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Final Analysis

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ACT SUMMARY

Basic child support schedule

- Repeals the statutory basic child support schedule and requires the Ohio Department of Job and Family Services (ODJFS) to adopt rules to create the schedule.
- Requires the new schedule to incorporate a self-sufficiency reserve in order to create an adjusted schedule based on 116% of the federal poverty level for a single person.
- Requires ODJFS to update the basic child support schedule created in rules and the self-sufficiency reserve every four years to reflect changes in the Consumer Price Index for All Urban Consumers.

Child support worksheets

- Repeals the statutory worksheet forms used to calculate child support and requires ODJFS to adopt rules governing the creation of child support worksheet forms and a standard instruction manual to provide guidance and assistance for calculating child support.
- Allows ODJFS to revise the worksheet and manual as needed, but requires revisions to both at least once every five years.

Child Support Guideline Advisory Council review

- Makes changes to the law requiring ODJFS, with the assistance of a Child Support Guideline Advisory Council, to conduct a review every four years to determine whether child support orders issued under the basic child support schedule and worksheets adequately provide for the needs of children subject to child support orders.

Child support calculation

- Requires that child support calculations are to be based on "income," which is gross income plus imputed income instead of basing the calculations on "gross income" as required in prior law.
- Allows a court or child support enforcement agency (CSEA) to determine obligation amounts on a case-by-case basis when the combined annual income of both parents is greater than the maximum annual income established in the basic child support schedule adopted by ODJFS.
- Provides that if the combined annual income of both parents falls below the minimum annual income established in the basic child support schedule adopted by ODJFS, the court or CSEA must apply the minimum support amount.
- Makes the following changes regarding calculation of the amount of child support to be paid:
 - Permits deduction from a parent's annual income of the annual amount of any court-ordered spousal support that is actually paid, excluding any ordered payments on arrears.
 - Requires a court or CSEA to adjust the amount of child support to be paid by a parent who has children not subject to the order, instead of deducting from gross income amounts:
 - Paid for children under preexisting support order; or
 - That equal the federal income tax exemption for children with another parent not involved in the child support proceedings.
 - Establishes additional factors that, if applicable, prevent a court or CSEA from determining a parent to be unemployed or underemployed, for purposes of imputing income.

- Provides that if a parent has an annual income subject to the self-sufficiency reserve, the parent's support obligation cannot be more than the obligation that would have resulted from an unadjusted schedule.
- Requires a deduction from the parent's annual child support obligations for any non-means tested benefits that a child subject to the order receives as a result of claims made by the parent.
- Requires both parents to share child care costs, and specifies factors that a court or CSEA must consider in determining child care costs.
- Requires a court or CSEA to reduce an annual child support obligation by 10% when a court issues a parenting time order that equals or exceeds 90 overnights per year.
- Amends the deviation factors that the court may consider when determining whether to deviate from the amount of child support that would otherwise result from the use of the basic child support schedule and worksheet.
- Permits a court to consider the following new deviation factors when determining whether to grant a deviation:
 - The child support obligee's income, if the obligee's annual income is equal to or less than 100% of the federal poverty level.
 - Extraordinary work-related expenses incurred by either parent.
 - Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated.
 - Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases.
 - Extraordinary child care costs required for the child or children that exceed the maximum statewide average cost, including extraordinary costs associated with specialized physical, psychological, or educational needs.
- Specifies that, if court-ordered parenting time exceeds 90 overnights per year, the court must consider whether to grant a child support deviation based on extended parenting time or extraordinary costs associated with parenting time in addition to any other adjustments granted if parenting time equals or exceeds 90 overnights per year.

- Requires the court to provide supporting facts regarding the denial of all child support deviations for court-ordered parenting time that equals or exceeds 147 overnights per year.
- Repeals "the amount of time the children spend with each parent" as an extraordinary circumstance permitting deviation from the amount of child support calculated pursuant to a shared parenting order.
- Permits a court to issue a separate order for private education and other appropriate expenses (though it is unclear if these expenses would be for medical purposes).
- Increases the minimum support obligation from \$50 to \$80 and permits CSEAs to impose minimum support obligations.

Health care

- Makes changes regarding the determination of responsibility for obtaining health insurance coverage, including establishing a rebuttable presumption that the child support obligee is the appropriate parent to provide health insurance coverage.
- Specifies circumstances that a court or CSEA may use to rebut the presumption, such as when the obligor wishes to provide health insurance coverage, when the obligor can obtain reasonably priced coverage through an employer or other source, or when the obligee is a nonparent individual or agency that has no duty to provide medical support.
- Repeals a provision that required a CSEA to give an obligor notice and an opportunity to be heard if the obligor believed there was a mistake of fact regarding a determination that private health insurance was available at a reasonable cost.
- Modifies the law governing when a parent cannot be ordered to provide health insurance coverage because the cost of coverage exceeds a certain threshold.
- Requires each child support order to specify that both the child support obligor and obligee are liable for the health care expenses of any children not covered by health insurance.
- Establishes a credit for the cost of providing health insurance coverage against a parent's annual income when calculating child support.
- Makes changes to the requirement for cash medical support in child support orders, including changing what cash medical support is used to pay, expanding who is required to pay it, and changing how it is determined and administered.

- Makes changes regarding the payment of extraordinary medical expenses.
- Changes the law governing accessibility of primary care services under private health insurance coverage.
- Provides for modification of a child support order if a court determines that insurance coverage under the order is inadequate to meet the medical needs of the child.

Other child support provisions

- Requires a CSEA reviewing a court child support order to apply deviations from the existing order to the revised amount of child support if the monetary or percentage value can be determined by the CSEA.
- Establishes a rebuttable presumption that the amounts withheld or deducted to recover overdue and unpaid support or arrearages under a terminated child support order are at least equal to the amount that was withheld or deducted under the terminated order.
- Eliminates a provision that allowed a CSEA to change the financial obligations of the parties to pay child support in accordance with the terms of the court or administrative child support order and cash medical support without a hearing or additional notice to the parties.

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CONTENT AND OPERATION

Overview

The act makes changes to (1) the basic child support schedule and worksheets, (2) the Child Support Guideline Advisory Council review, (3) how child support is calculated, (4) minimum child support order requirements, (5) how health care for the children covered by a child support order is handled, (6) the review and modification of child support orders, and (7) the collection of arrearages under terminated orders.



