

No. 2008-16

## AN ACT

SB 1278

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for child medical support, annual fees, review of orders of support, effect of incarceration, pass-through of support and assignment of support.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4326(a), (b), (c), (d) and (l) of Title 23 of the Pennsylvania Consolidated Statutes are amended to read:

§ 4326. Mandatory inclusion of child medical support.

(a) General rule.—In every proceeding to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide **[health care coverage] medical support** for the children of the parties, and the order shall **[provide health care coverage for each child as appropriate.] include a requirement for medical support to be provided by either or both parents, provided that such medical support is accessible to the children.**

(b) Noncustodial parent requirement.—If **[health care coverage] medical support** is available at a reasonable cost to a noncustodial parent **[on an employment-related or other group basis]**, the court shall require that the noncustodial parent provide such **[coverage] medical support** to the children of the parties. In cases where there are two noncustodial parents having such **[coverage] medical support** available, the court shall require one or both parents to provide **[coverage] medical support**.

(c) Custodial parent requirement.—If **[health care coverage] medical support** is available at a reasonable cost to a custodial parent **[on an employment-related or other group basis]**, the court shall require that the custodial parent provide such **[coverage] medical support** to the children of the parties, unless adequate **[health care coverage] medical support** has already been provided through the noncustodial parent. In cases where the parents have shared custody of the child and **[coverage] medical support** is available to both, the court shall require one or both parents to provide **[coverage] medical support**, taking into account the financial ability of the parties and the extent of **[coverage] medical support** available to each parent.

(d) Additional requirement.—If the court finds that **[health care coverage] medical support** is not available to either parent at a reasonable cost **[on an employment-related or other group basis]**, the court shall order either parent or both parents to obtain **medical support** for the parties' children **[health insurance coverage]** which is available at reasonable cost.

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(l) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Birth-related expenses.” Costs of reasonable and necessary health care for the mother or child or both incurred before, during or after the birth of a child born in or out of wedlock which are the result of the pregnancy or birth and which benefit either the mother or child. Charges not related to the pregnancy or birth shall be excluded.

“Child.” A child to whom a duty of child support is owed.

“Health care coverage.” Coverage for medical, dental, orthodontic, optical, psychological, psychiatric or other health care services for a child. For the purposes of this section, medical assistance under Subarticle (f) of Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, shall not be considered health care coverage.

“Insurer.” A foreign or domestic insurance company, association or exchange holding a certificate of authority under the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921; a risk-assuming preferred provider organization operating under section 630 of The Insurance Company Law of 1921; a health maintenance organization holding a certificate of authority under the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act; a fraternal benefit society holding a certificate of authority under the *former* act of December 14, 1992 (P.L.835, No.134), known as the Fraternal Benefit Societies Code; a hospital plan corporation holding a certificate of authority under 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations); a professional health service plan corporation holding a certificate of authority under 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations); or a similar entity authorized to do insurance business in this Commonwealth.

“Medical child support order.” An order which relates to the child’s right to receive certain health care coverage and which:

(1) includes the name and last known mailing address of the parent providing health care coverage and the name and last known mailing address of the child;

(2) includes a reasonable description of the type of coverage to be provided or includes the manner in which coverage is to be determined;

(3) designates the time period to which the order applies;

(4) if coverage is provided through a group health plan, designates each plan to which the order applies as of the date the order is written;

(4.1) requires that, if health care coverage is provided through the noncustodial parent’s employer and that parent changes employment, the provisions of the order will remain in effect for the duration of the order and will automatically apply to the new employer. The new employer shall enroll the child in health care coverage without need for an amended order unless the noncustodial parent contests the enrollment; and

(5) includes the name and address of the custodial parent.

**“Medical support.”** *Health care coverage, which includes coverage under a health insurance plan or government-subsidized health care coverage, including payment of costs of premiums, copayments, deductibles and capitation fees, and payment for medical expenses incurred on behalf of a child.*

**“Reasonable cost.”** *Cost of health care coverage that does not exceed 5% of the party’s net monthly income and, if the obligor is to provide health care coverage, the cost of the premium when coupled with a cash child support obligation and other child support-related obligations does not exceed the amounts allowed by the Federal threshold set forth in the Consumer Credit Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.).*

Section 2. Section 4351 of Title 23 is amended by adding a subsection to read:

§ 4351. Costs and fees.

