

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1746

S.P. 613

March 27, 2007

An Act To Improve MaineCare and Promote Employment

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BARTLETT of Cumberland.

Cosponsored by Representative PERRY of Calais and Senators: MARRACHÉ of Kennebec, MITCHELL of Kennebec, Representatives: GROSE of Woolwich, MILLER of Somerville, WALCOTT of Lewiston.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 19-A MRSA §2001, sub-§5-A** is enacted to read:

3 **5-A. Medical child support.** "Medical child support" means support for the child's
4 health care expenses, including but not limited to enrollment in employer-sponsored
5 group health plans, purchase of private health insurance plans, participation in public
6 health insurance plans and cash payments of premiums, copayments, deductibles and
7 routine and extraordinary medical expenses not otherwise covered by health insurance
8 plans.

9 **Sec. 2. 19-A MRSA §2004**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected
10 by Pt. E, §2, is amended to read:

11 **§2004. Income information, medical and child support worksheets**

12 **1. Court actions.** This subsection governs the exchange and filing of income
13 affidavits, medical child support and child support worksheets and supporting
14 documentation in court actions.

15 A. In a court action to determine or modify support of a minor child, the plaintiff
16 and defendant shall exchange, prior to mediation, affidavits regarding income ~~and~~,
17 assets and ability to provide medical child support. These affidavits must conform
18 with the forms provided by the court and must be accompanied by supporting
19 documentation of current income, such as pay stubs, tax returns, employer statements
20 or, if the plaintiff or defendant is self-employed, receipts and expenses, and
21 information on employer-sponsored group health insurance and private health
22 insurance available to the plaintiff and defendant.

23 B. The parties shall exchange prior to the commencement of mediation a completed
24 medical child support and child support ~~worksheet~~ worksheets. The worksheet must
25 be completed in accordance with the support guidelines.

26 C. At least 3 days prior to a court hearing, whether contested or uncontested, the
27 parties shall file with the court and exchange, if they have not already done so, the
28 completed affidavits and medical child support and child support worksheets. The
29 parties are not required to file with the court the supporting documentation, unless
30 otherwise directed.

31 D. If a party fails to comply with this subsection, the court may, in its discretion:

32 (1) Impose economic sanctions; or

33 (2) Presume for the purpose of determining a current medical child support and
34 child support obligation that the party has an earning capacity equal to the
35 average weekly wage of a worker in this State as determined by the most recent
36 Department of Labor statistics. A different annual income may be used if there is
37 sufficient reliable evidence to conclude reasonably that the noncomplying party
38 earns a greater or lesser actual income.

1 E. The court may admit Department of Labor statistics into evidence for purposes
2 of computing a parental support obligation.

3 **2. Administrative proceedings.** The department shall adopt rules regarding the
4 provision of information necessary to apply the medical child support and child support
5 guidelines in administrative proceedings.

6 **Sec. 3. 19-A MRSA §2006, sub-§1-A** is enacted to read:

7 **1-A. Determination of medical child support.** After the court or hearing officer
8 reviews income information and the medical child support and child support worksheets
9 and other relevant information, the court or hearing officer shall determine the amount of
10 medical child support to be contributed by the custodial and noncustodial parent and how
11 that medical support is to be payable.

12 A. In determining any new or modified court or administrative order for medical
13 child support, the court or hearing officer issuing the order must consider whether the
14 coverage available to the child through a parent's employer-sponsored group health
15 insurance plan or private health insurance is affordable, accessible, stable and
16 comprehensive. In determining whether coverage is comprehensive, the court or
17 hearing officer must consider the unique medical, mental health and social service
18 needs of the child and whether the coverage available includes basic dental coverage,
19 orthodontics, eyeglasses and mental health and substance abuse services. When the
20 child is eligible for medical assistance under the state plan under Title XIX of the
21 federal Social Security Act or for child health assistance under the state plan under
22 Title XXI of the federal Social Security Act, there is a presumption that this coverage
23 is more comprehensive than private coverage unless that coverage is provided under
24 Title 22, section 18.

