S T A T E O F N E W Y O R K

8977

2009-2010 Regular Sessions

I N A S S E M B L Y

June 17, 2009

Introduced by M. of A. WEINSTEIN -- (at request of the Office of Temporary and Disability Assistance) -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the domestic relations law, in relation to establishing definitions for "cash medical support", and when health insurance benefits are "reasonable in cost" and "reasonably accessible"; to amend the civil practice law and rules, in relation to amending the priority for deductions via an income execution; and to repeal certain provisions of the family court act and the domestic relations law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 5 of paragraph (c) of subdivision 1 of section 413 of the family court act is REPEALED and a new subparagraph 5 is added to read as follows:

(5) THE COURT SHALL DETERMINE THE PARTIES' OBLIGATION TO PROVIDE HEALTH INSURANCE BENEFITS PURSUANT TO SECTION FOUR HUNDRED SIXTEEN OF THIS PART AND TO PAY CASH MEDICAL SUPPORT AS PROVIDED UNDER THIS SUBPARAGRAPH.

(I) "CASH MEDICAL SUPPORT" MEANS AN AMOUNT ORDERED TO BE PAID TOWARD THE COST OF HEALTH INSURANCE PROVIDED BY A PUBLIC ENTITY OR BY A PARENT THROUGH AN EMPLOYER OR ORGANIZATION, INCLUDING SUCH EMPLOYERS OR ORGANIZATIONS WHICH ARE SELF INSURED, OR THROUGH OTHER AVAILABLE HEALTH INSURANCE OR HEALTH CARE COVERAGE PLANS, AND/OR FOR OTHER HEALTH CARE EXPENSES NOT COVERED BY INSURANCE.

(II) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO PARAGRAPH ONE AND SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED SIXTEEN OF THIS PART ARE DETERMINED BY THE COURT TO BE AVAILABLE, THE COST OF PROVIDING HEALTH INSURANCE BENEFITS SHALL BE PRORATED BETWEEN THE PARTIES IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME. IF THE CUSTODIAL PARENT IS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD07704-07-9

ORDERED TO PROVIDE SUCH BENEFITS, THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH COSTS SHALL BE ADDED TO THE BASIC SUPPORT OBLIGATION. IF THE NON-CUSTODIAL PARENT IS ORDERED TO PROVIDE SUCH BENEFITS, THE CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH COSTS SHALL BE DEDUCTED FROM THE BASIC SUPPORT OBLIGATION.

(III) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO PARAGRAPH ONE AND SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED SIXTEEN OF THIS PART ARE DETERMINED BY THE COURT TO BE UNAVAILABLE, IF THE CHILD OR CHILDREN ARE DETERMINED ELIGIBLE FOR COVERAGE UNDER THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY CASH MEDICAL SUPPORT AS FOLLOWS:

(A) IN THE CASE OF A CHILD OR CHILDREN AUTHORIZED FOR MANAGED CARE COVERAGE UNDER THE MEDICAL ASSISTANCE PROGRAM, THE LESSER OF THE AMOUNT THAT WOULD BE REQUIRED AS A FAMILY CONTRIBUTION UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW FOR THE CHILD OR CHILDREN IF THEY WERE IN A TWO-PARENT HOUSEHOLD WITH INCOME EQUAL TO THE COMBINED INCOME OF THE NON-CUSTODIAL AND CUSTODIAL PARENTS OR THE PREMIUM PAID BY THE MEDICAL ASSISTANCE PROGRAM ON BEHALF OF THE CHILD OR CHILDREN TO THE MANAGED CARE PLAN. THE COURT SHALL SEPARATELY STATE THE NON-CUSTODIAL PARENT'S MONTHLY OBLIGATION. THE NON-CUSTODIAL PARENT'S CASH MEDICAL SUPPORT OBLIGATION UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