Basic child support schedule

Replaced by rules

The act repeals the statutory basic child support schedule. In its place, the act requires the ODJFS Director to create a schedule by rule pursuant to the Administrative Procedure Act (R.C. Chapter 119.).¹ Under continuing law, the schedule and applicable worksheet are used by courts and child support enforcement agencies (CSEAs) to calculate the actual monthly support obligation amount for the obligor.²

The new schedule is required to be based on the parents' combined annual income and must include a self-sufficiency reserve (see "**Self-sufficiency reserve**" below). The schedule under prior law was based on combined *gross* income. Under continuing law, "income" includes imputed income, whereas "gross income" does not expressly do so (although the term "income" is used in the definition of gross income). But continuing law permits imputed income to be included in calculating child support. Therefore, it is unclear what the change from "gross income" to "annual income" is intended to accomplish.³

The new schedule must consist of a table depicting the payments required, depending on the number of children subject to the order. The act requires the table to begin at an annual guideline income of \$8,400 and increase at \$600 increments to a maximum annual guideline income of \$300,000 (the prior law schedule was \$6,600 to \$150,000 in \$600 increments). The child support amount for each guideline income is to be determined by applying percentage-based formulas set forth in the act to the guideline income amounts. The act provides different formulas depending on the income and number of children subject to the order. Just like prior law, the resulting schedule is to be applicable up to six children.⁴

Self-sufficiency reserve

The schedule must also incorporate a self-sufficiency reserve based on 116% of the federal poverty level (FPL) amount for a single person, as reported by the U.S. Department of Health and Human Services in calendar year 2016. ODJFS, in order to incorporate the self-sufficiency reserve, must first create an unadjusted schedule as described above and then adjust it using statutory requirements and formulas. The

¹ R.C. 3119.021.

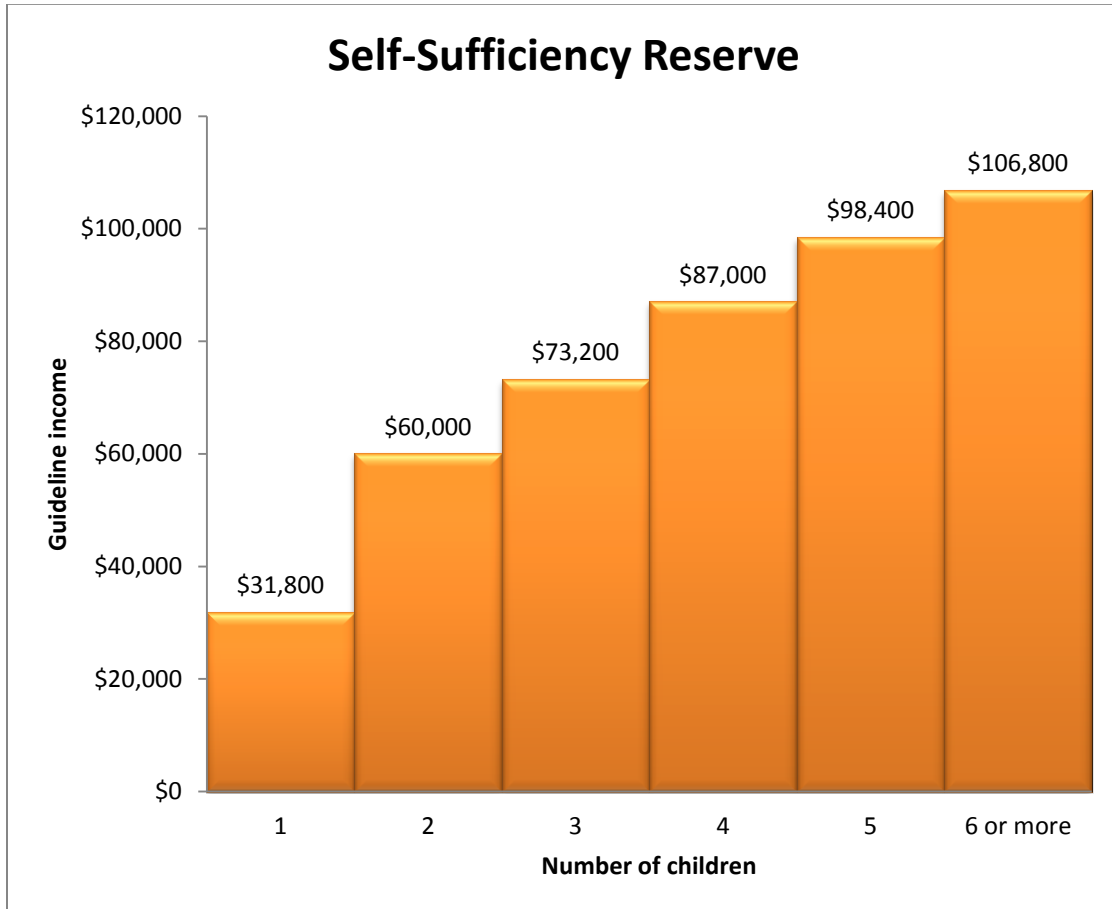
² R.C. 3119.02.

³ R.C. 3119.01(C)(9), (12), and (17), 3119.021(A), and 3119.05(I).

⁴ R.C. 3119.021(A) and (B)(1).



result is that the support amount must be adjusted (lowered) if income is below a certain guideline income. And that guideline income varies based on the number of children subject to the order. The following graph presents this self-sufficiency reserve as it would result from applying the formulas as they appear in the act, with the 2016 FPL for a single person.⁵

