

4214

2009-2010 Regular Sessions

I N S E N A T E

April 17, 2009

Introduced by Sen. SAMPSON -- (at request of the Office of Temporary and Disability Assistance) -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Subparagraph 5 of paragraph (c) of subdivision 1 of section
2 413 of the family court act is REPEALED and a new subparagraph 5 is
3 added to read as follows:
4 (5) THE COURT SHALL DETERMINE THE PARTIES' OBLIGATION TO PROVIDE
5 HEALTH INSURANCE BENEFITS PURSUANT TO SECTION FOUR HUNDRED SIXTEEN OF
6 THIS PART AND TO PAY CASH MEDICAL SUPPORT AS PROVIDED UNDER THIS SUBPAR-
7 AGRAPH.
8 (I) "CASH MEDICAL SUPPORT" MEANS AN AMOUNT ORDERED TO BE PAID TOWARD
9 THE COST OF HEALTH INSURANCE PROVIDED BY A PUBLIC ENTITY OR BY A PARENT
10 THROUGH EMPLOYMENT OR OTHERWISE, AND/OR FOR OTHER HEALTH CARE EXPENSES
11 NOT COVERED BY INSURANCE.
12 (II) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO PARAGRAPH ONE AND
13 SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF
14 SECTION FOUR HUNDRED SIXTEEN OF THIS PART ARE DETERMINED BY THE COURT TO
15 BE AVAILABLE, THE COST OF PROVIDING HEALTH INSURANCE BENEFITS SHALL BE
16 PRORATED BETWEEN THE PARTIES IN THE SAME PROPORTION AS EACH PARENT'S
17 INCOME IS TO THE COMBINED PARENTAL INCOME. IF THE CUSTODIAL PARENT IS
18 ORDERED TO PROVIDE SUCH BENEFITS, THE NON-CUSTODIAL PARENT'S PRO RATA
19 SHARE OF SUCH COSTS SHALL BE ADDED TO THE BASIC SUPPORT OBLIGATION. IF

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

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1 THE NON-CUSTODIAL PARENT IS ORDERED TO PROVIDE SUCH BENEFITS, THE CUSTO-
2 DIAL PARENT'S PRO RATA SHARE OF SUCH COSTS SHALL BE DEDUCTED FROM THE
3 BASIC SUPPORT OBLIGATION. IN ADDITION, THE COURT SHALL PRORATE EACH
4 PARENT'S SHARE OF OTHER HEALTH CARE EXPENSES NOT COVERED BY INSURANCE,
5 IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED
6 PARENTAL INCOME, AND STATE THE NON-CUSTODIAL PARENT'S SHARE AS A
7 PERCENTAGE IN THE ORDER. UPON PROOF TO THE COURT THAT THE CUSTODIAL
8 PARENT HAS INCURRED HEALTH CARE EXPENSES, THE COURT SHALL DETERMINE EACH
9 PARENT'S SHARE THEREOF AND ORDER THE NON-CUSTODIAL PARENT TO PAY HIS OR
10 HER SHARE, REGARDLESS OF WHETHER THE CUSTODIAL PARENT HAS ACTUALLY PAID
11 THE EXPENSE AT THE TIME OF THE DETERMINATION. THE TOTAL AMOUNT OF CASH
12 MEDICAL SUPPORT DETERMINED BY THE COURT TO BE DUE SHALL BE SUPPORT
13 ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES AS
14 PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT.
15 IN ADDITION, THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH CASH
16 MEDICAL SUPPORT SHALL BE PAID IN ONE SUM OR IN PERIODIC SUMS, AS THE
17 COURT DIRECTS, INCLUDING DIRECT PAYMENT TO THE HEALTH CARE PROVIDER;
18 PROVIDED, HOWEVER, THAT IF THE NON-CUSTODIAL PARENT IS DIRECTED TO MAKE
19 PERIODIC PAYMENTS, THE TOTAL OF ALL PERIODIC PAYMENTS UNDER THIS CLAUSE
20 SHALL NOT EXCEED TWENTY PERCENT OF THE PARENT'S GROSS INCOME. THE COURT
21 SHALL NOT ORDER A PAYMENT THAT WOULD REDUCE THE NON-CUSTODIAL PARENT'S
22 INCOME BELOW THE SELF-SUPPORT RESERVE.

