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AN ACT

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

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

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

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

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

B. Equitable defenses available to the
noncustodial parent in claims by the custodian for
retroactive support or past due support shall not operate to
deprive the department of its right to request retroactive
support or past due support for months during which the

1 noncustodial parent's children received cash assistance
2 benefits.

3 C. Amounts of support collected that are in excess
4 of the amounts specified in Subsections A and B of this
5 section shall be paid by the department to the custodian of
6 the child.

7 D. No agreement between any custodian of a child
8 and a parent of that child, either relieving the parent of
9 any duty of child or spousal support or responsibility or
10 purporting to settle past, present or future support
11 obligations, either as a settlement or prepayment, shall act
12 to reduce or terminate any rights of the department to
13 recover from that parent for support provided, unless the
14 department has consented to the agreement in writing.

15 E. The noncustodial parent shall be given credit
16 for any support actually provided, including housing,
17 clothing, food or funds paid prior to the entry of any order
18 for support. The noncustodial parent has the burden to prove
19 that the noncustodial parent has provided any support.

20 F. An application for public assistance by any
21 person constitutes an assignment by operation of law of any
22 support rights the person is entitled to during the time the
23 person's household receives public assistance, whether the
24 support rights are owed to the applicant or to any family
25 member for whom the applicant is applying for or receiving

1 assistance. The assignment includes all support rights that
2 accrue as long as the applicant receives public assistance.

3 G. By operation of law, an assignment to the
4 department of any and all rights of an applicant for or
5 recipient of medical assistance under the medicaid program in
6 New Mexico or supplemental security income through the social
7 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
18 any other individuals who are eligible for medical assistance
19 and 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 department in its efforts to secure the assignment
23 and to execute and deliver any instruments and papers deemed
24 necessary to complete the assignment by the department."

25 Section 2. Section 40-4C-3 NMSA 1978 (being Laws 1990,

1 Chapter 78, Section 3, as amended) is amended to read:

2 "40-4C-3. DEFINITIONS.--As used in the Mandatory
3 Medical Support Act:

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

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

11 C. "department" means the human services
12 department;

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

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

21 F. "insurer" means an employment-related or other
22 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

1 mechanism;

2 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
5 enforcement of a duty to provide health support for each
6 minor child or for registration of a support order that
7 includes a provision for such support for each minor child;

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

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

15 J. "national medical support notice" means a
16 notice to an employer that an employee's child must be
17 covered by the employment-related group health and dental
18 care 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
24 following:

25 (1) the availability of health insurance

1 coverage that meets or exceeds the minimum standards required
2 under the Mandatory Medical Support Act; and

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

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

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

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

21 E. The court shall require the medical support
22 obligor to pay cash medical support in specific dollar
23 amounts when:

24 (1) a public entity provides health
25 insurance;

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

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

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

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

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

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