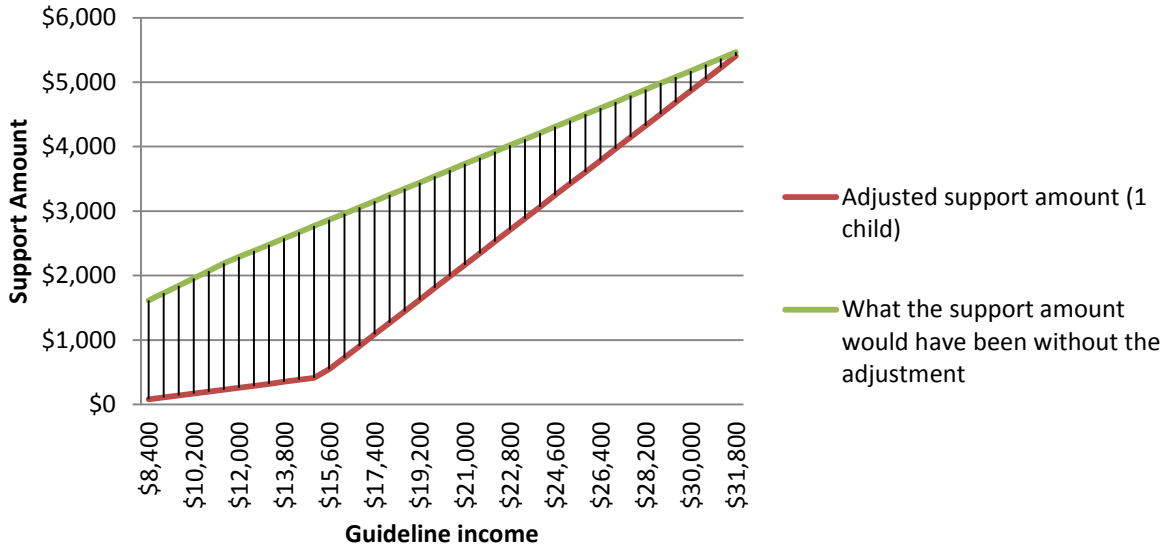


The following two graphs present the effect of the adjustment for the self-sufficiency reserve on support amounts when there is one child subject to the order (first graph) or two children subject to the order (second graph). The adjustment for the self-sufficiency reserve has a similar effect when there are additional children subject to the support order. Again, these tables were made by applying the formulas as they appear in the act, with the 2016 FPL for a single person.

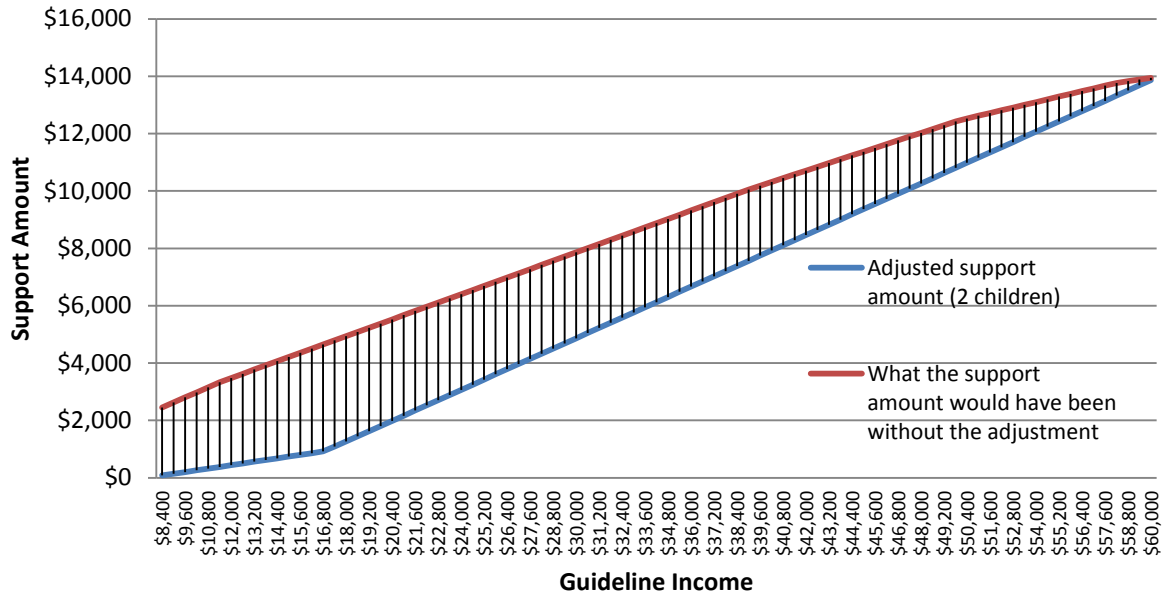
⁵ R.C. 3119.021(B)(2) and (C).



Effect of the Self-Sufficiency Reserve (1 child)



Effect of the Self-Sufficiency Reserve (2 children)



Update every four years

The act requires ODJFS to update the schedule and the self-sufficiency reserve every four years to reflect changes in the Consumer Price Index for All Urban



Consumers, as published by the U.S. Bureau of Labor Statistics (CPI-U) and changes in the FPL amount for a single person as reported by the U.S. Department of Health and Human Services. When updating the schedule for the most recent CPI-U, ODJFS must update the figures in the guideline income column for the percentage difference between the most recent CPI-U and the March 2016 CPI-U. When updating the reserve, ODJFS must set it based on 116% of the FPL in the most recent calendar year.⁶

Child support worksheets

The act repeals the statutory worksheet forms required to be used by courts and CSEAs when calculating child support under sole custody, shared parenting, and split custody situations. In their place, the act requires the ODJFS Director to adopt rules governing the creation of child support guideline worksheets and instructions that incorporate the requirements of the child support law for the calculation of child support and cash medical support obligations. Additionally, the Director must adopt standard worksheet forms for use by all courts and CSEAs and a standard instruction manual to provide guidance and assistance to those calculating support obligations. The act provides that the Director may revise the worksheets and the manual as needed, but must revise them at least once every five years.⁷

Child Support Guideline Advisory Council review

The act makes changes to the law requiring ODJFS, with the assistance of a Child Support Guideline Advisory Council that ODJFS constitutes, to conduct a review every four years of the basic child support schedule and to issue a report on any recommendations for statutory changes to the General Assembly.⁸

Scope of the review

Under prior law, the review was conducted to determine whether the child support orders issued in accordance with the schedule and worksheets adequately provided for the needs of children. The act adds that, in conducting the review, ODJFS may consider:

- The adequacy and appropriateness of the current schedule;
- Whether there are substantial and permanent changes in household consumption and savings patterns, particularly those resulting in

⁶ R.C. 3119.01(C)(6) and 3119.021(C)(1) and (2).

⁷ R.C. 3119.022.

⁸ R.C. 3119.023(A).



substantial and permanent changes in the percentage of total household expenditures on children;

- Whether there have been substantial and permanent changes to the federal and state income tax code, other than inflationary adjustments to such things as the exemption amount and income tax brackets; and
- Other factors.

The act also requires this review in addition to, and independent of, the update of the basic child support schedule that is required every four years as described above under "**Update every four years.**"⁹

Change to Council membership

Although the act retains nearly all the requirements regarding a Council, it does make a change to the membership. The act requires a Council to include:

- Common pleas court judges who have jurisdiction over domestic relations and juvenile cases that involve the determination of child support; and
- Attorneys whose practice includes a significant number of domestic relations or juvenile cases that involve the determination of child support.

Under prior law there was no requirement that the cases "involve the determination of child support." And prior law did not (1) require the common pleas judges to have jurisdiction over juvenile cases or (2) allow an attorney whose practice includes a significant number of juvenile cases to be a Council member.¹⁰

Report year

The act changes the cycle of the Council review. Under the act, ODJFS must make a report by March 1 of every fourth year after 2015. Under prior law, it was every fourth year after 1993, with the latest report made in 2013.¹¹

⁹ R.C. 3119.023(A) (R.C. 3119.024 under prior law).

