

1 SENATE BILL 57

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Richard C. Martinez

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10 AN ACT

11 RELATING TO PUBLIC ASSISTANCE; AMENDING SECTIONS OF THE PUBLIC
12 ASSISTANCE ACT AND THE MANDATORY MEDICAL SUPPORT ACT TO LIMIT
13 THE STATE'S CLAIM FOR CHILD SUPPORT ARREARS TO THE TIME PERIODS
14 IN WHICH A HOUSEHOLD RECEIVES CASH ASSISTANCE AND TO ALLOW FOR
15 CASH MEDICAL SUPPORT WHEN HEALTH INSURANCE IS UNAVAILABLE.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 Section 1. Section 27-2-28 NMSA 1978 (being Laws 1981,
19 Chapter 90, Section 2, as amended) is amended to read:

20 "27-2-28. LIABILITY FOR REPAYMENT OF PUBLIC
21 ASSISTANCE.--

22 ~~[A. A noncustodial parent is liable to the human~~
23 ~~services department in the amount of the public assistance~~
24 ~~lawfully and properly furnished to the children, and the spouse~~
25 ~~or former spouse with whom such children are living, to whom~~

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1 ~~the noncustodial parent owes a duty of support; except that if~~
2 ~~a support order has been entered, liability for the time period~~
3 ~~covered by the support order shall not exceed the amount of~~
4 ~~support provided for in the order.~~

5 ~~B. Amounts of support due and owing for periods~~
6 ~~prior to the granting of public assistance shall be paid to and~~
7 ~~retained by the human services department to the extent that~~
8 ~~the amount of assistance granted exceeds the amount of the~~
9 ~~monthly support obligation.]~~

10 A. In cases where the department has provided cash
11 assistance to children in a household, the court shall award
12 judgment in favor of the department and against the
13 noncustodial parents of the children for child support,
14 calculated pursuant to Section 40-4-11.1 NMSA 1978, for all
15 months in which the children received cash assistance benefits.

16 B. Equitable defenses available to the noncustodial
17 parent in claims by the custodian for retroactive support or
18 past due support shall not operate to deprive the department of
19 its right to retroactive support or past due support for months
20 during which the noncustodial parent's children received cash
21 assistance benefits.

22 C. Amounts of support collected that are in excess
23 of the amounts specified in Subsections A and B of this section
24 shall be paid by the [human services] department to the
25 custodian of the child.

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1 D. No agreement between any custodian of a child
2 and a parent of that child, either relieving the parent of any
3 duty of child or spousal support or responsibility or
4 purporting to settle past, present or future support
5 obligations, either as a settlement or prepayment, shall act to
6 reduce or terminate any rights of the [~~human services~~]
7 department to recover from that parent for support provided,
8 unless the [~~human services~~] department has consented to the
9 agreement in writing.

10 E. The noncustodial parent shall be given credit
11 for any support actually provided, including housing, clothing,
12 food or funds paid prior to the entry of any order for support.
13 The noncustodial parent has the burden [~~on the issue of any~~
14 ~~payment~~] to prove that the noncustodial parent has provided any
15 support.

16 F. An application for public assistance by any
17 person constitutes an assignment by operation of law of any
18 support rights the person is entitled to [~~from any other~~
19 ~~person~~] during the time the person's household receives public
20 assistance, whether the support rights are owed to the
21 applicant or to any family member for whom the applicant is
22 applying for or receiving assistance. The assignment includes
23 all support rights that [~~have accrued at the time of~~
24 ~~application for public assistance and continues as an~~
25 ~~assignment of all support rights the applicant is entitled to~~

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1 ~~for]~~ accrue as long as the applicant receives public
2 assistance.

3 G. By operation of law, an assignment to the [~~human~~
4 ~~services~~] department of any and all rights of an applicant for
5 or recipient of medical assistance under the medicaid program
6 in New Mexico or supplemental security income through the
7 social security administration:

8 (1) is deemed to be made of:

9 (a) any payment for medical care from
10 any person, firm or corporation, including an insurance
11 carrier; and

12 (b) any recovery for personal injury,
13 whether by judgment or contract for compromise or settlement;

14 (2) shall be effective to the extent of the
15 amount of medical assistance actually paid by the department
16 under the medicaid program; and

17 (3) shall be effective as to the rights of any
18 other individuals who are eligible for medical assistance and
19 whose rights can legally be assigned by the applicant or
20 recipient.