(B) IN THE CASE OF A CHILD OR CHILDREN AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE UNDER THE MEDICAL ASSISTANCE PROGRAM OTHER THAN A CHILD OR CHILDREN DESCRIBED IN ITEM (A) OF THIS CLAUSE, THE COURT SHALL DETERMINE THE NON-CUSTODIAL PARENT'S MAXIMUM ANNUAL CASH MEDICAL SUPPORT OBLIGATION, WHICH SHALL BE EQUAL TO THE LESSER OF THE MONTHLY AMOUNT THAT WOULD BE REQUIRED AS A FAMILY CONTRIBUTION UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW FOR THE CHILD OR CHILDREN IF THEY WERE IN A TWO-PARENT HOUSEHOLD WITH INCOME EQUAL TO THE COMBINED INCOME OF THE NON-CUSTODIAL AND CUSTODIAL PARENTS TIMES TWELVE MONTHS OR THE NUMBER OF MONTHS THAT THE CHILD OR CHILDREN ARE AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE DURING ANY YEAR. THE COURT SHALL SEPARATELY STATE IN THE ORDER THE NON-CUSTODIAL PARENT'S MAXIMUM ANNUAL CASH MEDICAL SUPPORT OBLIGATION AND, UPON PROOF TO THE COURT THAT THE NON-CUSTODIAL PARENT, AFTER NOTICE OF THE AMOUNT DUE, HAS FAILED TO PAY THE PUBLIC ENTITY FOR INCURRED HEALTH CARE EXPENSES, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH INCURRED HEALTH CARE EXPENSES UP TO THE MAXIMUM ANNUAL CASH MEDICAL SUPPORT OBLIGATION. SUCH AMOUNTS SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT. THE TOTAL ANNUAL AMOUNT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

(C) THE COURT SHALL ORDER CASH MEDICAL SUPPORT TO BE PAID BY THE NON-CUSTODIAL PARENT FOR HEALTH CARE EXPENSES OF THE CHILD OR CHILDREN PAID BY THE MEDICAL ASSISTANCE PROGRAM PRIOR TO THE ISSUANCE OF THE COURT'S ORDER. THE AMOUNT OF SUCH SUPPORT SHALL BE CALCULATED AS PROVIDED UNDER ITEM (A) OR (B) OF THIS CLAUSE, PROVIDED THAT THE AMOUNT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS ITEM SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME OR THE DIFFERENCE BETWEEN THE

NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS, FOR THE YEAR WHEN THE EXPENSE WAS INCURRED. SUCH AMOUNTS SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT.

(IV) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO PARAGRAPH ONE AND SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED SIXTEEN OF THIS PART ARE DETERMINED BY THE COURT TO BE UNAVAILABLE, AND THE CHILD OR CHILDREN ARE DETERMINED ELIGIBLE FOR COVERAGE UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW, THE COURT SHALL PRORATE EACH PARENT'S SHARE OF THE COST OF THE FAMILY CONTRIBUTION REQUIRED UNDER SUCH CHILD HEALTH INSURANCE PLAN IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE AMOUNT OF THE NON-CUSTODIAL PARENT'S SHARE IN THE ORDER. THE TOTAL AMOUNT OF CASH MEDICAL SUPPORT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

(V) IN ADDITION TO THE AMOUNTS ORDERED UNDER CLAUSE (II), (III), OR (IV) OF THIS SUBPARAGRAPH, THE COURT SHALL PRO RATE EACH PARENT'S SHARE OF REASONABLE HEALTH CARE EXPENSES NOT REIMBURSED OR PAID BY INSURANCE, THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW, OR THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW, IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE NON-CUSTODIAL PARENT'S SHARE AS A PERCENTAGE IN THE ORDER. THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH HEALTH CARE EXPENSES DETERMINED BY THE COURT TO BE DUE AND OWING SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT. IN ADDITION, THE COURT MAY DIRECT THAT THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH HEALTH CARE EXPENSES BE PAID IN ONE SUM OR IN PERIODIC SUMS, INCLUDING DIRECT PAYMENT TO THE HEALTH CARE PROVIDER.