¹⁰ R.C. 3119.023(B) (R.C. 3119.024 under prior law).

¹¹ R.C. 3119.023(C) (R.C. 3119.024 under prior law).



Child support calculation

Calculating obligations according to the schedule

Using the new basic child support schedule

Under the act, a court or CSEA must apply the new basic child support schedule that ODJFS must create under the act to the parents' combined annual incomes and each parent's individual income when calculating the amount of child support to be paid according to a court or administrative order. The act sets forth specific formulas for creating the new schedule that calculates support amounts for every possible income amount from \$8,400 to \$336,467.04. But, the act requires that if the combined annual income or individual income is between two amounts in the income column of the new schedule, the court or CSEA may use the support obligation (1) corresponding to the higher of the two amounts, (2) corresponding to the lower of the two amounts, or (3) calculate an obligation that is between those two amounts and corresponds proportionally to the parent's actual combined annual income or individual income.¹² It is not clear why any of those three options would apply considering that the new schedule creates no support obligation gaps.

Individual income and the self-sufficiency reserve

The act also provides that if the individual income of either or both of the parents is within the self-sufficiency reserve of the schedule (see "**Self-sufficiency reserve**" above), the court or CSEA must do both of the following:

(1) Calculate both of the following:

(a) The basic child support obligation for the parents using the schedule amount applicable to the combined annual income. This obligation will be the amount referred to under (2)(a), below, only if the combined annual income falls outside of the self-sufficiency reserve. Presumably, if the combined annual income falls within the self-sufficiency reserve, no further calculations, except for application of the worksheet and other applicable laws, are necessary to determine the obligation amount.

(b) The schedule amount applicable to the income in the self-sufficiency reserve. This could be two amounts if both parent's individual incomes are within the self-sufficiency reserve. It appears that this amount (or these two amounts) will be used in making the calculation required under (2)(b), below.

¹² R.C. 3119.021(B)(1) and 3119.05(G)(1) and (2).



(2) Determine the *lesser* of the following obligation amounts to be the applicable basic child support obligation:

(a) The amount that results from using the "*combined* annual income of the parents not in the self-sufficiency reserve of the schedule."

(b) The amount that results from using the "*individual* parent's annual income within the self-sufficiency reserve of the schedule."¹³

At first glance, it seems impossible that (2)(a), which is based on combined income, would ever be less than (2)(b), which is based on individual income. The reason is that higher incomes always correspond with higher support amounts in the basic schedule (see "**Replaced by rules**" above). And combined income would be higher than individual income. As a result, this part of the act may fail to adequately address what the intent might have been.

Combined annual income not covered by the new schedule

Income that exceeds the maximum amount in the new schedule

Continuing law provides that if the combined annual income of the parents is greater than the top end of the basic child support schedule (which is increased from \$150,000 to \$300,000 by the act), a court or CSEA, regarding court and administrative child support orders, respectively, must determine the child support obligor's support obligation on a case-by-case basis. In doing so, the court or CSEA must consider the needs and standards of the children subject to the order and of the parents. The court or CSEA cannot compute a basic child support obligation that is less than what the schedule and applicable worksheet would have computed for a combined annual income of \$300,000, unless the amount is determined to be unjust and inappropriate and thus not in the best interest of the children, obligor, or obligee. It is worth noting that the act provides a formula for calculating support amounts for incomes of every possible amount from \$300,000 to \$336,467.04.¹⁴ But the act does not require courts or CSEAs to use these formulas above \$300,000.

Income that is below the minimum amount in the new schedule

The act amends law that requires a court or CSEA to order a minimum support amount, with some exceptions, when combined annual income falls below the minimum amount in the schedule. The act updates language to reflect the increase in the minimum schedule amount, from \$6,600 to \$8,400. The act also changes the

¹³ R.C. 3119.05(G).

¹⁴ R.C. 3119.021(B)(1).



minimum support amount to \$80 a month for all children subject to the order. Prior law contained a minimum support amount of \$50 a month, but did not specify that the \$50 was for all children subject to the order.

The act also makes changes to the law governing orders for support amounts of less than the minimum. Prior law contained two provisions governing these orders. The first provision appeared to apply only to courts, and not CSEAs. It permitted a court to order no support, or a support amount of less than the minimum, in appropriate circumstances, such as medically verified or documented physical or mental disability or institutionalization in a facility for persons with a mental illness. The act retains this provision, but makes it applicable to both courts and CSEAs.

The second provision, which is repealed by the act, required that if the combined annual income of both parents was under \$6,600, a court or CSEA had to determine the child support amount on a case-by-case basis using the schedule as a guideline. The provision required the court or CSEA to determine the maximum child support amount that did not deny the obligor the means for self-support at a minimum subsistence level. The repealed provision also permitted the court or CSEA not to order any child support if: (1) the obligor proved that the obligor was totally unable to pay child support, (2) the court or CSEA determined that it would be unjust or inappropriate to order the payment of child support, and (3) the court or CSEA entered their determinations and findings in the journal.¹⁵

Specific computation requirements

The act amends and adds certain requirements and adjustments that must be considered when a court or CSEA computes the amount of child support to be paid pursuant to an order.

Deducting spousal support

The act excludes payment on arrears from the income deduction that is allowed under continuing law for any court-ordered spousal support that is actually paid. The act also clarifies that it is *annual* spousal support that must be deducted from *annual* income, rather than spousal support deducted from *gross* income.¹⁶

¹⁵ R.C. 3119.04 and 3119.06.

¹⁶ R.C. 3119.05(B).

Children in more than one household

Special calculations

The act eliminates requirements regarding deductions from a parent's gross income for amounts paid for children under pre-existing support orders and amounts for children with another parent not involved in the child support proceedings. In their place, the act requires a court or CSEA to adjust the amount of child support to be paid by a parent to give credit for children not included in the current calculation. In calculating the adjusted amount, the court or CSEA must use the basic child support schedule and do the following:

(1) Determine the amount of child support each parent would be ordered to pay for "all children for whom the parent has the legal duty to support," according to each parent's annual income. If the number of "children subject to the order" is greater than six, then the court or CSEA, to determine the appropriate amount for this step, must multiply the amount for three children by the appropriate factor in the following table:

Number of children	Factor
7	1.440
8	1.540
9	1.638
10	1.734
11	1.827
12	1.919
13	2.008
14	2.096
More than 14	2.182

(2) Next, compute a child support credit amount for each parent's children who are not subject to the child support order by dividing the amount calculated in (1) above by the total number of "children whom the parent is obligated to support" (this again is unclear) and multiplying that number by the number of that parent's children who are not subject to the child support order.

