Big Changes Under the 2017 Massachusetts Child Support Guidelines

By Jason V. Owens | July 19, 2017

Child Support Family Law News Modification

Massachusetts family law attorney Jason V. Owens explores the biggest changes under the 2017 Massachusetts Child Support Guidelines released on July 18, 2017.

The secrecy and waiting is over. The 2017 Massachusetts Child Support Guidelines have been released. Yesterday, the Trial Court announced in a press release that the new Guidelines will go into effect on September 15, 2017. The state has also released the 2016-2017 Task Force Report, the 2017 Child Support Guidelines (with Task Force comments included), a sample 2017 Guidelines Worksheet (which is not yet enabled to perform calculations).

In the coming months, we will post many in-depth blogs digging into each section of the new Guidelines, and how each change will affect Massachusetts probate and family cases. Today, however, we will get down to the simple business of explaining what is new in the 2017 Massachusetts Child Support Guidelines.

Without further ado, we will list the major changes we see under the new Guidelines, starting with the most dramatic changes first.

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1. Blanket 25% Reduction in Child Support for Adult Children Aged 18-23

Some of the biggest changes in the new Guidelines have been made to adult children, aged 18-23. We have blogged frequently about the confusion regarding child support for adult children in Massachusetts. It looks like those blogs will now need an update, because the Section II(F) of the 2017 Child Support Guidelines provides that “[i]f the Court exercises its discretion to order child support for children age 18 or older, the guidelines formula reduces the amount of child support” by 25% compared to child support of minor children. (Important note: the 25% reduction does not apply to 18-year old children in high school, but takes effect after adult children graduate from high school.)

The Task Force included the following comment explaining the change:

> Because these guidelines apply to all child support orders, including those for children up to age 23, the Task Force discussed whether the application of the guidelines through the guidelines worksheet should result in a reduction in the base amount of child support for children who are age 18 or older and not attending high school, but nevertheless eligible for child support pursuant to Massachusetts law. The Task Force agreed that a twenty-five percent reduction is appropriate as it takes into consideration factors typical of this age group.

However, the Task Force suggested that full child support would be appropriate for a child attending college who lives with one parent and commutes to school, where that parent would face increased costs associated with housing and feeding the child. We expect many complaints about

modifications to be filed in cases involving child support paid for children over age 18, where the new rule appears to apply to all such child support orders.

For more in-depth analysis, check out Attorney Levy's full-length blog on the blanket 25% reduction for children under 18.

2. Presumptive Cap On College Contributions at 50% of UMass Amherst Cost

Another area of major blogging focus for us has been the impact of college expenses on child support for adult children in Massachusetts. One such blog focused on the formulas that parties have employed in Massachusetts agreements to apportion the cost of college for adult children. Among the most popular approaches is to use the cost of room, board, tuition and fees at UMass Amherst as a baseline to apportion or limit what each parent must contribute to their children's education. The 2017 Guidelines aggressively adopts the "UMass formula". The 2017 Guidelines provide:

> No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state resident costs of the University of Massachusetts-Amherst unless the Court enters written findings that a parent has the ability to pay a higher amount. Costs for this purpose are defined as mandatory fees, tuition, and room and board for the University of Massachusetts-Amherst, as set out in the "Published Annual College Costs Before Financial Aid" in the College Board's Annual Survey of Colleges.

The Guidelines note that ordering parents to contribute to college is not presumptive, but remains in the discretion of the judge. Our blog has commented critically about the ambiguity and lack of structure surrounding child support and college expenses in Massachusetts. In its comments, the Task Force responds to this concern, stating that "[t]he Task Force also intended an expense limitation to provide general uniformity in court-ordered, post-secondary educational expenses contributions." In addition, the comments noted that "[t]he Task Force intended to discourage orders requiring parents to incur liability for loans in excess of state university costs unless the parents agree to accept such liabilities." (Interestingly, this suggests that a court order requiring parents to take out student loans on behalf of their children *within* the state university costs would be acceptable.)

