

No. 1994-150

AN ACT

SB 710

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, implementing the provisions of the Omnibus Budget Reconciliation Act of 1993 relating to required State laws for medical child support; and further providing for improvements in child support enforcement and for acknowledgment and claim of paternity.

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

Section 1. Sections 4326(g), (h), (i), (j), (k) and (l) and 4342(a) of Title 23 of the Pennsylvania Consolidated Statutes are amended and the sections are amended by adding subsections to read:

§ 4326. Mandatory inclusion of child medical support.

* * *

(g) Obligations of insurance companies.—Every insurer doing business within this Commonwealth shall be obligated as follows:

(1) **[to receive, process and pay claims to a custodial parent who has complied with subsection (i) in the same manner that the insurer is responsible to receive, process and pay claims to other insureds under the policy;]** *to permit the custodial parent or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent and to make payment on such claims directly to such custodial parent, the provider or, in the case of Medical Assistance patients, to the Department of Public Welfare;*

(2) *to provide such information to the custodial parent as may be necessary to obtain benefits, including copies of benefit booklets, insurance contracts and claims information [to custodial parents];*

(3) *if coverage is made available for dependents of the insured, to make such coverage available to the insured's children without regard to enrollment season restrictions, whether the child was born out of wedlock, whether the child is claimed as a dependent on the parent's Federal income tax return, whether the child resides in the insurer's service area, the amount of support contributed by a parent, the amount of time the child spends in the home or the custodial arrangements for the child;*

(4) *to permit the enrollment of children under court order [within 60 days of the issuance] upon application of the custodial parent, domestic relations section or the Department of Public Welfare within 30 days of receipt by the insurer of the order; [and]*

(4.1) not to disenroll or eliminate coverage of any child unless the insurer is provided satisfactory written evidence that a court order requiring coverage is no longer in effect or that the child is or will be enrolled in comparable health coverage through another insurer which will take effect no later than the effective date of such disenrollment;

(4.2) to receive, process and pay claims (whether or not on behalf of a child), including electronically submitted claims, submitted by the Department of Public Welfare within the time permitted by law without imposing any patient signature requirement or other requirement different from those imposed upon providers, agents or assignees of any insured individual;

(5) to provide the custodial parent who has complied with subsection [(i)] (j) with the same notification of termination or modification of any health care coverage due to nonpayment of premiums or other reason as is provided to other insureds under the policy[.]; and

(6) except as provided in paragraph (4.2), to not take into account the fact that any individual, whether or not a child, is eligible for or is being provided medical assistance when enrolling that individual or when making any payments for benefits to the individual or on the individual's behalf.

(h) Obligations of noninsurers.—To the maximum extent permitted by Federal law, the obligations of subsection (g) shall apply to noninsurers providing health care coverage within this Commonwealth, including health maintenance organizations, self-insured employee health benefit plans, and to insurers providing benefits, directly or indirectly, through stop-loss coverage to self-insured plans] and any other entity offering a service benefit plan.

(h.1) Obligations of employers.—Every employer doing business within this Commonwealth shall be obligated as follows:

(1) in any case in which a parent is required by a court order to provide health coverage for a child and the parent is eligible for family health coverage, the employer shall permit the insured parent to enroll any child who is otherwise eligible without regard to any enrollment season restrictions;

(2) if the insured parent is enrolled but fails to make application to obtain coverage for such child, to enroll the child under the family coverage upon application by the child's other parent, the domestic relations section or the Department of Public Welfare; and

(3) not to disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that the court or administrative order is no longer in effect, the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment or the employer has eliminated family health coverage for all of its employees.

(i) **Obligations of custodial parent.**—The custodial parent shall comply with the insurer's existing claim procedures and present to the insurer one of the following documents:

(1) a copy of a court order [**providing for payment of medical expenses and/or maintenance of medical insurance coverage on behalf of the child by the custodial parent; or**] *as defined in subsection (l); or*

(2) a release signed by the insured permitting the insurer to communicate directly with the custodial parent.

(j) **Enforcement of order.**—*The employee's share, if any, of premiums for health coverage shall be deducted by the employer and paid to the insurer or other entity providing health care coverage.* If an obligated parent fails to comply with the order to provide health care coverage for a child [or], *fails to pay medical expenses for a child or receives payment from a third party for the cost of medical services provided to such child and fails to reimburse the custodial parent or provider of services,* the court shall:

(1) If, after a hearing, the failure or refusal is determined to have been willful, impose the penalties of section 4345(a) (relating to contempt for noncompliance with support order).

(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child and for any premiums paid or provided for the child during any period in which the obligated parent failed or refused to provide coverage. Failure to comply with an order under this paragraph shall be subject to section 4348 (relating to attachment of income).

(3) Upon failure of the obligated parent to make this payment or reimburse the custodial parent and after compliance with due process requirements, treat the amount as arrearages.