(3) Finally, determine the adjusted income of the parents by subtracting the credit for minor children not subject to the child support order computed under (2) above from the annual income of each parent "for the children each has a duty to support that are not subject to the child support order."¹⁷

¹⁷ R.C. 3119.05(B) and (C).

Special calculation issues

With regard to the first step in the calculation ((1) above), the act is unclear on three points. First, the phrase "all children for whom the parent has a legal duty to support" is unclear. It may mean the total number of children whom the parent must support, regardless of whether they are subject to the order. Or, it could refer only to the children subject to the order. The latter interpretation is supported by the fact that the act directs that if the number of "children subject to the order" is greater than six, then the court or CSEA must make a special calculation. The interpretation of this phrase could have a very significant impact on the amount of support that a parent is obligated to pay.

Second, if the phrase is interpreted to include children not subject to the order, the act is unclear as to whether the court or CSEA should use the adjusted or unadjusted amount for step (1). An example would be if the parent's income is within the self-sufficiency reserve for the number of children subject to the order, but outside of the self-sufficiency reserve for the total number of children. This interpretation would also impact the support amount.

Third, the act is unclear as to situations in which there are more than six children subject to the order. The act directs the court or CSEA, in that case, to multiply "the amount for three children" by the appropriate factor in the above table. There is no reference to the self-sufficiency reserve or adjusted amounts. Therefore, it is unclear whether the court or CSEA must multiply the *unadjusted* or *adjusted* amount for three children by the appropriate factor. This would also impact the support amount.

Determining when a parent is voluntarily unemployed or underemployed

The act adds the following to the factors under continuing law, that, if they exist, prevent a court or CSEA from (1) determining a parent to be voluntarily unemployed or underemployed, and (2) imputing income to that parent:

- The parent is receiving recurring monetary income from general assistance received under former Chapter 5113 of the Revised Code;
- The parent is approved for Social Security Disability Insurance benefits because of a mental or physical disability, or the court or CSEA determines that the parent cannot work based on medical documentation that includes a physician's diagnosis and opinion that the parent cannot work due to a mental or physical disability;
- The parent has proven that he or she has made a continuous and diligent effort, without success, to find and accept employment, including

temporary employment, part-time employment, or employment at less than his or her previous salary or wage;

- The parent is complying with court-ordered family reunification efforts in a child abuse, neglect, or dependency proceeding, which limits the parent's ability to earn income.¹⁸

Support obligation limitation under the self-sufficiency reserve

The act provides that if a parent who has an annual income subject to the self-sufficiency reserve of the basic child support schedule, the parent's support obligation cannot exceed the obligation that would result from the schedule that is not adjusted for the reserve.¹⁹

Adjustments for non-means tested benefits

The act adds that if a child subject to the order receives any non-means tested benefit as a result of claims of either parent, the benefit amount is to be deducted from that parent's annual child support obligation after all other adjustments have been made. If the benefit amount exceeds the child support obligation of the parent from whose claim the benefit is realized, the obligation becomes zero.²⁰

Sharing child care costs

The act requires that as part of the child support calculation, both parents must also share the costs of child care. A child support obligor must pay an amount equal to the obligor's "income share" of the "child care cost" for all children subject to the order.²¹ The act defines "child care cost" to mean the annual out-of-pocket costs for the care and supervision of a child or children subject to the order that is related to work or employment training.²² The act defines "income share" as the percentage derived from a comparison of each parent's annual income after allowable deductions and credits as indicated on the worksheet to the total annual income of both parents.²³

¹⁸ R.C. 3119.05(I)(1) to (4).

¹⁹ R.C. 3119.05(M).

²⁰ R.C. 3119.05(N).

²¹ R.C. 3119.05(O).

²² R.C. 3119.01(C)(2).

²³ R.C. 3119.01(C)(10).



The child care cost used in the child support calculation must:

- Be for child care determined to be necessary to allow a parent to work or for activities related to employment training;
- Be verifiable by credible evidence;
- Exclude reimbursed or subsidized child care costs, including any state or federal tax credit for child care available to the parent or caretaker, whether or not claimed; and
- Not exceed the maximum statewide average cost estimate provided by ODJFS.²⁴

If the obligor's annual income is subject to the self-sufficiency reserve of the basic support schedule, the obligor's share of the child care cost must be equal to the lower of the obligor's income share of the child care cost or 50% of the child care cost.²⁵

Reduction for parenting time

Under the act, a court or CSEA calculating the amount to be paid under a child support order must reduce by 10% the amount of the parent or parents' annual individual support obligation when a court has issued or is issuing a parenting-time order that equals or exceeds 90 overnights per year. The 10% reduction may be in addition to other deviations and reductions provided in the act and continuing law.²⁶ If requested by a child support obligee, however, a court may eliminate a previously granted adjustment if the child support obligor, without just cause, has not exercised the court-ordered parenting time. The act defines "court-ordered parenting time" as the amount of parenting time a parent is to have under a parenting time order or the amount of time the children are to be in the physical custody of a parent under a shared parenting order.²⁷

Deviations – generally

The act amends the factors that the court may consider when determining whether to deviate from the amount of child support that would otherwise result from the use of the basic child support schedule and worksheet. After consideration of the

²⁴ R.C. 3119.05(O)(1)(a) to (d).

²⁵ R.C. 3119.05(O)(2).

²⁶ R.C. 3119.051(A).

²⁷ R.C. 3119.01(C)(4) and 3119.051(B).



factors *and* determining that the amount of child support would be unjust or inappropriate and therefore not in the best interest of the child, continuing law permits the court to order an amount of child support that deviates from the amount determined pursuant to the schedule and worksheet. The changes made by the act are described below.²⁸

The law as written prior to the act	The act
Special and unusual needs of the children; and the physical and emotional condition and needs of the child.	Special and unusual needs of the child or children, including consideration of needs arising from the physical or psychological condition of the child or children.
Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support determination.	Repeals this provision.
Extended parenting time or extraordinary costs associated with parenting time, provided that this factor does not authorize and is not construed as authorizing any deviation from the schedule and the applicable worksheet, through the line establishing the actual annual obligation, or any escrowing, impoundment, or withholding of child support because of a denial of or interference with a right of parenting time granted by court order.	Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child or children for parenting time. See " Deviation determinations based on parenting time " below.
The child support obligor obtaining additional employment after a child support order is issued in order to support a second family.	Repeals this provision.
The financial resources and the earning ability of the child.	The financial resources and the earning ability of the child <i>or children</i> .
Disparity in income between parties or households; and the relative financial resources, other assets and resources, and needs of each parent.	The relative financial resources, <i>including</i> disparity in income between parties or households, other assets, and the needs of each parent.