(VI) UPON PROOF BY EITHER PARTY THAT CASH MEDICAL SUPPORT PURSUANT TO CLAUSE (II), (III), (IV) OR (V) OF THIS SUBPARAGRAPH WOULD BE UNJUST OR INAPPROPRIATE PURSUANT TO PARAGRAPH (F) OF SUBDIVISION ONE OF THIS SECTION, THE COURT SHALL:

(A) ORDER THE PARTIES TO PAY CASH MEDICAL SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE, CONSIDERING THE BEST INTERESTS OF THE CHILD; AND

(B) SET FORTH IN THE ORDER THE FACTORS IT CONSIDERED, THE AMOUNT CALCULATED UNDER THIS SUBPARAGRAPH, THE REASON OR REASONS THE COURT DID NOT ORDER SUCH AMOUNT, AND THE BASIS FOR THE AMOUNT AWARDED.

S 2. Subparagraph 5 of paragraph (c) of subdivision 1-b of section 240 of the domestic relations law is REPEALED and a new subparagraph 5 is added to read as follows:

(5) THE COURT SHALL DETERMINE THE PARTIES' OBLIGATION TO PROVIDE HEALTH INSURANCE BENEFITS PURSUANT TO THIS SECTION AND TO PAY CASH MEDICAL SUPPORT AS PROVIDED UNDER THIS SUBPARAGRAPH.

(I) "CASH MEDICAL SUPPORT" MEANS AN AMOUNT ORDERED TO BE PAID TOWARD THE COST OF HEALTH INSURANCE PROVIDED BY A PUBLIC ENTITY OR BY A PARENT THROUGH AN EMPLOYER OR ORGANIZATION, INCLUDING SUCH EMPLOYERS OR ORGANIZATIONS WHICH ARE SELF INSURED, OR THROUGH OTHER AVAILABLE HEALTH INSURANCE OR HEALTH CARE COVERAGE PLANS, AND/OR FOR OTHER HEALTH CARE EXPENSES NOT COVERED BY INSURANCE.

(II) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPH ONE AND CLAUSES (I) AND (II) OF SUBPARAGRAPH TWO OF PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION ARE DETERMINED BY THE COURT TO BE AVAILABLE, THE COST OF PROVIDING HEALTH INSURANCE BENEFITS SHALL BE PRORATED BETWEEN THE PARTIES IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME. IF THE CUSTODIAL PARENT IS ORDERED TO PROVIDE SUCH BENEFITS, THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH COSTS SHALL BE ADDED TO THE BASIC SUPPORT OBLIGATION. IF THE NON-CUSTODIAL PARENT IS ORDERED TO PROVIDE SUCH BENEFITS, THE CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH COSTS SHALL BE DEDUCTED FROM THE BASIC SUPPORT OBLIGATION.

(III) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPH ONE AND CLAUSES (I) AND (II) OF SUBPARAGRAPH TWO OF PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION ARE DETERMINED BY THE COURT TO BE UNAVAILABLE, IF THE CHILD OR CHILDREN ARE DETERMINED ELIGIBLE FOR COVERAGE UNDER THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY CASH MEDICAL SUPPORT AS FOLLOWS:

(A) IN THE CASE OF A CHILD OR CHILDREN AUTHORIZED FOR MANAGED CARE COVERAGE UNDER THE MEDICAL ASSISTANCE PROGRAM, THE LESSER OF THE AMOUNT THAT WOULD BE REQUIRED AS A FAMILY CONTRIBUTION UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW FOR THE CHILD OR CHILDREN IF THEY WERE IN A TWO-PARENT HOUSEHOLD WITH INCOME EQUAL TO THE COMBINED INCOME OF THE NON-CUSTODIAL AND CUSTODIAL PARENTS OR THE PREMIUM PAID BY THE MEDICAL ASSISTANCE PROGRAM ON BEHALF OF THE CHILD OR CHILDREN TO THE MANAGED CARE PLAN. THE COURT SHALL SEPARATELY STATE THE NON-CUSTODIAL PARENT'S MONTHLY OBLIGATION. THE NON-CUSTODIAL PARENT'S CASH MEDICAL SUPPORT OBLIGATION UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

