



Geoffrey E. Snyder
Commissioner

The Commonwealth of Massachusetts
Department of Revenue
Office of the Commissioner
P.O. Box 9550
Boston, MA 02114-9550

August 4, 2020

Michael D. Hurley, Senate Clerk
Office of the Clerk of the Senate
State House, Room 335
Boston, MA 02133

Mr. Steven T. James, House Clerk
Office of the Clerk of the House
State House, Room 145
Boston, MA 02133

The Honorable Michael J. Rodrigues, Chair
Senate Committee on Ways and Means
State House, Room 212
Boston, MA 02133

The Honorable Aaron Michlewitz, Chair
House Committee on Ways and Means
State House, Room 243
Boston, MA 02133

Honorable Clerk Hurley, Clerk James, Chairman Rodrigues and Chairman Michlewitz,

Pursuant to Section 31 of Chapter 34 of the Massachusetts General Laws, Acts of 2019, the Child Support Enforcement Division of the Department of Revenue, in consultation with the Chief Justice of the Trial Court of the Commonwealth, hereby submits a report on implementation of medical legislation providing health care coverage for children.

If you have any questions please contact me (snyderge@dor.state.ma.us) or Michele Cristello, Deputy Commissioner of the Child Support Enforcement Division (cristellom@dor.state.ma.us).

Sincerely,

A handwritten signature in dark ink, appearing to read "Geoffrey E. Snyder".

Geoffrey E. Snyder
Commissioner

cc: The Honorable Paula M. Carey, Chief Justice, Massachusetts Trial Court
The Honorable John D. Casey, Chief Justice, Massachusetts Probate and Family Court
Michael J. Heffernan, Secretary of Administration and Finance



2020 Medical Legislation Report

**Commonwealth of Massachusetts
Department of Revenue
Child Support Enforcement Division**

**Michele A. Cristello
Deputy Commissioner**

July 2020

Purpose

Pursuant to Chapter 34 of the Acts of 2019, the Child Support Enforcement (CSE) Division of the Department of Revenue (DOR) is hereby submitting to the House and Senate Clerks and the House and Senate Committees on Ways and Means a report detailing the implementation and effect of the changes to the ordering of health care coverage for children. This legislation directed DOR, in consultation with the Chief Justice of the Trial Court, to file a report with “(i) information on the implementation process; and (ii) an analysis of the effect of [] sections 5 to 21 [of chapter 34] ... on health care coverage for children.”

As set forth below, DOR took immediate steps to implement the legislative changes. Due to the COVID-19 public health crisis, there is limited data available to assess the effect these changes have had on health care coverage for children.

Historical Requirements

When a court issues a child support order, the court must also address the child’s health care coverage. Prior to the 2019 legislative changes, section 12(b)(5) of chapter 119A of the General Laws required that any child support order include “a provision requiring the obligor to obtain health care coverage for his child or children, if such coverage is available to the obligor through his employer or is otherwise available to the obligor at reasonable cost” and provided that “health care coverage shall be deemed available to the obligor at reasonable cost if it is available through his employer.” The court did not have the authority to order the obligee to provide coverage. In certain circumstances where health insurance was available through employment, the court could make findings that obtaining such health insurance created an undue hardship on the obligor and therefore not order the obligor to provide health insurance.

Key Legislative Changes

The 2019 legislative changes ensured that the Commonwealth’s child support laws remained in compliance with federal medical support requirements regarding what factors the court must consider when entering a health care coverage order. The legislation modified the circumstances under which health care coverage can be ordered and who can be ordered to provide such coverage and clarified that coverage can include the child’s enrollment in Medicaid.

The medical support legislative changes were included in supplemental budget legislation, which was signed by Governor Baker on July 8, 2019. The changes became effective immediately upon signing. As of that date, a court may order the child support obligor, the child support obligee, or both parents to provide health care coverage for their child. The court must apply the following rules when issuing a health care coverage order:

- Before ordering a parent to provide health care coverage for a child, the court must find that the coverage is available at reasonable cost and accessible to the child.
- To be accessible, health care services must be available within 15 miles of the child’s primary residence.

- To be reasonable in cost, the health care coverage cannot exceed 5% of the parent's gross income.
- Private health insurance is deemed not available at reasonable cost to any parent whose gross income does not exceed 150% of the federal poverty guidelines for that parent's family size.
- If a parent is on MassHealth or receives MassHealth for the benefit of the child, the court cannot order that parent to provide private health insurance for the child.
- When a child is on MassHealth (or an equivalent program in another state), the court shall order the custodial parent to maintain the coverage for as long as the child remains eligible. The court may also order the other parent to provide private health insurance that, in addition to being reasonable in cost and accessible to the child, is in the best interest of the child and does not create an undue hardship for either parent.

Implementation Process

On July 11, 2019, CSE's Chief Legal Counsel sent an email to all CSE attorneys notifying them that the new legislation was effective immediately and provided a detailed summary of the changes, together with a copy of Chapter 34 of the 2019 Acts and Resolves. Attorneys were asked to report any issues or challenges they encountered due to the new provisions so that DOR could incorporate answers into a medical support legislation training being developed by the Office of Chief Legal Counsel.