²⁸ R.C. 3119.22 and 3119.23.



The law as written prior to the act	The act
No provision.	The child support obligee's income, if the obligee's annual income is equal to or less than 100% of the FPL.
No provision.	Extraordinary work-related expenses incurred by either parent.
The need and capacity of the child for an education and the educational opportunities that would have been available to the child had the circumstances requiring a court order for support not arisen.	The educational opportunities that would have been available to the child had the circumstances requiring a child support order not arisen.
The responsibility of each parent for the support of others.	The responsibility of each parent for the support of others, including support of a child or children with disabilities who are not subject to the support order.
No provision.	Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated.
No provision.	Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases.
No provision.	Extraordinary child care costs required for the child or children that exceed the maximum statewide average cost estimate issued by ODJFS as required by statute, including extraordinary costs associated with specialized physical, psychological, or educational needs.

The act repeals a provision that permitted a court to accept an agreement of the parents that assigned a monetary value to any of the factors or criteria in prior law that were applicable to their situation.²⁹

Deviation determinations based on parenting time

The act provides that, if court-ordered parenting time exceeds 90 overnights per year, the court must consider whether to grant a deviation. If the court-ordered parenting time equals or exceeds 147 overnights per year and the court does not grant a

²⁹ R.C. 3119.23.

deviation, the act requires the court to specify in the order the facts that are the basis for the court's decision.³⁰

Shared parenting deviation

The act makes changes to the law governing deviations from the child support obligations required under shared parenting orders. Continuing law permits a court to deviate from the support amount under a shared parenting order if that amount would be unjust or inappropriate "to the children or either parent" and not in the best interest "of the child" because of the extraordinary circumstances of the parents or because of any other factors for which deviations may be granted. "Extraordinary circumstances" previously included:

- The amount of time the "children" spend with each parent;
- The ability of each parent to maintain adequate housing for the "children";
- Each parent's expenses, including child care expenses, school tuition, medical expenses, dental expenses, and any other expenses the court considers relevant;
- Any other circumstances the court considers relevant.

The act repeals only the first (the amount of time the children spend with each parent) and leaves the rest unchanged.³¹

Child support amounts not included in "gross income"

The act clarifies the law governing what is not included in "gross income" and therefore not taken into account when child support is calculated. Prior law had said that gross income excluded child support received for children "who were not born or adopted during the marriage at issue." The act changes this to child support *amounts* received for children "who are not included in the current calculation."³²

³⁰ R.C. 3119.231.

³¹ R.C. 3119.24.

³² R.C. 3119.01(C)(12)(c).



Health care

Responsibility for providing health insurance

Obligee rebuttably presumed responsible

The act changes the law governing which parent, under a child support order, is responsible for providing health insurance coverage for the children subject to the child support order. The act specifies that the child support obligee is rebuttably presumed to be the parent to provide the health insurance coverage for the children under the child support order. The court or CSEA may consider the following factors to rebut this presumption:

- The obligor already has health insurance coverage for the children that is "reasonable in cost." The act defines a similar term, "reasonable cost" (see "**Reasonable cost**" below). But, it is not clear whether that definition applies to the term "reasonable *in* cost."
- The obligor already has health insurance coverage for the children that is not "reasonable in cost," but the obligor wishes to be named the health insurance obligor and provide the health insurance coverage.
- The obligor can obtain coverage for the children that is "reasonable in cost" through an employer or other source. For employer-based coverage, the court or CSEA must consider the length of time that the obligor has worked with the employer and the stability of the insurance.
- The obligee is a nonparent individual or an agency that has no duty to provide medical support.

The support order must specify that the obligee must provide coverage unless rebutted by one of the factors above.³³

Prior law did not impose a rebuttable presumption on the obligee. Instead, it required one of the following: (1) the obligor and obligee to obtain dual coverage, (2) the obligee to obtain coverage, if coverage was available at a more reasonable cost than to the obligor, or (3) the obligor to obtain coverage, if coverage was available at a more reasonable cost than to the obligee.³⁴

³³ R.C. 3119.30(B)(1).

³⁴ R.C. 3119.30(B)(1), (2), and (3) (under prior law).

When reasonable-cost coverage is unavailable

The act specifies that if private health insurance coverage is not available at a "reasonable cost" (see "**Reasonable cost**" below) to either the obligor or obligee at the time the court or CSEA issues the child support order, the order must require the *obligee* to obtain insurance not later than 30 days after it becomes available to the obligee at a "reasonable cost." The act also requires the obligee to inform the CSEA once the coverage is obtained.³⁵ It is unclear how this provision applies to an obligee that is a nonparent individual or agency that has no duty to provide medical support – because it is unclear what is "medical support."³⁶

Provision of information on health insurance

In any action or proceeding in which a court or CSEA is determining responsibility for health care of children under a child support order, the act requires each party to provide the court or CSEA the cost of self-only and family coverage under available policies, contracts, or plans. The act defines "family coverage" to mean the health insurance plan that provides coverage for the children who are the subject of a child support order.³⁷

Obligor's hearing opportunity on reasonable-cost coverage

The act repeals a provision that required a CSEA to give an obligor notice and an opportunity to be heard if the obligor believed there was a mistake of fact regarding a determination that private health insurance was available at a "reasonable cost" (see "**Reasonable cost**" below).³⁸

If health insurance becomes available to an obligor at a reasonable cost

The act requires that if private health insurance becomes available to the obligor at a "reasonable cost," the obligor must inform the CSEA (see "**Reasonable cost**" below). The act permits the obligor to then seek a modification of health insurance coverage from the court or CSEA.³⁹

³⁵ R.C. 3119.30(B)(2).

³⁶ See R.C. 3119.30(B)(1)(d).

³⁷ R.C. 3119.29(A) and 3119.31.

³⁸ R.C. 3119.30(D).

³⁹ R.C. 3119.30(B)(3).