(B) IN THE CASE OF A CHILD OR CHILDREN AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE UNDER THE MEDICAL ASSISTANCE PROGRAM OTHER THAN A CHILD OR CHILDREN DESCRIBED IN ITEM (A) OF THIS CLAUSE, THE COURT SHALL DETERMINE THE NON-CUSTODIAL PARENT'S MAXIMUM ANNUAL CASH MEDICAL SUPPORT OBLIGATION, WHICH SHALL BE EQUAL TO THE LESSER OF THE MONTHLY AMOUNT THAT WOULD BE REQUIRED AS A FAMILY CONTRIBUTION UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW FOR THE CHILD OR CHILDREN IF THEY WERE IN A TWO-PARENT HOUSEHOLD WITH INCOME EQUAL TO THE COMBINED INCOME OF THE NON-CUSTODIAL AND CUSTODIAL PARENTS TIMES TWELVE MONTHS OR THE NUMBER OF MONTHS THAT THE CHILD OR CHILDREN ARE AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE DURING ANY YEAR. THE COURT SHALL SEPARATELY STATE IN THE ORDER THE NON-CUSTODIAL PARENT'S MAXIMUM ANNUAL CASH MEDICAL SUPPORT OBLIGATION AND, UPON PROOF TO THE COURT THAT THE NON-CUSTODIAL PARENT, AFTER NOTICE OF THE AMOUNT DUE, HAS FAILED TO PAY THE PUBLIC ENTITY FOR INCURRED HEALTH CARE EXPENSES, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO PAY SUCH INCURRED HEALTH CARE EXPENSES UP TO THE MAXIMUM ANNUAL CASH MEDICAL SUPPORT OBLIGATION. SUCH AMOUNTS SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT. THE TOTAL ANNUAL AMOUNT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

(C) THE COURT SHALL ORDER CASH MEDICAL SUPPORT TO BE PAID BY THE NON-CUSTODIAL PARENT FOR HEALTH CARE EXPENSES OF THE CHILD OR CHILDREN PAID BY THE MEDICAL ASSISTANCE PROGRAM PRIOR TO THE ISSUANCE OF THE COURT'S ORDER. THE AMOUNT OF SUCH SUPPORT SHALL BE CALCULATED AS PROVIDED UNDER ITEM (A) OR (B) OF THIS CLAUSE, PROVIDED THAT THE AMOUNT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS ITEM SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS, FOR THE YEAR WHEN THE EXPENSE WAS INCURRED. SUCH AMOUNTS SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT.

(IV) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPH ONE AND CLAUSES (I) AND (II) OF SUBPARAGRAPH TWO OF PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION ARE DETERMINED BY THE COURT TO BE UNAVAILABLE, AND THE CHILD OR CHILDREN ARE DETERMINED ELIGIBLE FOR COVERAGE UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW, THE COURT SHALL PRORATE EACH PARENT'S SHARE OF THE COST OF THE FAMILY CONTRIBUTION REQUIRED UNDER SUCH CHILD HEALTH INSURANCE PLAN IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE AMOUNT OF THE NON-CUSTODIAL PARENT'S SHARE IN THE ORDER. THE TOTAL AMOUNT OF CASH MEDICAL SUPPORT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

(V) IN ADDITION TO THE AMOUNTS ORDERED UNDER CLAUSE (II), (III), OR (IV), THE COURT SHALL PRO RATE EACH PARENT'S SHARE OF REASONABLE HEALTH CARE EXPENSES NOT REIMBURSED OR PAID BY INSURANCE, THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW, OR THE STATE'S CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE PUBLIC HEALTH LAW, IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE NON-CUSTODIAL PARENT'S SHARE AS A PERCENTAGE IN THE ORDER. THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH HEALTH CARE EXPENSES DETERMINED BY THE COURT TO BE DUE AND OWING SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT. IN ADDITION, THE COURT MAY DIRECT THAT THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH HEALTH CARE EXPENSES BE PAID IN ONE SUM OR IN PERIODIC SUMS, INCLUDING DIRECT PAYMENT TO THE HEALTH CARE PROVIDER.