\* \* \*

**(a.1) Annual fee.**—*The Commonwealth shall impose a fee of \$25 in each case in which an individual has never received assistance under Title IV-A of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) and for whom the Commonwealth has collected at least \$500 of support in a Federal fiscal year. The Commonwealth shall pay the \$25 fee for those cases in which the annual collection is between \$500 and \$1,999.99. The \$25 fee shall be collected from the custodial parent in cases where annual collections equal \$2,000 or more.*

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Section 3. Section 4352(a.1) of Title 23 is amended and the section is amended by adding a subsection to read:

§ 4352. Continuing jurisdiction over support orders.

\* \* \*

**(a.1) Automatic review.**—**[A method shall be developed for the automatic review of]** *Upon request of either parent, or automatically if there is an assignment under Title IV-A of the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), each order of support shall be reviewed at least once every three years from the date of establishment or the most recent review[.]. The review shall be for the purpose of making any appropriate increase, decrease, modification or rescission of the order. During the [automatic] review, taking into the account the best interest of the child involved, the court shall adjust the order, without requiring proof of a change in circumstances, by applying the Statewide guidelines or a cost-of-living adjustment in accordance with a formula developed by general rule. Automated methods, including automated matches with wage or State income tax data, may be used to identify the support orders eligible for review and implement appropriate adjustments. [If, however, it is determined that such a review would not be in the best interests of the child and neither*

parent nor the department, if it has an assignment or other interest, has requested a review, no review shall be required.]

*(a.2) Effect of incarceration.—Incarceration, except incarceration for nonpayment of support, shall constitute a material and substantial change in circumstance that may warrant modification or termination of an order of support where the obligor lacks verifiable income or assets sufficient to enforce and collect amounts due.*

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Section 4. Sections 4374(c) and (d) and 4378(b) of Title 23 are amended to read:

§ 4374. State disbursement unit.

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(c) Allocation of collections.—Subject to subsections (d), (e), (f) and (f.1), support collected on behalf of a family shall be distributed as follows:

(1) In the case of a family receiving cash assistance from the Commonwealth:

(i) First, **[pay to the Federal Government an amount equal to the Federal share of the amount collected.]** *from the amount of current support collected, pass through to the assistance group the first \$100 per month for one child or the first \$200 per month for two or more children or the first \$50 per month for spousal support, without decreasing the amount of cash assistance, provided, however, that in no event may any assistance group be paid more than one support pass-through payment per month.*

(ii) Second, **[after application of subparagraph (i), from the amount remaining, pass through to the assistance group the first \$50 per month of current child or spousal support collected without decreasing the amount of cash assistance, provided, however, that in no event may any assistance group be paid more than one support pass-through payment per month.]** *calculate the Federal Government's share of the remaining amount collected.*

(iii) Third, **pay the Federal Government's share and** retain the remainder of the amount collected to reimburse the Commonwealth until the amount **[reimbursed]** equals the amount of unreimbursed cash assistance paid to the **[family] assistance group.**

(iv) Fourth, pay to the **[family] assistance group** any amounts collected in excess of the amounts distributed or retained under subparagraphs (i), (ii) and (iii).

(2) In the case of a family that formerly received cash assistance from the Commonwealth:

(i) first, pay to the family the current support collected that does not exceed the court-ordered amount to be paid in the month; and

(ii) second, treat amounts collected in excess of the current support collected as arrearages and distribute as follows:

(A) In the case of arrearages that accrued after the family ceased to receive cash assistance from the Commonwealth and which are collected after October 1, 1998:

(I) first, pay the family up to the amount of arrearages that accrued after the family ceased to receive cash assistance from the Commonwealth;

(II) second, treat the balance as reimbursement of assistance in an amount not to exceed the total amount of unreimbursed cash assistance paid to the family and:

(a) pay an amount equal to the Federal share of the reimbursed amount to the Federal Government; and

(b) retain for the Commonwealth an amount equal to the non-Federal share of the reimbursed amount; and

(III) third, pay any remaining amount to the family.

(C) In the case of arrearages that accrued before the family received cash assistance from the Commonwealth and which are collected after October 1, 1998:

(I) first, pay to the family up to the amount of arrearages that accrued before the family began to receive cash assistance from the Commonwealth;

(II) second, treat the balance as reimbursement of assistance in an amount not to exceed the total amount of unreimbursed cash assistance paid to the family and:

(a) pay an amount equal to the Federal share of the reimbursed amount to the Federal Government; and

(b) retain for the Commonwealth an amount equal to the non-Federal share of the reimbursed amount; and

(III) third, pay any remaining amount to the family.

