollment;

17 (c) the medical support obligor has
18 terminated employment; or

19 (d) the employer has eliminated health
20 care coverage for all of its employees; and

21 (4) withhold from the medical support
22 obligor's compensation the medical support obligor's share, if
23 any, of premiums for health care coverage and to pay the share
24 of premiums to the carrier, unless otherwise provided in law or
25 regulation.

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1 C. In those instances in which the medical support
2 obligor fails or refuses to execute any document necessary to
3 enroll a minor child in a health care coverage plan ordered by
4 the court, the required information and authorization may be
5 provided by the department or the custodial parent or guardian
6 of the minor child.

7 D. Information and authorization provided by the
8 department or the custodial parent or guardian of a minor child
9 shall be valid for the purpose of meeting enrollment
10 requirements of the health care coverage plan and shall not
11 affect the obligation of the employer or union and the carrier
12 to enroll the minor child in the health care coverage plan for
13 which other eligibility, enrollment, underwriting terms and
14 other requirements are met. In instances in which a minor
15 child is covered through the medical support obligor, the
16 carrier shall provide all information to the medical support
17 obligee that may be helpful or necessary for the minor child to
18 obtain benefits.

19 E. A minor child that a medical support obligor is
20 required to cover as an eligible dependent pursuant to the
21 Mandatory Medical Support Act shall be considered for health
22 care coverage purposes as a dependent of the medical support
23 obligor until the child is emancipated or until further order
24 of the court.

25 F. In instances in which a minor child is provided

1 health care coverage through a medical support obligor, unless
2 prohibited by federal law, the carrier is prohibited from
3 denying health care coverage of the minor child on the grounds
4 that:

5 (1) the minor child was born out of wedlock;

6 (2) the minor child is not claimed as a
7 dependent on the medical support obligor's federal income tax
8 return; or

9 (3) the minor child does not reside with the
10 medical support obligor or reside in the carrier's service
11 area.

12 G. In instances in which a minor child is provided
13 health care coverage through a medical support obligor, the
14 carrier is prohibited from imposing requirements on the
15 department that are different from requirements applicable to
16 an agent or assignee of any other individual covered by the
17 health care coverage plan.

18 H. In instances in which a minor child is provided
19 health care coverage through a medical support obligor who is a
20 noncustodial parent, the carrier shall permit the custodial
21 parent or health care provider, with the approval of the
22 custodial parent, to submit claims for covered services without
23 the approval of the medical support obligor. The carrier shall
24 make payments on submitted claims directly to the custodial
25 parent or the health care provider.

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1 I. In instances in which a minor child is covered
2 through a public entity, the medical support obligor is
3 required to maintain the recertification of the health care
4 coverage as long as the medical support obligor meets
5 eligibility requirements.

6 ~~[F.]~~ J. If the medical support obligor is
7 terminated, the employer shall notify the department of the
8 termination."

9 SECTION 4. Section 40-4C-12 NMSA 1978 (being Laws 1990,
10 Chapter 78, Section 12, as amended) is amended to read:

11 "40-4C-12. MEDICAL SUPPORT OBLIGOR LIABILITY.--

12 A. A medical support obligor who fails to maintain
13 the health care coverage for the benefit of a minor child as
14 ordered pursuant to the Mandatory Medical Support Act shall be
15 liable to ~~[the department or]~~ the other parent for any medical
16 and dental expenses incurred from the date of the court order.

17 B. A medical support obligor who receives payment
18 from a third party for the costs of medical or dental services
19 provided to a minor child and who fails to use the payment to
20 reimburse the department is liable to the department to the
21 extent of the department's payment for the services. The
22 department is authorized to intercept the obligor's tax refund,
23 if the medical support obligor is a noncustodial parent, or use
24 other means of enforcement available to the department to
25 recoup amounts paid. Claims for current or past due child

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1 support take priority over any claims made pursuant to this
2 subsection. Failure to maintain health care coverage as
3 ordered constitutes a showing of increased need and provides a
4 basis for modification of the medical support obligor's child
5 support order.

6 C. A medical support obligor is required to provide
7 the department with the following information concerning health
8 care coverage:

9 (1) medical support obligor's name and tax
10 identification number;

11 (2) type of coverage (single or family);

12 (3) name, address and identifying number of
13 health care coverage;

14 (4) name and tax identification number of
15 other individuals who are provided health care coverage by the
16 medical support obligor;

17 (5) effective period of coverage; and

18 (6) name, address and the tax identification
19 number of the employer."

20 SECTION 5. Section 40-4C-13 NMSA 1978 (being Laws 1990,
21 Chapter 78, Section 13, as amended) is amended to read:

22 "40-4C-13. DEPARTMENT--DUTIES.--The department shall
23 pursue the establishment and enforcement of an order for health
24 care coverage [~~when~~] of a minor child [~~receives public~~
25 ~~assistance or medicaid or~~] upon application of a custodial or

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1 noncustodial parent to the department and payment by the
2 custodial or noncustodial parent of fees required by the
3 department."

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