(VI) UPON PROOF BY EITHER PARTY THAT CASH MEDICAL SUPPORT PURSUANT TO CLAUSE (II), (III), (IV), OR (V) OF THIS SUBPARAGRAPH WOULD BE UNJUST OR INAPPROPRIATE PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION, THE COURT SHALL:

(A) ORDER THE PARTIES TO PAY CASH MEDICAL SUPPORT AS THE COURT FINDS JUST AND APPROPRIATE, CONSIDERING THE BEST INTERESTS OF THE CHILD; AND

(B) SET FORTH IN THE ORDER THE FACTORS IT CONSIDERED, THE AMOUNT CALCULATED UNDER THIS SUBPARAGRAPH, THE REASON OR REASONS THE COURT DID NOT ORDER SUCH AMOUNT, AND THE BASIS FOR THE AMOUNT AWARDED.

S 3. Subdivision (d) of section 416 of the family court act is amended by adding a new paragraph 3 to read as follows:

(3) WHEN THE PERSON ON WHOSE BEHALF THE PETITION IS BROUGHT IS A CHILD IN ACCORDANCE WITH SUBDIVISION (E) OF THIS SECTION, HEALTH INSURANCE BENEFITS SHALL BE CONSIDERED "REASONABLE IN COST" IF THE COST OF HEALTH INSURANCE BENEFITS DOES NOT EXCEED FIVE PERCENT OF THE COMBINED PARENTAL GROSS INCOME. THE COST OF HEALTH INSURANCE BENEFITS SHALL REFER TO THE

COST OF THE PREMIUM AND DEDUCTIBLE ATTRIBUTABLE TO ADDING THE CHILD OR CHILDREN TO EXISTING COVERAGE OR THE DIFFERENCE BETWEEN SUCH COSTS FOR SELF-ONLY AND FAMILY COVERAGE. PROVIDED, HOWEVER, THE PRESUMPTION THAT THE HEALTH INSURANCE BENEFITS ARE REASONABLE IN COST MAY BE REBUTTED UPON A FINDING THAT THE COST IS UNJUST OR INAPPROPRIATE WHICH FINDING SHALL BE BASED ON THE CIRCUMSTANCES OF THE CASE, THE COST AND COMPREHENSIVENESS OF THE HEALTH INSURANCE BENEFITS FOR WHICH THE CHILD OR CHILDREN MAY OTHERWISE BE ELIGIBLE, AND THE BEST INTERESTS OF THE CHILD OR CHILDREN. IN NO INSTANCE SHALL HEALTH INSURANCE BENEFITS BE CONSIDERED "REASONABLE IN COST" IF A PARENT'S SHARE OF THE COST OF EXTENDING SUCH COVERAGE WOULD REDUCE THE INCOME OF THAT PARENT BELOW THE SELF-SUPPORT RESERVE. HEALTH INSURANCE BENEFITS ARE "REASONABLY ACCESSIBLE" IF THE CHILD LIVES WITHIN THE GEOGRAPHIC AREA COVERED BY THE PLAN OR LIVES WITHIN THIRTY MINUTES OR THIRTY MILES OF TRAVEL TIME FROM THE CHILD'S RESIDENCE TO THE SERVICES COVERED BY THE HEALTH INSURANCE BENEFITS OR THROUGH BENEFITS PROVIDED UNDER A RECIPROCAL AGREEMENT; PROVIDED, HOWEVER, THIS PRESUMPTION MAY BE REBUTTED FOR GOOD CAUSE SHOWN INCLUDING, BUT NOT LIMITED TO, THE SPECIAL HEALTH NEEDS OF THE CHILD. THE COURT SHALL SET FORTH SUCH FINDING AND THE REASONS THEREFOR IN THE ORDER OF SUPPORT.