21 An applicant or recipient is required to cooperate fully
22 with the [~~human services~~] department in its efforts to secure
23 the assignment and to execute and deliver any instruments and
24 papers deemed necessary to complete the assignment by [~~that~~]
25 the department."

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1 Section 2. Section 40-4C-3 NMSA 1978 (being Laws 1990,
2 Chapter 78, Section 3, as amended) is amended to read:

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

5 A. "cash medical support" means an amount ordered
6 to be paid toward the cost of health insurance provided by a
7 public entity or by another parent through employment or
8 otherwise, or for other medical costs not covered by insurance;

9 ~~[A.]~~ B. "court" means any district court ordering
10 support by a medical support obligor;

11 ~~[B.]~~ C. "department" means the human services
12 department;

13 ~~[C.]~~ D. "employer" means an individual,
14 organization, agency, business or corporation hiring a medical
15 support obligor for pay;

16 ~~[D.]~~ E. "health insurance coverage" means those
17 coverages generally associated with a medical plan of benefits,
18 which may include dental insurance, but not including medicaid
19 coverage authorized by Title 19 of the Social Security Act and
20 administered by the department;

21 ~~[E.]~~ F. "insurer" means an employment-related or
22 other group health care insurance plan, a health maintenance
23 organization, a nonprofit health care plan or other type of
24 health care insurance plan under which medical or dental
25 services are provided, regardless of service delivery

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1 mechanism;

2 ~~[F.]~~ G. "medical support obligee" means a person to
3 whom a duty of medical support is owed or a person, including
4 the department, who has commenced a proceeding for enforcement
5 of a duty to provide health support for each minor child or for
6 registration of a support order that includes a provision for
7 such support for each minor child;

8 ~~[G.]~~ H. "medical support obligor" means a person
9 owing a duty to provide health support or against whom a
10 proceeding for the enforcement of such a duty of support is
11 commenced or for registration of a support order that includes
12 provisions for such support for each minor child;

13 ~~[H.]~~ I. "minor child" means a child younger than
14 eighteen years of age who has not been emancipated; and

15 ~~[I.]~~ J. "national medical support notice" means a
16 notice to an employer that an employee's child must be covered
17 by the employment-related group health and dental care
18 insurance plan pursuant to a court order."

19 Section 3. Section 40-4C-4 NMSA 1978 (being Laws 1990,
20 Chapter 78, Section 4, as amended) is amended to read:

21 "40-4C-4. MEDICAL SUPPORT--ORDER.--

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

24 (1) the availability of health insurance
25 coverage that meets or exceeds the minimum standards required

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1 under the Mandatory Medical Support Act; and

2 (2) the availability of health insurance
3 coverage through an employment-related or other group health
4 and dental care insurance plan.

5 B. When a medical support obligor is ordered to
6 provide health insurance coverage, the medical support obligor
7 shall properly name each minor child on behalf of whom medical
8 support is owed as an eligible dependent on such insurance.

9 C. The court may consider the impact of the cost of
10 health insurance coverage on the payment of the base child
11 support amounts in determining whether such insurance coverage
12 shall be ordered.

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

19 E. The court shall require the medical support
20 obligor to ~~[be liable for all or a portion of the medical and~~
21 ~~dental expenses of each minor child that are not covered by the~~
22 ~~required health insurance coverage if]~~ pay cash medical support
23 in specific dollar amounts when:

24 (1) a public entity provides health insurance;

25 (2) the court finds that health insurance is

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1 not available at the time an order is entered or modified and
2 until such time that health insurance becomes available; or

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

7 ~~(2) the court finds that a medical support~~
8 ~~obligor has the financial resources to contribute to the~~
9 ~~payment of these medical or dental expenses]~~

10 F. The court shall require the medical support
11 obligor to be liable for all or a portion of the uninsured or
12 uncovered medical and dental expenses of each minor child.

13 [~~F.~~] G. The court shall require the medical support
14 obligor to provide health insurance coverage or dental
15 insurance coverage for the benefit of the medical support
16 obligee if it is available at no additional cost to the medical
17 support obligor.

18 [~~G.~~] H. The court in any proceeding for the
19 establishment, enforcement or modification of a child support
20 obligation may modify an existing order of support or establish
21 child support, as applicable, for each minor child to
22 incorporate the provisions for medical and dental support
23 ordered pursuant to the Mandatory Medical Support Act."