25 B. In determining any new or modified court or administrative order for medical
26 child support the court or hearing officer issuing the order must consider whether
27 public health insurance pursuant to Title 22, section 18 and Title 22, chapter 855 is
28 more reasonable in cost, accessible, stable and comprehensive than coverage under
29 paragraph A.

30 C. If a child is incurring extraordinary medical expenses that cannot be covered
31 under paragraphs A and B and the future expenses are determinable because of the
32 permanent, chronic or recurring nature of the illness or disorder, the sums actually
33 being expended for the medical expenses must be added to the medical child support
34 entitlement.

35 D. If a party is paying health insurance premiums that the court or hearing officer or
36 applicable administrative agency determines is appropriate to the needs of the child,
37 then the sums actually being expended for health insurance premiums for the child or
38 children for whom support is being ordered must be subtracted from the medical
39 child support entitlement. The court shall determine the pro rata share of the health
40 insurance premium actually expended that is attributable to each child.

41 E. To determine to what extent medical child support should be payable for public
42 health insurance or participation in the Private Health Insurance Premium Program,
43 Title 22, section 18, an order establishing medical child support shall require that

1 each party cooperates with the department if a child is or becomes eligible for and is
2 enrolled in a medical assistance plan under Title XIX and Title XXI of the federal
3 Social Security Act.

4 **Sec. 4. 19-A MRSA §2006, sub-§3**, as amended by PL 2003, c. 415, §7, is
5 further amended to read:

6 **3. Total basic support obligation.** The total basic support obligation is determined
7 by adding the child care costs, ~~health insurance premiums and extraordinary medical~~
8 ~~expenses~~ and medical child support to the basic support entitlement as follows.

9 A. When each child is under the age of 12 years, the sums actually being expended
10 for child care costs must be added to the basic support entitlement to determine the
11 total basic support obligation.

12 ~~B. If a child is incurring extraordinary medical expenses, the future incidence of~~
13 ~~which is determinable because of the permanent, chronic or recurring nature of the~~
14 ~~illness or disorder, the sums actually being expended for the medical expenses must~~
15 ~~be added to the basic support entitlement to determine the total basic support~~
16 ~~obligation.~~

17 ~~C. If a party is paying health insurance premiums, the sums actually being expended~~
18 ~~for health insurance premiums for the child or children for whom support is being~~
19 ~~ordered must be added to the basic support entitlement to determine the total basic~~
20 ~~support obligation. The court shall determine the pro rata share of the health~~
21 ~~insurance premium actually expended that is attributable to each child.~~

22 **Sec. 5. 19-A MRSA §2006, sub-§5**, as amended by PL 2003, c. 415, §§9 and 10,
23 is further amended to read:

24 **5. Special circumstances.** The court or hearing officer shall consider the following
25 special circumstances in determining child support and medical child support in new and
26 modified orders.

27 A. When the parent who is not the primary care provider is legally obligated to
28 support a child in that party's household other than the child for whom a support order
29 is being sought, an adjustment must be made to that party's parental support
30 obligation. The adjustment is made by using the nonprimary residential care
31 provider's annual gross income to compute a theoretical support obligation under the
32 support guidelines for each child in that household. Neither the child support
33 received by nor the financial contributions of the other parent of each child in the
34 household are considered in the theoretical support calculation. The obligation is
35 then subtracted from the annual gross income, and the adjusted income is the amount
36 used to calculate support. The adjustment is used in all appropriate cases, except
37 when the result would be a reduction in an award previously established.

38 B. When the parties' combined annual gross income exceeds \$240,000, the child
39 support table is not applicable, except that the basic weekly child support entitlement
40 of a child is presumed to be not less than that set forth in the table for a combined
41 annual gross income of \$240,000.