One reason it is so difficult to make a single rule for college contribution is because of the vast wealth disparities between families in Massachusetts. For many parents, even an order to pay 50% of the UMass cost would be wildly beyond their means. Conversely, limiting the children of the very wealthy to UMass Amherst – when their parents could afford the very best private colleges – might be equally perverse. In an attempt to bridge this gap, the Task Force comments:

> The limitation on post-secondary educational expenses orders is recommended for most cases, but it is not mandatory. The Task Force does not intend the limitation to apply to children already enrolled in post-secondary education before the effective date of these guidelines or to parents who are financially able to pay educational expenses using assets or other resources.

Although not completely clear, the Task Force comments suggest that parents whose Separation Agreements assign college costs greater than the UMass cap to one or both parties would remain bound by their agreement. It is fair to surmise, however, that many parents will attempt to modify their college obligations based on the language in the new Guidelines. Finally, it will be interesting to see whether children seeking to attend elite private schools will be able to secure sufficient financial aid if their parents' contribution is limited to the cost of UMass. Many top private schools cost more than twice UMass Amherst, and it is likely that children will not be able to borrow sufficient funds in their names alone to cover the difference in cost.

For a more in-depth analysis, check out Attorney Levy's full-length blog on the new UMass Cap for College Expenses under the 2017 Child Support Guidelines.

3. Removal of "Hybrid" Child Support Order for Parents with 33-50% of Parenting Time

Easily the most controversial and problematic section of the 2013 Child Support Guidelines was the provision that provided that parents who have between 33% and 50% of parenting time with reduced child support – i.e. a child support order that fell between "full" child support and the amount of child support due if the parents shared 50/50 custody. Section II(D) of the new Guidelines removes this provision. The Task Force comments describe the impact of the ill-fated 2013 provision:

> The Task Force discussed at length the consequences of the changes that were incorporated by the 2012 Task Force with regard to when parenting time is more than one-third but less than fifty percent. The Task Force agreed that the provision relating to these circumstances needed to be eliminated. … The 2012 change increased litigation and acrimony between parents, shifted the focus from a parenting plan that is in the best interests of the children to a contest about a parenting plan that attempts to reduce a child support order, and failed to create the consistency in child support orders that it sought to create.

Our opinion was always that the *range* provided by the Guidelines for a hybrid order was simply too broad. For example, a better formula would have called for a hybrid child support order for a parent who has the children between 39% and 44% of the time. Such a spread would fall much closer to a true mid-range between primary and shared custody. However, by making hybrid child support available to *all* parents with between 33% and 50% of parenting time, the 2013 Guidelines created a major incentive for parents to "count hours" and jockey over weekday overnights in an effort to change child support.

The 2017 Guidelines simply remove the hybrid calculation. Parents who fall in the 39% and 44% range – i.e. the murky middle between primary custody and shared custody – will still have an opportunity to argue for an adjustment of child support, but a hybrid order will no longer be presumptive under the new Guidelines. Notably, the Massachusetts Appeals Court has favored treating parenting schedules in which one parent has as little as 43% of overnight parenting time as "shared physical custody" for the purposes of calculating child support.

For a more in-depth analysis, check out my blog on the elimination of 33-49% hybrid orders in the 2017 Child Support Guidelines.

4. Big Changes to How Medical Insurance and Child Care Deductions Factor into Formula

Once we experiment with the 2017 Child Support Guidelines worksheet, we may find that the *real* biggest change in the 2017 Guidelines is the treatment of medical insurance and child care deductions under the formula. As our readers know, we have been especially critical of the historically clumsy treatment of medical insurance deductions under the Guidelines. Because the old Guidelines formula treated the income and expenses of custodial parents quite differently from those of non-custodial parents, the high cost of medical

insurance often distorted child support almost unrecognizably. Similarly, very high childcare costs often skewed child support to the point where one parent's weekly childcare costs exceeded the child support order.

