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AN ACT

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

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

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

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

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

B. "cash medical support" means an amount ordered
to be paid toward the cost of health care coverage provided
by another parent through employment or otherwise, or for
other medical costs not covered by health care coverage;

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

D. "department" means the human services
department;

1 E. "employer" means an individual, organization,
2 agency, business or corporation hiring a medical support
3 obligor for pay;

4 F. "gross income" means income from any source and
5 includes income from salaries, wages, tips, commissions,
6 bonuses, dividends, severance pay, pensions, interest, trust
7 income, annuities, capital gains, social security benefits,
8 workers' compensation benefits, unemployment insurance
9 benefits, disability insurance benefits, significant in-kind
10 benefits that reduce personal living expenses, prizes and
11 alimony or maintenance received; provided that:

12 (1) "gross income" does not include benefits
13 received from:

14 (a) means-tested public assistance
15 programs, including temporary assistance for needy families,
16 supplemental security income and general assistance;

17 (b) the earnings or public assistance
18 benefits of a child who is the subject of a child support
19 award; or

20 (c) child support received by a parent
21 for the support of other children;

22 (2) for income from self-employment, rent,
23 royalties, proprietorship of a business or joint ownership of
24 a partnership or closely held corporation, "gross income"
25 means gross receipts minus ordinary and necessary expenses

1 required to produce such income, but ordinary and necessary
2 expenses do not include expenses determined by the court to
3 be inappropriate for purposes of calculating child support;

4 (3) "gross income" does not include the
5 amount of alimony payments actually paid in compliance with a
6 court order;

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

11 (5) "gross income" does not include a
12 reasonable amount for a parent's obligation to support prior
13 children who are in that parent's custody. A duty to support
14 subsequent children is not ordinarily a basis for reducing
15 support owed to children of the parties but may be a defense
16 to a child support increase for the children of the parties.
17 In raising such a defense, a party may use Table A as set
18 forth in Subsection M of Section 40-4-11.1 NMSA 1978 to
19 calculate the support for the subsequent children;

20 G. "health care coverage" means fee-for-service,
21 health maintenance organization, preferred provider
22 organization and other types of private health insurance and
23 public health care coverage under which medical services may
24 be provided to minor children;

25 H. "medical support obligee" means a person to

1 whom a duty of medical support is owed or a person who has
2 commenced a proceeding for enforcement of a duty to provide
3 health support for each minor child or for registration of a
4 support order that includes a provision for such support for
5 each minor child;

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

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

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

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

19 "40-4C-4. MEDICAL SUPPORT--ORDER.--

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

23 (1) the availability of health care coverage
24 that meets or exceeds the minimum standards required under
25 the Mandatory Medical Support Act;

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

4 (3) the availability of health care coverage
5 through a public entity when either parent meets eligibility
6 requirements.

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

12 C. The court may consider the impact of the cost
13 of health care coverage on the payment of the base child
14 support amounts in determining whether the coverage shall be
15 ordered; provided that:

16 (1) the health care coverage for the minor
17 child shall be available to the parent responsible for
18 providing medical support at a reasonable cost;

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

24 (3) the court shall allocate the cost of
25 coverage between the minor child's parents by including the

1 costs in the child support worksheet as set forth in Section
2 40-4-11.1 NMSA 1978.

3 D. The court may order the medical support obligor
4 to obtain health care coverage for each minor child to whom
5 medical support is owed if the court finds that health care
6 coverage for each minor child is not available to the medical
7 support obligor through an employment-related or other group
8 health care coverage plan.

9 E. The court shall require the medical support
10 obligor to pay cash medical support in specific dollar
11 amounts when:

12 (1) the court finds that health care
13 coverage is not available at the time an order is entered or
14 modified and until such time that health care coverage
15 becomes available; or

16 (2) the court finds that the health care
17 coverage required to be obtained by a medical support obligor
18 does not pay all the medical or dental expenses of each minor
19 child.

20 F. The court shall require the medical support
21 obligor to be liable to the custodial parent for all or a
22 portion of the uninsured or uncovered medical and dental
23 expenses of each minor child.

24 G. The court shall require the medical support
25 obligor to provide health care coverage or dental care

1 coverage for the benefit of the medical support obligee if it
2 is available at no additional cost to the medical support
3 obligor.

4 H. The court in any proceeding for the
5 establishment, enforcement or modification of a child support
6 obligation may modify an existing order of support or
7 establish child support, as applicable, for each minor child
8 to incorporate the provisions for medical and dental support
9 ordered pursuant to the Mandatory Medical Support Act.

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

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

15 "40-4C-6. OBLIGATIONS--EMPLOYERS, UNIONS AND CARRIERS--
16 PLAN.--

17 A. Upon receipt of a national medical support
18 notice or the court order for health care coverage pursuant
19 to Section 40-4C-5 NMSA 1978 or upon application of the
20 medical support obligor pursuant to the court order, the
21 employer or union shall enroll the minor child as an eligible
22 dependent in the health care coverage plan and withhold any
23 required premium from the medical support obligor's income or
24 wages. If more than one health care coverage plan and dental
25 care coverage plan is offered by the employer, union or

1 carrier, the minor child shall be enrolled in the plan in
2 which the medical support obligor is enrolled. If the
3 medical support obligor is not enrolled in a plan, the child
4 shall be enrolled in a plan that meets the minimum coverage
5 criteria required pursuant to the Mandatory Medical Support
6 Act. If the medical support obligor is not enrolled in a
7 plan, the premiums charged for the child or children of the
8 medical support obligor shall be those charged for the
9 enrollment of the medical support obligor only.