1 C. The subsistence needs of the nonprimary care provider must be taken into account
2 when establishing the parental support obligation. If the annual gross income of the
3 nonprimary care provider is less than the federal poverty guideline, the nonprimary
4 care provider's weekly parental support obligation for each child for whom a support
5 award is being established or modified may not exceed 10% of the nonprimary care
6 provider's weekly gross income, regardless of the amount of the parties' combined
7 annual gross income. The child support table includes a self-support reserve for
8 obligors earning less than \$12,600 per year. If the nonprimary care provider's annual
9 gross income, without adjustments, is in the self-support reserve, the amount listed in
10 the table for the number of children is the nonprimary care provider's basic support
11 obligation, regardless of the parties' combined annual gross income. The nonprimary
12 care provider's proportional share of childcare, health insurance premiums and
13 extraordinary medical expenses are added to this basic support obligation.

14 D. ~~When~~ Except as provided in paragraphs F and G, when the parties have equal
15 annual gross incomes and provide substantially equal care for each child for whom
16 support is being determined, neither party is required to pay the other a parental
17 support obligation. The parties shall share equally the child care costs, ~~health~~
18 ~~insurance premiums and uninsured~~ and medical expenses child support.

19 D-1. When the parties do not have equal annual gross incomes but provide
20 substantially equal care for each child for whom support is being determined, the
21 presumptive parental support obligation must be determined as follows.

- 22 (1) The enhanced support entitlement for each child must be determined.
- 23 (2) Using the enhanced support entitlement, a parental support obligation for
24 each child must be determined by dividing the total enhanced support obligation
25 between the parties in proportion to their respective gross incomes.
- 26 (3) The party with the higher annual gross income has a presumptive obligation
27 to pay the other party the lower of:
- 28 (a) The difference between their parental support obligations as
29 calculated in subparagraph (2); and
- 30 (b) The presumptive parental support obligation determined for the
31 payor party using the basic support entitlement under the support
32 guidelines as though the other party provided primary residential care
33 of the child.
- 34 (4) The parties shall share the child care costs, ~~health insurance premiums and~~
35 ~~uninsured~~ except as provided in paragraphs F and G, and medical expenses child
36 support in proportion to their incomes.

37 E. When each party is the primary residential care provider for at least one of the
38 children involved, a child support obligation must first be computed separately for
39 each party for each child residing primarily with the other party, based on a
40 calculation pursuant to the support guidelines, and using as input in each calculation
41 the number of children in each household, rather than the total number of children.
42 The amounts determined in this manner represent the theoretical support obligation
43 due each party for support of each child for whom the party has primary residential

1 responsibility. Each party's proportionate share of child care costs and ~~health~~
2 ~~insurance premiums~~ medical child support is added to the amounts calculated, and the
3 party owing the greater amount of child support shall pay the difference between the
4 2 amounts as a parental support obligation.

5 F. Parties with incomes below 200% of the federal poverty guidelines are exempt
6 from purchasing groups or private health insurance as part of their medical child
7 support obligation unless such coverage is available at no cost.

8 G. Parties with incomes between 150% and 200% of the federal poverty guidelines
9 may be ordered to make payments toward the cost of medical child support,
10 including, but not limited to, public insurance based on a sliding scale pursuant to
11 Title 22, section 18 and Title 22, chapter 855.

12 H. Any amount of medical support payment that a noncustodial parent whose
13 income is above 200% of the federal poverty guidelines is ordered by a court or
14 administrative agency to pay to a custodial parent whose income is below 200% of
15 federal poverty guidelines must first be used by the custodial parent to offset the
16 premium for public health insurance coverage for the child, in accordance with rules
17 adopted by the Department of Health and Human Services.

18 **Sec. 6. 22 MRSA §18, sub-§1**, as enacted by PL 1997, c. 795, §5, is amended to
19 read:

20 **1. Program.** The Private Health Insurance Premium Program is operated by the
21 Bureau of Medical Services within the department and implements the provisions of 42
22 United States Code, Section 1396a(a)(25)(G) and 1396e. The bureau shall seek to
23 maximize enrollment in the program pursuant to section 3174-LL.