Verification that health insurance is being provided

The act provides that each child support order contain a requirement that whoever is required to provide private health insurance must provide documentation to the CSEA, not later than 30 days after the order's issuance, that verifies that coverage is being provided.⁴⁰

Elimination of deadline to designate children as covered dependents

The act eliminates the 30-day deadline for a person required to provide health insurance coverage to designate the children as covered dependents under the health insurance.⁴¹

Notices to employers regarding health insurance

The act amends the statement required to be included in each child support order regarding notices to new employers to enroll the children in private health insurance. Specifically, the act limits those notices to situations "when insurance is not being provided by any other source."⁴²

The act also amends a notice required to be included in each child support order regarding an employer's release of coverage information. Specifically, the act clarifies that the notice is in regard to an employer of a person required to obtain coverage *through that employer*, and not just an employer of any person required to obtain coverage.⁴³

When a parent cannot be ordered to provide health insurance

Health insurance exceeds reasonable cost

The act modifies the law governing when a parent cannot be ordered to provide private health insurance under a child support order. The threshold under prior law was when the "contributing cost of private family health insurance" exceeded 5% of a parent's annual gross income. The act, in its modifications to the definition of "reasonable cost" (see "**Reasonable cost**" below) generally maintains the 5% threshold,

⁴⁰ R.C. 3119.32(A)(2).

⁴¹ R.C. 3119.32(C); R.C. 3119.32(G) (under prior law)

⁴² R.C. 3119.32(G).

⁴³ R.C. 3119.32(E).



but explains that it is the difference between self-only and family coverage that must exceed the 5%.⁴⁴

Exception

The act changes an exception to when a parent cannot be ordered to provide private health insurance. Prior law allowed that a parent could be ordered to provide private health insurance, even though it exceeded 5% of income, if *either* parent requested that the health insurance be obtained or maintained. By changing "either parent" to "the parent," the act appears to require the request of the parent who is subject to the child support order before the court or CSEA can order that parent to provide health insurance that exceeds the 5%.⁴⁵

Reasonable cost

Definition changes

The act mostly maintains the definition of "reasonable cost" regarding the cost of health insurance that was in prior law, but with minor wording changes. Under the act, "reasonable cost" means that the cost of private health insurance to the person required to provide health insurance coverage for the children subject to the child support order does not exceed 5% of the person's annual income. The act specifies that if the U.S. Secretary of Health and Human Services issues a regulation that redefines "reasonable cost" or a similar term or phrase, or clarifies the elements of cost used when determining reasonable cost relating to the provision of health care for children in a child support order, and if those changes are substantively different than the definitions and terms used in the act, those terms must have the same meaning as defined by the Secretary. Prior law contained a similar provision regarding definition changes by the Secretary.⁴⁶

Unemployed or underemployed parents

The act might be interpreted to have the effect of raising the threshold of what is a reasonable cost of health insurance for a parent who is voluntarily unemployed or underemployed. It may have this effect because, as part of the redefinition of "reasonable cost" under the act, the threshold to 5% of "annual income" is used. Under prior law, the threshold was 5% of "annual gross income." Under continuing law, "income" includes gross income as well as "potential income" imputed to a parent based

⁴⁴ R.C. 3119.29(G) and 3119.302(A)(2).

⁴⁵ R.C. 3119.302(A)(2)(a).

⁴⁶ R.C. 3119.29(G).



on the parent's experience, education, and other factors. Therefore, under the act, a voluntarily unemployed or underemployed parent might be considered to have a threshold of 5% of the parent's gross income plus potential income.⁴⁷

Dual liability for health care in the event that children are uninsured

The act makes changes to the law that requires a statement in child support orders regarding both parents' liability for health care. The act requires that each child support order specify that both the child support obligor and obligee are liable for the health care expenses for the children who are not covered by private health insurance. The act requires those health care expenses to be calculated according to a formula established by courts and CSEAs. The act does not specify what is to be done with the calculation.

Prior law contained a similar provision. It required a child support order to specify that the obligor and obligee were both liable for the "health care of the children" who were not covered by private health insurance or cash medical support (see "**Cash medical support**" below).⁴⁸

Credit for health insurance cost

The act provides that the cost of providing health insurance under a child support order is to be defrayed by a credit against that parent's annual income when calculating child support using the basic child support schedule and applicable worksheet. The credit is to be equal to the total actual out-of-pocket cost for health insurance premiums for the coverage. Any credit given will be less any subsidy, including a premium tax or cost-sharing reduction received by the parent providing the coverage.⁴⁹

Cash medical support

Overview

The act changes the nature of what "cash medical support" is, and changes how it is determined. The act also expands who must pay cash medical support under a child support order. And the act contains provisions for how cash medical support is paid, administered, and enforced.

⁴⁷ R.C. 3119.01(C)(9) and (17), 3119.29(G), and 3119.302(A)(2).

⁴⁸ R.C. 3119.30(A); R.C. 3119.29(A)(1) (under prior law).

⁴⁹ R.C. 3119.30(E).



How cash medical support is defined

The act changes the nature of "cash medical support," and therefore what costs it is used to pay. Under prior law, cash medical support was either: (1) an alternative to private health insurance coverage for the children under a child support order, if coverage was unavailable, or (2) an amount ordered to be paid to defray the costs of the children's health insurance or Medicaid. It also included amounts to pay for medical costs not covered by insurance.⁵⁰ Prior law also required the obligor, obligee, or both, to pay co-payments and deductibles under a health insurance policy, but did not refer to these payments as cash medical support.⁵¹ The act, on the other hand, defines cash medical support as the amount ordered to be paid in a child support order toward ordinary medical expenses, including co-payments, deductibles, and uninsured medical-related costs.⁵²

Related to this change, the act repeals provisions that pertained to the administration of payments for cash medical support when private health insurance was not provided.⁵³

Who must pay cash medical support

The act requires every child support order to include a cash medical support amount. Prior law limited the requirement to pay cash medical support to an obligor whose gross income was 150% or more of the FPL for an individual.⁵⁴

How cash medical support is determined

The act requires the cash medical support obligation to be an amount for each child subject to the order. That amount must be consistent with the amount determined and periodically updated by ODJFS, but also calculated in accordance with the basic child support schedule, the applicable worksheet, and other provisions of the child support law.⁵⁵ (It is unclear how the schedule, worksheet, and other provisions would pertain to cash medical support.) The act requires ODJFS to update the cash medical support amount periodically. The updates must be made in consideration of the Medical Expenditure Panel Survey conducted by the U.S. Department of Health and

⁵⁰ R.C. 3119.29(A)(1) and 3119.30(A), (C), (D), and (E) (under prior law).

⁵¹ R.C. 3119.32(D).

⁵² R.C. 3119.01(C)(1) and (14).

⁵³ R.C. 3119.30(D) and (E), 3119.302(A)(3), and 3119.32(I) (under prior law).

