

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

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Civ.P. 1910.16-6(c)**

The Domestic Relations Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the Amendment of Pa.R.Civ.P. 1910.16-6(c) governing unreimbursed medical expenses, for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **February 15, 2023**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

Domestic Relations Procedural Rules  
Committee

By David S. Pollock, Esquire  
Chair

**DOMESTIC RELATIONS PROCEDURAL RULES COMMITTEE**

**1910.16-6 (c). Unreimbursed Medical Expenses**

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(c) **Unreimbursed Medical Expenses.** The trier-of-fact shall allocate the obligee's or child's unreimbursed medical expenses. However, the trier-of-fact shall not allocate unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The trier-of-fact may require that the obligor's expense share be included in the basic support obligation, paid directly to the health care provider, or paid directly to the obligee.

(1) **Medical Expenses.**

- (i) For purposes of this subdivision, medical expenses are annual unreimbursed medical expenses in excess of \$250 per person.
- (ii) 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, **psychiatric and psychological services,** and orthodontia.
- (iii) Medical expenses do not include cosmetic, chiropractic, **[psychiatric, psychological,]** or other services unless specifically directed in the order of court.

**[Note: While cosmetic, chiropractic, psychiatric, psychological, or other expenses are not required to be apportioned between the parties, the trier-of-fact may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.]**

- (2) The trier-of-fact may impose an annual limitation when the burden on the obligor would otherwise be excessive.
- (3) Annual expenses shall be calculated on a calendar year basis.
  - (i) In the year in which the initial support order is entered, or in any period in which support is being paid that is less than a

full year, the \$250 threshold shall be pro-rated.

- (ii) The party seeking allocation for an unreimbursed medical expense shall provide to the other party the expense's documentation, such as a receipt or an invoice, promptly upon receipt, but not later than March 31<sup>st</sup> of the year following the calendar year in which the final bill was received by the party seeking allocation.
  - (iii) For purposes of subsequent enforcement, unreimbursed medical bills need not be submitted to the domestic relations section prior to March 31<sup>st</sup>.
  - (iv) The trier-of-fact shall have the discretion to not allocate an expense if documentation is not timely provided to the other party.
- (4) If the trier-of-fact determines that out-of-network medical expenses were not obtained due to medical emergency or other compelling factors, the trier-of-fact may decline to assess the expenses against the other party.

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

\* \* \*

**COMMENT: While cosmetic, chiropractic, or other expenses are not required to be apportioned between the parties, the trier-of-fact may apportion such expenses that it determines to be reasonable and appropriate under the circumstances.**

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

**The contested necessity of unreimbursed medical services should be raised as a custody or other matter. The intent of this rule is strictly to apportion costs of these services, not to determine if the services are appropriate for the child or obligee.**

#### **EXPLANATORY COMMENT--2004**

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code, 26 U.S.C. § 21. By generally referencing the Tax Code, rather than incorporating current Code provisions in the rule, further amendments will be incorporated into the support calculation.

#### **EXPLANATORY COMMENT--2005**

Pa.R.C.P. No. 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C. § 21. By referring to the Tax Code in general, rather than incorporating current Code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subdivision (b)(1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subdivision (b)(2) clarifies 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, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subdivision (b)(2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier-of-fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first \$250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of \$250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first \$250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed \$250 per year. The definition of “medical expenses” includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines “mortgage” to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier-of-fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the trier-of-fact's discretion based upon the circumstances of the case.

#### **EXPLANATORY COMMENT--2006**

A new introductory sentence in Pa.R.C.P. No. 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of either formula Pa.R.C.P. No. 1910.16-4 results in a basic support obligation of zero, the trier-of-fact may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment of subdivision (e) recognizes that the obligor may be occupying the marital residence and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

#### **EXPLANATORY COMMENT--2008**

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program (“CHIP”) is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody

must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

#### **EXPLANATORY COMMENT--2010**

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.

#### **EXPLANATORY COMMENT--2018**

The amendments provide for an adjustment to the parties' monthly net incomes prior to determining the percentage each party pays toward the expenses set forth in Pa.R.C.P. No. 1910.16-6. Previously, the Rules of Civil Procedure apportioned the enumerated expenses in Pa.R.C.P. No. 1910.16-6(a)-(d), with the exception of subdivision (c)(5), between the parties based on the parties' respective monthly net incomes as calculated pursuant to Pa.R.C.P. No. 1910.16-2. This apportionment did not consider the amount of support paid by the obligor or received by the obligee.

The amended rule adjusts the parties' monthly net incomes, upward or downward, by the spousal support/APL amount paid or received by that party prior to apportioning the expenses. This methodology is not new to the Rules of Civil Procedure.

In Pa.R.C.P. No. 1910.16-6(c)(5)(rescinded), the parties' monthly net incomes in spousal support/APL-only cases were similarly adjusted prior to the apportionment of unreimbursed medical expenses. Likewise, Pa.R.C.P. No. 1910.16-6(e) considers the parties' monthly net income after the receipt or payment of the support obligation for purposes of determining a mortgage deviation. As the new procedure adopts the methodology in former subdivision (c)(5), that subdivision has been rescinded as delineating the spousal support only circumstance is unnecessary.