The Administrative Office of the Probate and Family Court on July 11, 2019, notified all judges, chief probation officers, law clerks and research attorneys that the health care coverage requirements in child support orders had changed effective immediately. They were all provided with a red-lined and a clean copy of the sections of Chapter 34 of the 2019 Acts and Resolves that related to health care coverage, as well as a red-lined version of the effected General Laws.

On July 22, 2019, CSE's Chief Legal Counsel and senior attorneys within that office met with CSE Regional Counsels and the senior attorneys in each regional office to discuss how the courts were addressing medical support orders in the recent DOR Probate and Family Court sessions: particularly, how judges were addressing and incorporating the new legislative requirements when entering orders. At the meeting, the attorneys also reviewed a draft medical support implementation presentation for CSE attorneys. Regional Counsels then shared the draft presentation with their staff for provisional use while more information in response to findings from the Probate and Family Court sessions was pending.

On August 30, 2019, the Chief Legal Counsel issued the medical support implementation presentation to all CSE attorneys. The presentation set forth the relevant legislative changes, addressed the main issues and challenges CSE attorneys had encountered in their hearings since the legislative changes went into effect, and provided updated language to use for medical support orders. DOR met with the Administrative Office of the Probate and Family Court on September 23, 2019, at which time changes to legal practice as a result of the new legislation were discussed. DOR's medical support implementation presentation was shared with the Court on September 26, 2019.

DOR held a statewide attorney meeting on November 1, 2019. CSE's Director of Special Litigation delivered a medical support presentation to the attorneys in attendance followed by a discussion concerning issues the attorneys were encountering in court and ways to improve medical support

language in proposed orders and judgments. Subsequently, based on input received at the meeting, new medical support language was circulated to CSE attorneys to use in orders and judgments.

After that meeting, CSE attorneys, through their Regional Counsels, notified the Chief Legal Counsel of any additional medical support questions encountered in litigation. Most questions related to the appropriate language to use in stipulations of the parties and in proposed medical support orders.

Analysis of Effect on Health Care Coverage for Children

DOR was asked to provide an analysis on the effect of the provisions on health care coverage for children. The legislation, enacted on July 8, 2019, would under normal circumstances provide for 11 months of data. However, due to the COVID-19 public health crisis, the Probate and Family Courts effectively closed to all but emergency matters on March 17, 2020 and more recently transitioned to hearing cases remotely, with DOR limited to a very small number of hearings in June. Essentially, DOR has 7 months of data available to assess the legislation's impact.

DOR compared its records for health care coverage orders entered from January – June of 2019, the six months immediately preceding the legislative changes, to orders entered from July – December of 2019; DOR also reviewed the first two months of 2020, prior to COVID-19. The chart below shows, for each time period, the number of cases where custodial parents were ordered to provide health care coverage, whether through private insurance or maintaining MassHealth for the child; the number of cases where the noncustodial parent was ordered to provide private insurance; and the number of cases where neither parent was ordered to provide health care coverage for the child.

	Custodial Parent to Provide	Noncustodial Parent to Provide	Neither Parent to Provide
Pre-Legislative Changes (January – June 2019)	393	392	1467
Post-Legislative Changes July 2019 – Dec. 2019	1139	393	1276
Jan. 2020 – Feb. 2020	716	135	511

As the chart indicates, the number of cases where the noncustodial parent was ordered to provide health insurance or where neither party was ordered to provide health insurance did not change significantly post-legislation. However, there was a significant increase in the number of cases where the custodial parent was ordered to provide health care coverage for the child, whether through private insurance or by maintaining MassHealth. The first two months of 2020 reflect a similar pattern. This dramatic increase in the number of custodial parents providing health care coverage is attributable to the legislative requirement regarding maintaining MassHealth.

Conclusion

DOR implemented steps to enable its attorneys to present the various medical support options available to the court based on the 2019 statutory amendments as applied to particular factors in each case before the court. The child's MassHealth status is considered in every case, and DOR asks the court to

order the parent to maintain MassHealth for any child presently enrolled. When private insurance is available to either party, DOR assists the court in determining whether the insurance is available at reasonable cost and accessible to the child, as defined in the statute. DOR requests the court to order a parent to provide private health insurance in any case where the statutory requirements are satisfied.

Under the new legislation, if health insurance is not deemed reasonable in cost and accessible to the child at the time of hearing, the court can order parents to notify DOR or the other parent when it becomes available. Upon notification, either the parent or DOR may return to court to modify the order. It remains to be seen whether the definition of reasonable cost will impact the number of children that will be eligible for private health insurance, particularly in light of COVID-19.

COVID-19 may have such long-lasting, severe effects that any future assessment of the impact of these legislative changes may be difficult to undertake. The loss of employment and the corresponding loss of employer-based health care coverage, changes to the cost of health insurance, availability of individual coverage purchased through the health insurance marketplaces and expansion of Medicaid eligibility under the Affordable Care Act all have an impact on what options are available to a court when entering health care orders. While it will be possible to track what type of health care coverage is ordered in a given case, it will be difficult to determine whether health care orders entered post-COVID reflect the economic realities or result from the legislative changes.