(D) In the case of arrearages that accrued while the family received cash assistance from the Commonwealth:

(I) first, treat the amount collected as reimbursement of assistance in an amount not to exceed the total amount of unreimbursed cash assistance paid to the family and:

(a) pay an amount equal to the Federal share of the reimbursed amount to the Federal Government; and

(b) retain for the Commonwealth an amount equal to the non-Federal share of the reimbursed amount; and

(II) second, pay any remaining amount to the family.

(E) Notwithstanding clauses (A) through (C), the right to any support obligation assigned to the Commonwealth as a condition of receiving cash assistance in effect on September 30, 1997, shall remain assigned after that date.

(F) Except for amounts assigned to the Commonwealth under subsection (d), beginning October 1, 1998, any support arrearages collected shall be credited as follows:

(I) first, to the period after the family ceased to receive assistance;

(II) second, to the period before the family received assistance; and

(III) third, to the period during which the family received assistance.

(3) In the case of a family that never received cash assistance from the Commonwealth, all support collections shall be paid to the family[.] *with the exception of the federally mandated \$25 annual fee collected from the custodial parent as required under section 4351(a.1) (relating to costs and fees).*

(d) Retention by Commonwealth.—

(1) Arrearages collected through use of the Internal Revenue Service Tax Refund Offset Program *for a family receiving cash assistance* shall be retained by the Commonwealth to the extent past due support has been assigned to the department as a condition of receiving assistance. *Arrearages collected through use of the Internal Revenue Service Tax Refund Offset Program for a family that formerly received cash assistance shall first be applied to the monthly support obligation, and the balance shall be applied to arrears owed the family, including assignments of arrearages that accrued before the family received assistance from the Commonwealth and that were executed between October 1, 1997, and September 30, 2009. Any remaining arrearages shall be paid to the department.* The department shall pay to the Federal Government the Federal share of the amounts so retained. In no event shall the total of amounts paid to the Federal Government and retained by the department exceed the total of the amount of cash assistance paid to the family by the Commonwealth. To the extent that the amounts collected exceed the amount retained, the department shall pay the excess to the family.

(2) *Notwithstanding any other provision of law, the federally mandated \$25 annual fee collected from the custodial parent as required under section 4351(a.1) shall be retained by the department.*

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§ 4378. Assistance recipients to seek support.

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(b) Assignment.—Acceptance of assistance shall operate as an assignment to the department, by operation of law, of the assistance recipient's rights to receive support on his or her own behalf and on behalf of any family member with respect to whom the recipient is receiving assistance. Such assignment shall be effective only up to the amount of assistance received[.] *during the period that a family receives assistance. The assignment shall exclude arrears that accrued prior to receipt of assistance.* The assignment shall take effect at the time that the recipient is determined to be eligible for assistance. Upon termination of assistance

payments, the assignment of support rights shall terminate, provided that any amount of unpaid support obligations shall continue as an obligation to and collectible by the department to the extent of any unreimbursed assistance consistent with Federal law. Immediately upon receipt of notification from the department that a recipient has been determined to be eligible for assistance, the clerks of the appropriate courts of the Commonwealth shall transmit any and all support payments that they thereafter receive on behalf of such assistance recipients to the department. Such clerks shall continue transmitting such support payments until notified by the department that it is no longer necessary to do so. While the recipient is receiving assistance, any such support payments made to or on behalf of the assistance recipient shall be allocated to any amount due the department as assignee of the recipient's support rights consistent with Federal law. The assistance recipient shall be deemed to have appointed the department as his attorney-in-fact to endorse over to the department any and all drafts, checks, money orders or other negotiable instruments submitted for payment of support due during the time the recipient is receiving assistance on behalf of himself, herself or any family member.

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Section 5. The amendment of 23 Pa.C.S. §§ 4326, 4351, 4352 and 4374(c)(3) shall apply retroactively to March 31, 2008.

Section 6. This act shall take effect as follows:

- (1) The amendment of 23 Pa.C.S. § 4374(c)(1) and (d)(1) shall take effect October 1, 2008.
- (2) The amendment of 23 Pa.C.S. § 4378(b) shall take effect October 1, 2009.
- (3) The remainder of this act shall take effect immediately.

APPROVED—The 13th day of May, A.D. 2008.

EDWARD G. RENDELL