24 **Sec. 7. 22 MRSA §18, sub-§1-A** is enacted to read:

25 **1-A. Comparable coverage.** A person enrolled in the Private Health Insurance
26 Premium Program with children eligible for Medicaid under section 3174-G is eligible
27 for MaineCare benefits not otherwise provided by a private or employer-sponsored group
28 health plan.

29 **Sec. 8. 22 MRSA §18, sub-§1-B** is enacted to read:

30 **1-B. Sliding scale.** To the extent that participation in the Private Health Insurance
31 Premium Program is the result of a medical child support order under Title 19-A, section
32 2004, the department shall establish a sliding scale for applicable premiums and cost-
33 sharing amounts that do not exceed the amounts established under section 3174-T.

34 **Sec. 9. 22 MRSA §3174-G, sub-§1, ¶E**, as amended by PL 2003, c. 469, Pt. A,
35 §5 and as affected by c. 673, Pt. Y, §3, is further amended to read:

36 E. The parent or caretaker relative of a child described in paragraph B or D when the
37 child's family income is equal to or below 200% of the nonfarm income official
38 poverty line, subject to adjustment by the commissioner under this paragraph.
39 Medicaid services provided under this paragraph must be provided within the limits
40 of the program budget. Funds appropriated for services under this paragraph must

1 include an annual inflationary adjustment equivalent to the rate of inflation in the
2 Medicaid program. On a quarterly basis, the commissioner shall determine the fiscal
3 status of program expenditures under this paragraph. If the commissioner determines
4 that expenditures will exceed the funds available to provide Medicaid coverage
5 pursuant to this paragraph, the commissioner must adjust the income eligibility limit
6 for new applicants to the extent necessary to operate the program within the program
7 budget. If, after an adjustment has occurred pursuant to this paragraph, expenditures
8 fall below the program budget, the commissioner must raise the income eligibility
9 limit to the extent necessary to provide services to as many eligible persons as
10 possible within the fiscal constraints of the program budget, as long as the income
11 limit does not exceed 200% of the nonfarm income official poverty line; and

12 **Sec. 10. 22 MRSA §3174-G, sub-§1, ¶E-1** is enacted to read:

13 E-1. The parent or caretaker relative described in paragraph E, who has received
14 benefits under this chapter in the past 3 months and whose income now exceeds the
15 level in paragraph E, may purchase coverage under this chapter for a period of up to
16 18 months at a premium level that does not exceed the premiums established for
17 MaineCare under the Katie Beckett option authorized by the federal Tax Equity and
18 Fiscal Responsibility Act of 1982 and a contribution toward administrative costs no
19 greater than the maximum level allowed under COBRA;

20 **Sec. 11. 22 MRSA §3174-G, sub-§1, ¶F**, as amended by PL 2003, c. 469, Pt. A,
21 §5 and affected by c. 673, Pt. Y, §3, is further amended to read:

22 F. A person 20 to 64 years of age who is not otherwise covered under paragraphs A
23 to E when the person's family income is below or equal to 125% of the nonfarm
24 income official poverty line, provided that the commissioner shall adjust the
25 maximum eligibility level in accordance with the requirements of the paragraph.

26 (2) If the commissioner reasonably anticipates the cost of the program to exceed
27 the budget of the population described in this paragraph, the commissioner shall
28 lower the maximum eligibility level to the extent necessary to provide coverage
29 to as many persons as possible within the program budget.