Lastly, the amendment consolidates Pa.R.C.P. No. 1910.16-6(b)(1), (2), and (2.1).

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

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Civ.P. 1910-16-6(c)**

The Domestic Relations Procedural Rules Committee (Committee) is seeking comments on a proposed amendment of Pa.R.Civ.P. 1910.16-6(c) that would require the allocation of psychological and psychiatric services as medical expenses between the parties, if those expenses are not reimbursed by a third party. Currently, the allocation of those expenses is discretionary.

The Committee received several requests for the amendment of Pa.R.Civ.P. 1910.16-6(c), which has existed in some form since the original support guidelines were adopted in 1990. Since that time, the coverage and provision of mental health services has evolved. In 2010, the Mental Health Parity and Addiction Equality Act of 2008 (“MHPAEA”) was enacted to require that insurance companies provide equivalent coverage for mental health services, as they do for other medical and surgical benefits, if covered. See 29 U.S.C. § 1185a and 42 U.S.C. § 300gg-26. Similarly, the Patient Protection and Affordable Care Act built on the MHPAEA, requiring all new small group and individual market plans to cover ten essential health benefit categories, including mental health and substance use disorder services, and to cover them at parity with medical and surgical benefits. See 42 U.S.C. § 18022(b)(1)(E).

Moreover, children covered by the Children’s Health Insurance Program (CHIP) receive mental health services. See 42 U.S.C. § 1397cc. These services include counseling, therapy, medication management, and substance use disorder treatment. *Id.* Medicaid requires that children enrolled in Medicaid receive a wide range of “medically necessary” services, including mental health services. 42 U.S.C. § 1396d(r)(1)(A)(ii).

The Domestic Relations Code requires either one or both parents to provide “medical support” for children of parties in support matters. See 23 Pa.C.S. § 4326(a). “Medical support” is defined as “[h]ealth care coverage, which includes coverage under a health insurance plan...” and “health care coverage” includes “coverage for medical, dental...psychological, psychiatric or other health care services...” *Id.* at § 4326(l).

The Committee took note of these legislative changes, as well as the parity between medical expenses and mental health expenses in other jurisdictions. A review indicated that at least 15 states, including the neighboring states of Maryland, Ohio and West Virginia, consider mental health expenses the same as other medical expenses. See Md. Code, Family Law Article § 12-204(h)(2); O.R.C. § 3119.05; and W. Va. Code § 48–12–101(7).

Additionally, the Committee observed there appears to be a growing need for mental health services for minors. Statistics from the Center of Disease Control (CDC) indicate that 9.8% of children under the age of 18 are diagnosed with ADHD, 9.4% suffer from anxiety, 4.4% suffer from depression, and 8.9% suffer from behavior problems. See [www.cdc.gov/childrensmentalhealth/data.html](http://www.cdc.gov/childrensmentalhealth/data.html). The CDC's 2019 Youth Behavior Risk Surveillance System found that 17% of all Pennsylvania school-aged children had thoughts of suicide, 12.5% had a plan to end their lives and 8% had an attempt in the past 12 months. See A. Ivey-Stephenson, *et al*, *Suicidal Ideation and Behaviors Among High School Students*, *Morbidity and Mortality Weekly Report* Vol. 69(1):47-55 (Aug 21 2020). Research indicates that children exposed to family instability in their personal lives have an increased risk for adjustment problems, including depression and behavior disorders. D. Lee and S. McLanahan, *Family Structure Transitions and Child Development: Instability, Selection, and Population Heterogeneity*, *Am. Sociological Rev.* 80(4):738-763 (Aug 2015). As a result of the increasing concerns related to mental health issues, the majority of the Committee did not want child support litigation between parties to cause a delay in accessing mental health services.

Accordingly, the proposal would remove references to “psychiatric” and “psychological” expenses from subdivisions (c)(1)(iii) and place those references in subdivision (c)(1)(ii) so those expenses are apportioned without a specific order of court in a manner similar to medical expenses. It is also proposed that the Notes following subdivision (c)(1)(iii) and subdivision (c)(4) would be revised to reflect this amendment and the content relocated to a Comment.

This proposal was not without concern that a support determination allocating unreimbursed psychiatric and psychological expenses may be tantamount to a determination that such services are appropriate for a child or obligee. *Compare* Pa.R.Civ.P. 1910.16-6(c)(1)(ii) (“reasonably necessary”) with the accompanying Note (“reasonable and appropriate”). A majority of the Committee believed that any disagreement among the parties about the appropriateness of medical services, including psychiatric and psychological services, is a matter of custody and not support or a proceeding for an obligee, as directed by the court. As a result of these concerns, commentary was added to confirm that the “necessity of unreimbursed medical services should be raised as a custody or other matter...” The commentary would emphasize that the intent of this rule is to apportion costs of all of the services, not to determine if they are appropriate for a child or obligee.

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.