

**SUPREME COURT OF PENNSYLVANIA  
DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

**RECOMMENDATION 71**

**Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.**

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**(e) Support Obligations When Custodial Parent Owes Spousal Support.**

Where children are residing with the spouse obligated to pay spousal support or alimony pendente lite (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support or alimony pendente lite shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support or alimony pendente lite, and awarding the net difference either to the non-custodial parent as spousal support/alimony pendente lite or to the custodial parent as child support as the circumstances warrant.

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**RULE 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.**

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**(b) Health Insurance Premiums.**

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no statutory duty of support is owed or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event this portion is not known or cannot be verified, it shall be calculated as follows. First, determine the cost per person by

dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

**[For example,]** Example 1. [i] If the parties are separated, but not divorced, and Husband pays \$200 per month [for] toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties - \$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.A. §4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

Example 2. If the parties are divorced and Father pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, the parties' child and two additional children from a previous marriage, the portion of the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the amount of the premium attributable to Father and the two other children is \$120 (\$40 per person multiplied by three) and that amount is deducted from the total cost of the premium, leaving \$80 (\$200 - \$120=\$80) to be allocated between the parties.

(3) Pursuant to 23 Pa.C.S.A. §4326, the non-custodial parent bears the initial responsibility of providing health care coverage for the children if it is available at a reasonable cost on an employment-related or other group basis.

(4) In cases in which the obligor is paying the cost of health insurance coverage and the obligee has no income or minimal income such that the obligor will bear 90% or more of the proportional share of the cost of the health insurance premiums, the trier of fact may, as fairness requires, deduct part or all of the cost of the premiums actually paid by the obligor to provide coverage for the other party or the children from the obligor's gross income to determine net income for support purposes. If such a deduction is taken from the obligor's gross income, then the allocation of premium costs as set forth in (b)(1) above shall not be applied.

#### Official Note

Subdivision (b) of this **[R]**rule does not apply to Medical Assistance. See 23 Pa.C.S.A. §4326(l). The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maier v. Maier*, 575 Pa. 181, 835 A.2d 1281 (2003) and 23 Pa. C.S.A. §4321.

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The court may direct that obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

(1) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person. Medical expenses include insurance co-payments and deductibles and all expenses incurred for reasonably necessary medical services and supplies, including but not limited to surgical, dental and optical services, and orthodontia. Medical expenses do not include cosmetic, chiropractic, psychiatric or psychological services unless specifically directed in the order of court.

#### Official Note

While cosmetic, chiropractic, psychiatric and psychological expenses are not required to be apportioned between the parties, the court may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.

(2) An annual limitation may be imposed when the burden on the obligor would otherwise be excessive.

(3) Annual expenses pursuant to this subdivision (c), shall be calculated on a calendar year basis. In the year in which the initial support order is entered, the \$250 threshold shall be pro-rated.

#### Official Note

If the trier of fact determines that the obligee acted reasonably in obtaining services which were not specifically set forth in the order of support, payment for such services may be ordered retroactively.

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#### [Explanatory Comment--2003

**Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order.]**

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**Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order.**

(a) An order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise. However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.

**Note**

Subdivision (a) was amended in 2005 to include the statutory provision at 23 Pa.C.S.A. §4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. Ct. 2003), is inconsistent, it is superseded. See 23 Pa.C.S.A. §4352(e) for additional provisions.

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