In an effort to address these thorny issues, the 2017 Guidelines takes a "share the burden" approach which caps medical insurance and child care deductions at 15% of the total order. Frankly, it will be difficult to assess the real-world impact of these changes without a sample worksheet to experiment with. That said, our initial reaction is that capping the maximum deduction for medical insurance and child care costs may not alleviate the disproportionate financial burden that falls on the parent providing medical insurance for the children.

In our view, these concerns are somewhat (but only somewhat) reduced in the context of child care expenses, where each parent generally pays the childcare costs required for coverage during his or her parent's individual parenting time – as opposed to one parent paying for all of the coverage for all of the parenting time. (The absence of any consistent, reliable and/or predictable cost structure for child care also makes it difficult to apply broad rules.)

Ultimately, we still believe that our proposed solution for apportioning medical insurance costs under the Guidelines will still be superior to the approach advocated under the new Guidelines. Our suggested approach was simply this: parents share equally (50/50) in the cost of insuring the child. While our approach includes challenges in its own right, it guarantees that neither parent will be saddled with an extraordinary medical insurance cost for a child. That said, until we play with the 2017 Guidelines Worksheet, it is difficult to make any firm predictions on how dramatically these provisions will affect child support.

IMPORTANT UPDATE (9/26/17) – For news on a critical error affecting medical/childcare deductions in shared custody cases under the 2017 Guidelines, please read this blog.

5. Increased Emphasis on Unallocated Family Support in Alimony/Child Support Cases

The new Guidelines strongly suggest that Courts consider entering orders for "unallocated family support" in cases in which either child support or alimony is available. Check out our blog on unallocated support for more details on this form of support, the crux of which is this: in lieu of ordering child support, a Court may order unallocated support that is tax deductible as alimony to the paying party. The main impetus for this change under the new Guidelines arises out of the competition between alimony and child support orders that has arisen since the effective date of the Alimony Reform Act (ARA) in 2012. In short, the alimony formula under the ARA provides for alimony payments of up to 35% of the paying party's gross income. Accordingly, a maximum alimony order will often exceed the real dollar amount of a maximum child support order, even after taxes are taken into account.

The language of the ARA suggests that Courts ought to calculate child support *before* calculating alimony, and notes that any income used to calculate child support should be excluded from the subsequent alimony calculation. Thus, even parents who are eligible for alimony might be forced to accept a lower child support order. Alimony is often a hidden factor in child support cases, and the new Guidelines bring helpful clarification to the issue.

By emphasizing and encouraging unallocated family support, the new Guidelines provide alimony-eligible spouses with the clear right to seek alimony (in the form of unallocated support) instead of child support, which certainly makes sense in cases where alimony is likely to exceed child support. However, this provision comes with an important caveat:

> These guidelines were developed with the understanding that child support is nondeductible by the payor and non-taxable to the recipient. These guidelines do not preclude the Court from deciding that any support order be designated in whole or in part as alimony or unallocated support without it being deemed a deviation, **provided that the tax consequences are considered in determining the support order and the after-tax support received by the recipient is not diminished. The parties have the responsibility to present to the Court the tax consequences of proposed orders.** (Emphasis added.)

Most of the complications surrounding unallocated support arise out of the complex tax issues surrounding the transformation of child support into the

equivalent of tax-deductible alimony. Parties who want to seek unallocated support have the burden of providing a judge with sufficient tax information to enter an order for unallocated support with confidence.

For more in-depth analysis, check out Attorney Miraglia's full-length blog on how unallocated support is encouraged under the 2017 Guidelines.

6. New Methods for Imputing "Unreported" Income of Parties

Section I(D) of the new Guidelines provides a new approach to dealing with income that parents fail to report for tax purposes:

> When the Court finds that a parent has, in whole or in part, undocumented or unreported income, the Court may reasonably impute income to the parent based on all the evidence submitted, including, but not limited to, evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.