S 4. Paragraph (b) of subdivision 1 of section 240 of the domestic relations law is amended by adding a new subparagraph 3 to read as follows:

(3) WHEN THE PERSON ON WHOSE BEHALF THE PETITION IS BROUGHT IS A CHILD IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVISION, HEALTH INSURANCE BENEFITS SHALL BE CONSIDERED "REASONABLE IN COST" IF THE COST OF HEALTH INSURANCE BENEFITS DOES NOT EXCEED FIVE PERCENT OF THE COMBINED PARENTAL GROSS INCOME. THE COST OF HEALTH INSURANCE BENEFITS SHALL REFER TO THE COST OF THE PREMIUM AND DEDUCTIBLE ATTRIBUTABLE TO ADDING THE CHILD OR CHILDREN TO EXISTING COVERAGE OR THE DIFFERENCE BETWEEN SUCH COSTS FOR SELF-ONLY AND FAMILY COVERAGE. PROVIDED, HOWEVER, THE PRESUMPTION THAT THE HEALTH INSURANCE BENEFITS ARE REASONABLE IN COST MAY BE REBUTTED UPON A FINDING THAT THE COST IS UNJUST OR INAPPROPRIATE WHICH FINDING SHALL BE BASED ON THE CIRCUMSTANCES OF THE CASE, THE COST AND COMPREHENSIVENESS OF THE HEALTH INSURANCE BENEFITS FOR WHICH THE CHILD OR CHILDREN MAY OTHERWISE BE ELIGIBLE, AND THE BEST INTERESTS OF THE CHILD OR CHILDREN. IN NO INSTANCE SHALL HEALTH INSURANCE BENEFITS BE CONSIDERED "REASONABLE IN COST" IF A PARENT'S SHARE OF THE COST OF EXTENDING SUCH COVERAGE WOULD REDUCE THE INCOME OF THAT PARENT BELOW THE SELF-SUPPORT RESERVE. HEALTH INSURANCE BENEFITS ARE "REASONABLY ACCESSIBLE" IF THE CHILD LIVES WITHIN THE GEOGRAPHIC AREA COVERED BY THE PLAN OR LIVES WITHIN THIRTY MINUTES OR THIRTY MILES OF TRAVEL TIME FROM THE CHILD'S RESIDENCE TO THE SERVICES COVERED BY THE HEALTH INSURANCE BENEFITS OR THROUGH BENEFITS PROVIDED UNDER A RECIPROCAL AGREEMENT; PROVIDED, HOWEVER, THIS PRESUMPTION MAY BE REBUTTED FOR GOOD CAUSE SHOWN INCLUDING, BUT NOT LIMITED TO, THE SPECIAL HEALTH NEEDS OF THE CHILD. THE COURT SHALL SET FORTH SUCH FINDING AND THE REASONS THEREFOR IN THE ORDER OF SUPPORT.

S 5. Subparagraph (iii) of paragraph 2 of subdivision (e) of section 416 of the family court act, as added by chapter 624 of the laws of 2002, is amended to read as follows:

(iii) If neither parent has available health insurance benefits, the court shall direct in the order of support that the custodial parent apply for the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law and the medical assistance program established pursuant to title eleven of article five of the social services law. [If eligible for such coverage, the court shall prorate the cost of any premium or family contribution in accord-

ance with subdivision (f) of this section.] A direction issued under this subdivision shall not limit or alter either parent's obligation to obtain health insurance benefits at such time as they become available as required pursuant to subdivision (c) of this section. NOTHING IN THIS SUBDIVISION SHALL ALTER OR LIMIT THE AUTHORITY OF THE MEDICAL ASSISTANCE PROGRAM TO DETERMINE WHEN IT IS CONSIDERED COST EFFECTIVE TO REQUIRE A CUSTODIAL PARENT TO ENROLL A CHILD IN AN AVAILABLE GROUP HEALTH INSURANCE PLAN PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTY-SEVEN-A OF THE SOCIAL SERVICES LAW.