10 B. In any instance in which the medical support
11 obligor is required by a court order to provide health care
12 coverage for each minor child and the medical support obligor
13 is eligible for health care coverage through an employment-
14 related or other group health care coverage plan, the
15 employer, union or carrier shall do the following:

16 (1) permit the medical support obligor to
17 enroll for health care coverage each minor child who is
18 otherwise eligible for coverage without regard to any
19 enrollment season restrictions;

20 (2) enroll each minor child for health care
21 coverage if the medical support obligor fails to enroll each
22 minor child upon application by the medical support obligee
23 or the department;

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

1 (a) the employer is provided with
2 satisfactory written evidence that the court order is no
3 longer in effect;

4 (b) the minor child is or will be
5 enrolled in comparable health care coverage that meets the
6 health care coverage criteria required pursuant to the
7 Mandatory Medical Support Act and that will take effect not
8 later than the effective date of the disenrollment;

9 (c) the medical support obligor has
10 terminated employment; or

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

13 (4) withhold from the medical support
14 obligor's compensation the medical support obligor's share,
15 if any, of premiums for health care coverage and to pay the
16 share of premiums to the carrier, unless otherwise provided
17 in law or regulation.

18 C. In those instances in which the medical support
19 obligor fails or refuses to execute any document necessary to
20 enroll a minor child in a health care coverage plan ordered
21 by the court, the required information and authorization may
22 be provided by the department or the custodial parent or
23 guardian of the minor child.

24 D. Information and authorization provided by the
25 department or the custodial parent or guardian of a minor

1 child shall be valid for the purpose of meeting enrollment
2 requirements of the health care coverage plan and shall not
3 affect the obligation of the employer or union and the
4 carrier to enroll the minor child in the health care coverage
5 plan for which other eligibility, enrollment, underwriting
6 terms and other requirements are met. In instances in which
7 a minor child is covered through the medical support obligor,
8 the carrier shall provide all information to the medical
9 support obligee that may be helpful or necessary for the
10 minor child to obtain benefits.

11 E. A minor child that a medical support obligor is
12 required to cover as an eligible dependent pursuant to the
13 Mandatory Medical Support Act shall be considered for health
14 care coverage purposes as a dependent of the medical support
15 obligor until the child is emancipated or until further order
16 of the court.

17 F. In instances in which a minor child is provided
18 health care coverage through a medical support obligor,
19 unless prohibited by federal law, the carrier is prohibited
20 from denying health care coverage of the minor child on the
21 grounds that:

- 22 (1) the minor child was born out of wedlock;
23 (2) the minor child is not claimed as a
24 dependent on the medical support obligor's federal income tax
25 return; or

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

4 G. In instances in which a minor child is provided
5 health care coverage through a medical support obligor, the
6 carrier is prohibited from imposing requirements on the
7 department that are different from requirements applicable to
8 an agent or assignee of any other individual covered by the
9 health care coverage plan.

10 H. In instances in which a minor child is provided
11 health care coverage through a medical support obligor who is
12 a noncustodial parent, the carrier shall permit the custodial
13 parent or health care provider, with the approval of the
14 custodial parent, to submit claims for covered services
15 without the approval of the medical support obligor. The
16 carrier shall make payments on submitted claims directly to
17 the custodial parent or the health care provider.

18 I. In instances in which a minor child is covered
19 through a public entity, the medical support obligor is
20 required to maintain the recertification of the health care
21 coverage as long as the medical support obligor meets
22 eligibility requirements.

23 J. If the medical support obligor is terminated,
24 the employer shall notify the department of the termination."

25 SECTION 4. Section 40-4C-12 NMSA 1978 (being Laws 1990,

1 Chapter 78, Section 12, as amended) is amended to read:

2 "40-4C-12. MEDICAL SUPPORT OBLIGOR LIABILITY.--

3 A. A medical support obligor who fails to maintain
4 the health care coverage for the benefit of a minor child as
5 ordered pursuant to the Mandatory Medical Support Act shall
6 be liable to the other parent for any medical and dental
7 expenses incurred from the date of the court order.

8 B. A medical support obligor who receives payment
9 from a third party for the costs of medical or dental
10 services provided to a minor child and who fails to use the
11 payment to reimburse the department is liable to the
12 department to the extent of the department's payment for the
13 services. The department is authorized to intercept the
14 obligor's tax refund, if the medical support obligor is a
15 noncustodial parent, or use other means of enforcement
16 available to the department to recoup amounts paid. Claims
17 for current or past due child support take priority over any
18 claims made pursuant to this subsection. Failure to maintain
19 health care coverage as ordered constitutes a showing of
20 increased need and provides a basis for modification of the
21 medical support obligor's child support order.

22 C. A medical support obligor is required to
23 provide the department with the following information
24 concerning health care coverage:

25 (1) medical support obligor's name and tax

1 identification number;

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

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

5 (4) name and tax identification number of
6 other individuals who are provided health care coverage by
7 the medical support obligor;

8 (5) effective period of coverage; and

9 (6) name, address and the tax identification
10 number of the employer."

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

13 "40-4C-13. DEPARTMENT--DUTIES.--The department shall
14 pursue the establishment and enforcement of an order for
15 health care coverage of a minor child upon application of a
16 custodial or noncustodial parent to the department and payment
17 by the custodial or noncustodial parent of fees required by
18 the department."