⁵⁴ R.C. 3119.30(C).

⁵⁵ R.C. 3119.02 and 3119.022.



Human Services for health care research and quality. The amount must be based on the most recent survey year data available. It must be calculated by multiplying the total amount expended for health services for children by the percentage that is out-of-pocket, divided by the number of individuals under 18 that have private insurance.⁵⁶

Under prior law, the amount for cash medical support was required to be the lower of: (1) 5% of the obligor's adjusted gross income, or (2) the obligor's share of the U.S. Department of Agriculture estimated annual health care expenditure per child. The ODJFS Director was required to create and *annually* update a table for determining the amount of cash medical support. The table had to incorporate potential combined gross incomes and the Department of Agriculture's estimates.⁵⁷

How cash medical support is paid

Under the act, the cash medical support must be paid through ODJFS by the child support obligor to the child support obligee (if the children subject to the order are not Medicaid recipients), or to the Department of Medicaid when a Medicaid assignment is in effect for any child under the support order. Prior law did not expressly require payments to go through ODJFS.⁵⁸

How cash medical support is administered and enforced

The act requires that cash medical support orders must be administered, reviewed, modified, and enforced in the same manner as the underlying child support order.⁵⁹

Extraordinary medical expenses; education expenses

The act modifies continuing law that permits a court to issue a separate order for extraordinary medical expenses. It modifies this law in four ways.

First, it changes the description of the order and the types of expenses that it may cover. The act refers to the order as a "separate medical support order" and allows it to cover orthodontia, dental, optical, and psychological services. Prior law referred to the order as a "separate order for extraordinary medical or dental expenses." It allowed the order to cover "orthodontia, psychological, appropriate private education, and other expenses."

⁵⁶ R.C. 3119.302(B).

⁵⁷ R.C. 3119.30(C) and 3119.302(B).

⁵⁸ R.C. 3119.30(D).

⁵⁹ R.C. 3119.303.



Second, the act allows a court to make an order for the payment of "private education, and other appropriate expenses," and requires it to do so by issuing a separate order. So, it appears the act requires an order for private education and other appropriate expenses to be separate from a medical support order. It is unclear to what extent the private education and other appropriate expenses would have to be related to medical needs.⁶⁰

Third, the act changes the threshold for when medical expenses become "extraordinary medical expenses." The threshold under prior law was when the uninsured medical expenses incurred for a child during a calendar year exceeded \$100. The act's threshold is when the uninsured medical expenses incurred for a child during a calendar year exceed the cash medical support amount owed during that year.⁶¹

Fourth, the act requires that a child support order must contain a requirement that the child support obligor, obligee, or both, pay extraordinary medical expenses for the children, under a formula established under the court (for a court child support order) or CSEA (for an administrative order).⁶²

Reimbursement for medical expenses

The act modifies continuing law that requires each order to contain a statement setting forth contact information for the individual to be reimbursed for medical expenses. Specifically, the act no longer requires a telephone number for the individual. And the act simplifies the statement by referring to "medical expenses" rather than "out-of-pocket medical, optical, hospital, dental, or prescription expenses."

The act repeals law that required an additional statement in each order that the health plan administrator could continue making medical payments directly to any health care provider under the insurance policy, contract, or plan.⁶³

Accessibility of care

The act permits a court or CSEA, when determining who is responsible for the health care of the children, to "[r]equire primary care services be accessible by public transportation" if public transportation is the obligee's only source of transportation.

⁶⁰ R.C. 3119.05(F).

⁶¹ R.C. 3119.01(C)(7).

⁶² R.C. 3119.32(D).

⁶³ R.C. 3119. 32(B).

The act refers to this as an "accessibility determination" and requires it to be included in the child support order.

The act repeals a law that permitted a court or CSEA to "allow private health insurance to be farther than 30 miles if . . . primary care services [were] accessible only by public transportation."⁶⁴

Health insurance and modification of child support orders

The act changes the law governing how a court must examine health insurance when it recalculates child support upon an obligor's or obligee's request for a modification. Specifically, the act provides that if a court determines that the medical needs of a child subject to a child support order are not being met because of inadequate health insurance coverage, the inadequate coverage must be considered a change of circumstance that is substantial enough to require a modification of the child support order. The act repeals a similar law that provided that if a court determined that the *child support amount* did not adequately meet the medical needs of a child, the "inadequate coverage" had to be considered a change of circumstance that was substantial enough to require modification of the *child support amount*. The act also eliminates a requirement that a court consider the cost of health insurance when recalculating the child support amount required under the current child support order.⁶⁵

Elimination of a CSEA's ability to change obligations without a hearing

The act eliminates a provision that allowed a CSEA to change the financial obligations of the parties to pay child support in accordance with the terms of the court or administrative child support order and cash medical support without a hearing or additional notice to the parties.⁶⁶ It is unclear how this provision operated under prior law.

Administrative reviews of court child support orders

The act provides that if a court child support order contains a deviation, the CSEA reviewing the order for purposes of determining whether the child support amount should be updated must apply the deviation from the existing order to the revised amount of child support, provided that the CSEA can determine the monetary

⁶⁴ R.C. 3119.29(C) and 3119.302(A)(4).

⁶⁵ R.C. 3119.79(A) and (B).

⁶⁶ R.C. 3119.32(I) (under prior law).

or percentage value of the deviation. If the agency cannot determine the value, the CSEA may not apply the deviation to the revised amount of support.⁶⁷

Collecting arrearages

The act provides that, in situations in which a child support order is terminated and withholding or deduction is initiated to collect the overdue and unpaid support or arrearage from the obligor, the amount withheld or deducted must be rebuttably presumed to be at least equal to the amount that was withheld or deducted under the terminated order. This provision is unclear, because it seems that the new withholding or deduction amount could easily be compared to the amount withheld or deducted under the terminated order. Consequently, there would be no reason to make presumptions about the amount. Nevertheless, the act requires this rebuttable presumption, and permits the court or CSEA to consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for "deviation from the presumed amount." Prior law, repealed by the act, required the amount withheld or deducted to *be* at least equal to the amount that was withheld or deducted under the terminated order.⁶⁸

Delayed implementation

The act specifies that all of the act's provisions take effect six months after the effective date of this act. During this six-month period, ODJFS must perform any automated system changes that are needed and may organize and oversee the training across the state of local CSEAs, lawyers who practice in child support, and judges who preside over child support cases.⁶⁹

HISTORY

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⁶⁷ R.C. 3119.63(B).

⁶⁸ R.C. 3121.36 and R.C. 3123.14.

⁶⁹ Section 3.