(k) **Enforcement against insurers.**—Any insurer or other entity which violates the obligations imposed upon it under subsection (g) or (h) shall be civilly liable for damages and may be adjudicated in contempt and fined by the court.

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

“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 corporation or person incorporated or doing business in this Commonwealth by virtue of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921; a hospital plan corporation as defined in 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations); a professional health service plan corporation as defined in 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations); a beneficial

society subject to 40 Pa.C.S. Ch. 65 (relating to fraternal benefit societies); a health maintenance organization; or any other person, association, partnership, common-law trust, joint stock company, nonprofit corporation, profit corporation or other entity conducting an insurance business.

“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; and

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

§ 4342. Expedited procedure.

(a) General rule.—The Supreme Court shall by general rule provide for expedited procedures for the determination of ***paternity and the determination*** and enforcement of support. The procedures shall include an office conference; a conference summary to the court by the hearing officer; an opportunity for the court to enter an order without hearing the parties; and an opportunity for the parties to demand a full hearing by the court.

* * *

(e) Default.—The court shall enter a default order establishing paternity and enforcing support upon a showing that the defendant has been properly served and has not appeared.

Section 2. Section 4343(c) of Title 23 is amended to read:

§ 4343. Paternity.

* * *

(c) Genetic tests.—

(1) Upon the request of any party to an action to establish paternity, the court shall require the child and the parties to submit to genetic tests.

(2) Genetic test results [shall be considered prima facie evidence of paternity.] ***indicating a 99% or greater probability that the alleged father is the father of the child shall create a presumption of paternity which may be rebutted only by clear and convincing evidence that the results of the genetic tests are not reliable in that particular case.***

(3) To ensure the integrity of the specimen and that the proper chain of custody has been maintained, the genetic tests of the biological mother, the child or children in question and the alleged father should be conducted by an established genetic-testing laboratory in the course of its regularly conducted business activity, and certified records should be issued. ***The certified records shall be admissible into evidence without further foundation, authentication or proof of accuracy if no objection is made within ten days prior to trial.*** The laboratory must be certified by

either the American Association of Blood Banks or the American Association for Histocompatibility and Immunogenetics.

(4) A fee for performing genetic tests may be imposed on any individual who is not a recipient of public assistance. The amount of the fee will be in accordance with applicable Federal regulation.

(5) A determination of paternity made by another state, whether through judicial proceedings, administrative proceedings or by acknowledgment of paternity, shall be given full faith and credit in the courts of this Commonwealth.

(6) A determination of nonpaternity made by another state with respect to a public assistance recipient shall not be binding upon the Department of Public Welfare unless the defendant shows that the Department of Public Welfare had actual notice of the proceedings, including the date and time of any trial, and a fair opportunity to participate in all material proceedings through counsel of its own choice.

Section 3. Section 5103(a) and (b) of Title 23 are amended and the section is amended by adding subsections to read:

§ 5103. Acknowledgment and claim of paternity.

(a) Acknowledgment of paternity.—The father of a child born to an unmarried woman may file with the Department of [Health] *Public Welfare*, on forms prescribed by [it] *subsection (c)*, an acknowledgment of paternity of the child which shall include the consent of the mother of the child, supported by her affidavit. [The department shall, upon receipt of the acknowledgment, proceed as provided in section 603(a) of the act of June 29, 1953 (P.L.304, No.66), known as the Vital Statistics Law of 1953, and] *In such case*, the father shall have all the rights and duties as to the child which he would have had if he had been married to the mother at the time of the birth of the child, and the child shall have all the rights and duties as to the father which the child would have had if the father had been married to the mother at the time of birth. [The acknowledgment may also provide for the assumption by the child of the surname of the father or other name desired by the parents.]

(b) Claim of paternity.—If the mother of the child fails or refuses to join in the acknowledgment of paternity provided for in subsection (a), the Department of [Health] *Public Welfare* shall index it as a claim of paternity. The filing and indexing of a claim of paternity shall not confer upon the putative father any rights as to the child except that the putative father shall be entitled to notice of any proceeding brought to terminate any parental rights as to the child.

* * *

(d) Conclusive evidence.—An acknowledgment of paternity shall constitute conclusive evidence of paternity in any action to establish support. An acknowledgment of paternity may be set aside by the court only upon clear and convincing evidence that the defendant was unaware of the

fact that he was acknowledging paternity when the acknowledgment was signed.

(e) Transfer.—The Department of Health shall transfer to the Department of Public Welfare all acknowledgments or claims of paternity filed with the Department of Health under prior statutes.

(f) Certifications.—The Department of Public Welfare shall provide necessary certifications under Part III (relating to adoption) as to whether any acknowledgment or claim of paternity has been filed in regard to any child who is a prospective adoptive child.

Section 4. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 5. The amendment of 23 Pa.C.S. §§ 4326, 4343 and 5103 shall apply to all actions pending on the effective date of this act.

Section 6. This act shall take effect immediately.

APPROVED—The 16th day of December, A.D. 1994.

ROBERT P. CASEY