30 (3) The commissioner shall give at least 30 days' notice of the proposed change
31 in maximum eligibility level to the joint standing committee of the Legislature
32 having jurisdiction over appropriations and financial affairs and the joint standing
33 committee of the Legislature having jurisdiction over health and human services
34 matters;

35 **Sec. 12. 22 MRSA §3174-G, sub-§1, ¶G** is enacted to read:

36 G. A young adult 19 years of age or 20 years of age when the household income is
37 equal to or below 200% of the nonfarm income official poverty line; and

38 **Sec. 13. 22 MRSA §3174-G, sub-§1, ¶H** is enacted to read:

39 H. A qualified working disabled person when the person's family unearned income is
40 equal to or below 150% of the nonfarm income official poverty line and when the

1 total unearned and earned income does not exceed 250% of the nonfarm income
2 official poverty line.

3 **Sec. 14. 22 MRSA §3174-T, sub-§2, ¶E**, as amended by PL 2001, c. 450, Pt. A,
4 §3, is further amended to read:

5 E. Coverage under the Cub Care program may be purchased for children described
6 in subparagraphs (1) and (2) for a period of up to 18 months as provided in this
7 paragraph at a premium level that ~~is revenue neutral and that covers the cost of the~~
8 benefit does not exceed premiums established for MaineCare under the Katie Beckett
9 option authorized by the federal Tax Equity and Fiscal Responsibility Act of 1982
10 and a contribution toward administrative costs no greater than the maximum level
11 allowable under COBRA. The department shall adopt rules to implement this
12 paragraph. The following children are eligible to enroll under this paragraph:

13 (1) A child who is enrolled under paragraph A or B and whose family income at
14 the end of the child's 12-month enrollment term exceeds the maximum allowable
15 income set in that paragraph; and

16 (2) A child who is enrolled in the Medicaid program and whose family income
17 exceeds the limits of that program. The department shall terminate Medicaid
18 coverage for a child who enrolls in the Cub Care program under this
19 subparagraph.

20 **Sec. 15. 22 MRSA §3174-LL** is enacted to read:

21 **§3174-LL. Medical support for children**

22 The department shall ensure that the parents of children eligible for and enrolled in
23 Medicaid under section 3174-G provide medical child support to the extent authorized
24 under Title 19-A, section 2006 and the Private Health Insurance Premium Program and in
25 accordance with the guidelines in this section.

26 **1. Exceptions to enrollment in health insurance plans.** The department may not
27 petition the court in any proceeding regarding a new or modified medical child support
28 order to require a parent with an income below 200% of the nonfarm income official
29 poverty line to purchase private health insurance or enroll in a group health plan unless
30 such enrollment is available at no cost or the parent is eligible for assistance under section
31 18.

32 **2. Exception to payment of cash medical support.** Except as provided in Title 19-
33 A, section 2006, subsection 5, paragraphs F and G the department may not petition the
34 court in any proceeding regarding new or modified medical child support order to require
35 a parent with an income between 150% and 200% of the nonfarm income official poverty
36 line to pay cash medical support or for any extraordinary medical expenses as defined at
37 Title 19-A, section 2001, subsection 4.

38 **Sec. 16. Third-party liability unit established.** The Department of Health and
39 Human Services shall establish a centralized 3rd-party liability unit that will work to

1 maximize the use of private health insurance coverage pursuant to the Maine Revised
2 Statutes, Title 22, section 18.

3 **Sec. 17. Rules.** The Department of Health and Human Services shall adopt routine
4 technical rules pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-
5 A to implement this Act.

6 **Sec. 18. Contingent effective Date.** The provisions of this Act will be effective
7 upon adoption of the final federal rules for 45 Code of Federal Regulations, Parts 302 to
8 305 and 308.