S 6. Clause (iii) of subparagraph 2 of paragraph (c) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 624 of the laws of 2002, is amended to read as follows:

(iii) If neither parent has available health insurance benefits, the court shall direct in the order of support that the custodial parent apply for the state's child health insurance plan pursuant to title one-A of article twenty-five of the public health law and the medical assistance program established pursuant to title eleven of article five of the social services law. [If eligible for such coverage, the court shall prorate the cost of any premium or family contribution in accordance with paragraph (d) of this subdivision.] A direction issued under this subdivision shall not limit or alter either parent's obligation to obtain health insurance benefits at such time as they become available, as required pursuant to paragraph (a) of this subdivision. NOTHING IN THIS SUBDIVISION SHALL ALTER OR LIMIT THE AUTHORITY OF THE MEDICAL ASSISTANCE PROGRAM TO DETERMINE WHEN IT IS CONSIDERED COST EFFECTIVE TO REQUIRE A CUSTODIAL PARENT TO ENROLL A CHILD IN AN AVAILABLE GROUP HEALTH INSURANCE PLAN PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION ONE OF SECTION THREE HUNDRED SIXTY-SEVEN-A OF THE SOCIAL SERVICES LAW.

S 7. Subdivision (f) of section 416 of the family court act is REPEALED and a new subdivision (f) is added to read as follows:

(F) THE COST OF PROVIDING HEALTH INSURANCE BENEFITS OR BENEFITS UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN OR THE MEDICAL ASSISTANCE PROGRAM, PURSUANT TO SUBDIVISION (E) OF THIS SECTION, SHALL BE DEEMED CASH MEDICAL SUPPORT, AND THE COURT SHALL DETERMINE THE OBLIGATION OF EITHER OR BOTH PARENTS TO CONTRIBUTE TO THE COST THEREOF PURSUANT TO SUBPARAGRAPH FIVE OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS PART.

S 8. Paragraph (d) of subdivision 1 of section 240 of the domestic relations law is REPEALED and a new paragraph (d) is added to read as follows:

(D) THE COST OF PROVIDING HEALTH INSURANCE BENEFITS OR BENEFITS UNDER THE STATE'S CHILD HEALTH INSURANCE PLAN OR THE MEDICAL ASSISTANCE PROGRAM, PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION, SHALL BE DEEMED CASH MEDICAL SUPPORT, AND THE COURT SHALL DETERMINE THE OBLIGATION OF EITHER OR BOTH PARENTS TO CONTRIBUTE TO THE COST THEREOF PURSUANT TO SUBPARAGRAPH FIVE OF PARAGRAPH (C) OF SUBDIVISION ONE-B OF THIS SECTION.

S 9. Section 514 of the family court act, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

S 514. Liability of father to mother. The father is liable [to pay] FOR the reasonable expenses of the mother's confinement and recovery and such reasonable expenses in connection with her pregnancy as DETERMINED BY the court [in its discretion may deem proper]; provided, however, where the mother's confinement, recovery and expenses in connection with her pregnancy were paid under the medical assistance program on the mother's behalf, the father may be liable to the social services district furnishing such medical assistance and to the state department

of [social services] HEALTH for [the full amount of] medical assistance so expended[, as the court in its discretion may deem proper]. SUCH EXPENSES, INCLUDING SUCH EXPENSES PAID BY THE MEDICAL ASSISTANCE PROGRAM ON THE MOTHER'S BEHALF, SHALL BE DEEMED CASH MEDICAL SUPPORT AND THE COURT SHALL DETERMINE THE OBLIGATION OF THE PARTIES TO CONTRIBUTE TO THE COST THEREOF PURSUANT TO SUBPARAGRAPH FIVE OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ACT.

S 10. Subdivision 1 of section 545 of the family court act, as amended by chapter 214 of the laws of 1998, is amended to read as follows:

1. In a proceeding in which the court has made an order of filiation, the court shall direct the parent or parents possessed of sufficient means or able to earn such means to pay weekly or at other fixed periods a fair and reasonable sum according to their respective means as the court may determine and apportion for such child's support and education, until the child is twenty-one. The order shall be effective as of the earlier of the date of the application for an order of filiation, or, if the children for whom support is sought are in receipt of public assistance, the date for which their eligibility for public assistance was effective. Any retroactive amount of child support shall be support arrears/past-due support and shall be paid in one sum or periodic sums as the court shall direct, taking into account any amount of temporary support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. The court shall direct such parent to make his or her residence known at all times should he or she move from the address last known to the court by reporting such change to the support collection unit designated by the appropriate social services district. The order shall contain the social security numbers of the named parents. The order may also direct each parent to pay an amount as the court may determine and apportion for the support of the child prior to the making of the order of filiation, and may direct each parent to pay an amount as the court may determine and apportion for [(i)] the funeral expenses if the child has died[; (ii) the]. THE necessary expenses incurred by or for the mother in connection with her confinement and recovery[;] and [(iii)] such expenses in connection with the pregnancy of the mother [as the court may deem proper] SHALL BE DEEMED CASH MEDICAL SUPPORT, AND THE COURT SHALL DETERMINE THE OBLIGATION OF EITHER OR BOTH PARENTS TO CONTRIBUTE TO THE COST THEREOF PURSUANT TO SUBPARAGRAPH FIVE OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ACT. In addition, the court shall make provisions for health insurance benefits in accordance with the requirements of section four hundred sixteen of this act.

S 11. Subparagraph (i) of paragraph 2 of subdivision (b) of section 5241 of the civil practice law and rules, as amended by chapter 533 of the laws of 1999, is amended to read as follows:

(i) Where the court orders the debtor to provide health insurance benefits for specified dependents, an execution for medical support enforcement may, except as provided for herein, be issued by the support collection unit, or by the sheriff, the clerk of court or the attorney for the creditor as an officer of the court; provided, however, that when the court issues an order of child support or combined child and spousal support on behalf of persons other than those in receipt of public assistance or in receipt of services pursuant to section one hundred eleven-g of the social services law, such medical execution

shall be in the form of a separate qualified medical child support order as provided by subdivision [(f)] (J) of section four hundred sixteen of the family court act and paragraph [(f)] (H) of subdivision one of section two hundred forty of the domestic relations law. Such execution for medical support enforcement may require the debtor's employer, organization or group health plan administrator to purchase on behalf of the debtor and the debtor's dependents such available health insurance benefits. Such execution shall direct the employer, organization or group health plan administrator to provide to the dependents for whom such benefits are required to be provided or such dependents' custodial parent or legal guardian or social services district on behalf of persons applying for or in receipt of public assistance any identification cards and benefit claim forms and to withhold from the debtor's income the employee's share of the cost of such health insurance benefits, and to provide written confirmation of such enrollment indicating the date such benefits were or become available or that such benefits are not available and the reasons therefor to the issuer of the execution. An execution for medical support enforcement shall not require a debtor's employer, organization or group health plan administrator to purchase or otherwise acquire health insurance or health insurance benefits that would not otherwise be available to the debtor by reason of his or her employment or membership. Nothing herein shall be deemed to obligate or otherwise hold any employer, organization or group health plan administrator responsible for an option exercised by the debtor in selecting medical insurance coverage by an employee or member.

S 12. Subdivision (h) of section 5241 of the civil practice law and rules, as amended by chapter 398 of the laws of 1997, is amended to read as follows:

(h) Priority. A levy pursuant to this section or an income deduction order pursuant to section 5242 of this chapter shall take priority over any other assignment, levy or process. If an employer or income payor is served with more than one execution pursuant to this section, or with an execution pursuant to this section and also an order pursuant to section 5242 of this chapter, and if the combined total amount of the deductions to be withheld exceeds the limits set forth in subdivision (g) of this section, the employer or income payor shall withhold the maximum amount permitted thereby and pay to each creditor that proportion thereof which such creditor's claim bears to the combined total. Any additional deduction authorized by subdivision (g) of this section to be applied to the reduction of arrears shall be applied to such arrears in proportion to the amount of arrears due to each creditor. Deductions to satisfy CURRENT support obligations[, including any additional deductions authorized by subdivision (g) of this section,] shall have priority over deductions for the debtor's share of health insurance premiums WHICH SHALL HAVE PRIORITY OVER ANY ADDITIONAL DEDUCTION AUTHORIZED BY SUBDIVISION (G) OF THIS SECTION.

S 13. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to any proceeding to establish or modify a child support obligation, including a medical support obligation, commenced on or after such date.