In addition, this section provides:

> Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, and payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

The new language provides welcome clarity in child support cases involving self-employed parents in which unreported income – often in the form of personal expenses paid by a business – are common. The 2017 Guidelines take a common sense approach encouraging judges to look behind tax returns and seek out unreported income in child support cases. While the new provision is not a major substantive change, the added emphasis will be helpful, where probate and family court judges are sometimes hesitant to challenge the dubious tax reported income of self-employed parents.

In its piece summarizing the 2017 Guidelines, Massachusetts Lawyers Weekly quoted 2016-2017 Child Support Guidelines Task Force Member Fern Frolin on the increased emphasis on unreported or "imputed" income:

> The new guidelines also draw a sharper distinction between “imputed” income and “attributed” income.
>
> In the past, the words were often used interchangeably, Frolin said.
>
> Now, it is clearer that “imputed income” is income that a parent “really gets,” just in a form that may not show up on tax documents. If a job comes with a housing benefit, for example, or a business is paying for personal expenses, such income may be considered when setting child support payments, “if such payments are significant and reduce personal living expenses,” the guidelines state.

7. No Change to Maximum Combined Income of $250,000 Per Year

In our view, one of the biggest questions with the 2017 Guidelines focused on whether the state would increase the Guidelines beyond the current limit of $250,000 of combined annual income. The result of the “cap” at $250,000 per year in income is simply this: while child support parents earning under $100,000 are routinely required to pay child support exceeding 25% of their after-tax income, wealthy non-custodial parents earning $350,000 or more per year are often required to pay a far smaller share of their income for their children (frequently as little as 5% of their after-tax income). Section II(C) of the new Guidelines leaves the $250,000 cap in place.

One silver lining is that the new Guidelines include language in Section IV that suggest a deviation from the Guidelines is appropriate in the following scenario:

> [A]pplication of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income.

Although the new language reflects established Massachusetts law, its inclusion in the Guidelines may prove helpful for cases in which a noncustodial parent earning $500,000 per year would only be required to pay $50,000 per year in child support under the Guidelines. In such cases, a custodial parent may now argue more forcefully that a 10-to-1 income ratio represents an “unreasonably low percentage of the combined available income”.

8. Child Support Deviations Encouraged by Task Force

Among the most noticeable thematic changes throughout the 2017 Guidelines are the Task Force's consistent encouragement and prodding of judges to deviate from the child support calculation instead of following a cookie-cutter approach in every case.

From the preamble to the middle sections of the Guidelines to a revamped Section IV on deviations, the 2017 Guidelines gently chastise judges for failing to deviate often enough, while encouraging judges to examine the facts of each case instead of taking a "one size fits all" approach to child support. The Task Force cites the 2016-2017 Economic Review of the Child Support Guidelines, which includes a lengthy (and interesting!) analysis on deviations that result in the following conclusion: Massachusetts judges do not deviate from the Guidelines frequently enough, and the deviations judges do enter tend to be minor. It seems clear that the Task Force wants to see more judges exercising independence and discretion in child support cases by deviating from the Guidelines when appropriate.

As noted above, the 2017 Guidelines eliminate 33-50% "hybrid orders", which were meant to provide a middle ground for child support in cases where parenting time fell somewhere in between primary (67/33) and shared (50/50) physical custody. As flawed as the hybrid orders were, their elimination reduces flexibility for judges in cases where non-custodial parents with parenting time in the 38-44% range between primary and shared custody. The elimination of hybrid orders may be the reason the Task Force leans so heavily on judges to consider deviation in cases where a standard child support doesn't quite fit.

In its comments in Section IV, the Task Force notes its renewed emphasis on deviations as follows:

> The Task Force refined and clarified the circumstances where deviation may be appropriate. The Task Force reordered this section for clarification purposes only and not to prioritize any one factor over another. **The Task Force emphasized that a deviation may be appropriate for a family and encourages the Court to deviate where circumstances require it.**

For a more in-depth analysis, check out Attorney Miraglia's full-length blog on how the 2017 Guidelines encourage judges to deviate when entering child support orders.

Expect many more blogs on the 2017 Massachusetts Child Support Guidelines in the future. In the meantime, let us know if we missed anything in our initial review.

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