9

SUMMARY

10 This bill requires the court, hearing officers or applicable administrative agency to
11 consider, when determining new or modified orders for child support, a means to provide
12 support for a child's health care expenses, including but not limited to enrollment in
13 employer-sponsored group health insurance plans, purchase of private health insurance
14 plans, participation in public health insurance plans and cash payments of premiums,
15 copayments, deductibles and routine and extraordinary medical expenses not otherwise
16 covered by health insurance plans. It requires plaintiffs and defendants to provide
17 information related to their ability to provide medical child support including information
18 on employer-sponsored group health insurance and private health insurance available to
19 the plaintiff and defendant as part of the affidavits, medical child support and child
20 support worksheets and other relevant information that the parties are required to file with
21 the court. It requires the court or hearing officer to review the information submitted by
22 the plaintiff and defendant and to determine the amount of medical child support to be
23 contributed by each and how that support is to be payable. The bill exempts parties with
24 incomes below 200% of the federal poverty guidelines from purchasing employer-
25 sponsored group or private health insurance as part of their medical child support
26 obligation unless such coverage is available at no cost. It allows the court or hearing
27 officers to order parties with incomes between 150% and 200% of the federal poverty
28 guidelines to make payments toward the cost of public insurance based on a sliding scale
29 pursuant to the Maine Revised Statutes, Title 22, section 18 and chapter 855. It requires
30 any amount of medical support payment that a noncustodial parent whose income is
31 above 200% of the federal poverty guidelines is ordered by a court or administrative
32 agency to pay to a custodial parent whose income is below 200% of federal poverty
33 guidelines to first be used by the custodial parent to offset the premium for public health
34 insurance coverage for the child. It requires the Department of Health and Human
35 Services to maximize enrollment in the Private Health Insurance Premium Program
36 pursuant to Title 22, section 18 and allows persons enrolled in the Private Health
37 Insurance Premium Program with children eligible for Medicaid under Title 22, section
38 3174-G to be eligible for MaineCare benefits not otherwise provided by the private or
39 employer-sponsored group health plan. It requires the Department of Health and Human
40 Services to establish a sliding scale for applicable premiums and cost-sharing amounts
41 that do not exceed the amounts established under Title 22, section 3174-T to the extent
42 that participation in Title 22, section 18 is the result of a medical child support order
43 under Title 19-A, section 2004. It allows people who have received Medicaid for their
44 children for the past 3 months whose income exceeds limits pursuant to Title 22, section

1 3174-G, subsection 1, paragraph E-1 to purchase coverage for up to 18 months at
2 premiums not to exceed those under the Katie Beckett program and limits contributions
3 toward administrative costs to the maximum amount allowed under COBRA. It makes
4 working disabled persons with unearned income that is equal to or below 150% of the
5 nonfarm income official poverty line and with a combined total earned and unearned
6 income that does not exceed 250% of the nonfarm income official poverty line eligible
7 for Medicaid. It makes young adults who are 19 years of age or 20 years of age when the
8 household income is equal to or below 200% of the nonfarm income official poverty line
9 eligible for Medicaid. It requires the Department of Health and Human Services to ensure
10 that the parents of children eligible for Medicaid under Title 22, section 3174-G provide
11 medical child support as defined in Title 19-A, section 2001, subsection 11 to the extent
12 authorized under Title 19-A, section 2006, to the extent possible through the Private
13 Health Insurance Premium Program pursuant to Title 22, section 18 and in accordance
14 with the guidelines in this section. It prohibits the department from petitioning the court
15 in any new or modified medical child support order to require a parent with an income
16 below 200% of the nonfarm income official poverty line to purchase private health
17 insurance or enroll in an employer-sponsored group health plan unless such enrollment is
18 available at no cost or the parent is eligible for assistance under Title 22, section 18 or
19 from making an administrative determination with the same effect. It prohibits the
20 department from petitioning the court in any new or modified medical child support order
21 to require a parent with an income between 150% and 200% of the nonfarm income
22 official poverty line to include cash medical support or any extraordinary medical
23 expenses as defined at Title 19-A, section 2001 or from making an administrative
24 determination with the same effect. It requires the Department of Health and Human
25 Services to establish a centralized 3rd-party liability unit that will work to maximize the
26 use of private health insurance coverage pursuant to Title 22, section 18 and to adopt
27 routine technical rules.