23 (III) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPHS (I)
24 AND (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED
25 SIXTEEN OF THIS PART ARE DETERMINED BY THE COURT TO BE UNAVAILABLE, IF
26 THE CHILD IS DETERMINED ELIGIBLE FOR COVERAGE UNDER THE MEDICAL ASSIST-
27 ANCE PROGRAM ESTABLISHED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE
28 SOCIAL SERVICES LAW, THE COURT SHALL ORDER THE NON-CUSTODIAL PARENT TO
29 PAY AN AMOUNT FOR SUCH CHILD EQUAL TO THE LESSER OF: (A) THE AMOUNT THAT
30 WOULD BE REQUIRED AS A FAMILY CONTRIBUTION UNDER THE STATE'S CHILD
31 HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF
32 THE PUBLIC HEALTH LAW FOR THE CHILD, IF HE OR SHE WERE IN A TWO-PARENT
33 HOUSEHOLD WITH INCOME EQUAL TO THE COMBINED INCOME OF THE NON-CUSTODIAL
34 AND CUSTODIAL PARENTS; OR (B) THE ACTUAL AMOUNT EXPENDED BY THE MEDICAL
35 ASSISTANCE PROGRAM ON BEHALF OF THE CHILD OR CHILDREN. IN THE CASE OF A
36 CHILD AUTHORIZED FOR MANAGED CARE COVERAGE UNDER THE MEDICAL ASSISTANCE
37 PROGRAM, THE COURT SHALL SEPARATELY STATE THE MONTHLY OBLIGATION. IN THE
38 CASE OF A CHILD AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE UNDER THE
39 MEDICAL ASSISTANCE PROGRAM, THE COURT SHALL DETERMINE THE MAXIMUM ANNUAL
40 CASH SUPPORT OBLIGATION UNDER SUBCLAUSE (A) OF THIS CLAUSE, WHICH SHALL
41 BE EQUAL TO TWELVE TIMES THE MONTHLY CONTRIBUTION CALCULATED UNDER SUCH
42 SUBCLAUSE OR SUCH PORTION OF THE YEAR THAT THE CHILD IS AUTHORIZED FOR
43 FEE-FOR-SERVICE COVERAGE, AND SHALL ORDER THE NON-CUSTODIAL PARENT TO
44 PAY UP TO THE MAXIMUM ANNUAL CASH SUPPORT OBLIGATION UPON PROOF TO THE
45 COURT THAT THE PUBLIC ENTITY HAS INCURRED HEALTH CARE EXPENSES. THE
46 COURT MAY ORDER THE MONTHLY CONTRIBUTION CALCULATED UNDER SUBCLAUSE (A)
47 OF THIS CLAUSE TO BE PAID BY THE NON-CUSTODIAL PARENT FOR MONTHS PRIOR
48 TO THE ISSUANCE OF THE COURT'S ORDER, UPON A SHOWING THAT THE MEDICAL
49 ASSISTANCE PROGRAM INCURRED HEALTH CARE EXPENSES DURING SUCH MONTHS,
50 REGARDLESS OF WHETHER THE MEDICAL ASSISTANCE PROGRAM HAS ACTUALLY PAID
51 THE EXPENSES AT THE TIME OF THE ORDER; SUCH AMOUNTS SHALL BE SUPPORT
52 ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES AS
53 PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE SUPPORT.
54 IN ADDITION, THE COURT SHALL PRORATE EACH PARENT'S SHARE OF OTHER HEALTH
55 CARE EXPENSES NOT COVERED BY THE MEDICAL ASSISTANCE PROGRAM, IN THE SAME
56 PROPORTION AS EACH PARENT'S INCOME IS TO THE COMBINED PARENTAL INCOME,

1 AND STATE THE NON-CUSTODIAL PARENT'S SHARE AS A PERCENTAGE IN THE ORDER.
2 IN THE CASE OF A CHILD AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE UNDER THE
3 MEDICAL ASSISTANCE PROGRAM, THE COURT SHALL DETERMINE THE MAXIMUM ANNUAL
4 CASH SUPPORT OBLIGATION UNDER SUBCLAUSE (A) OF THIS CLAUSE, WHICH SHALL
5 BE EQUAL TO TWELVE TIMES THE MONTHLY CONTRIBUTION CALCULATED UNDER SUCH
6 SUBCLAUSE. THE TOTAL ANNUAL AMOUNT OF CASH MEDICAL SUPPORT THAT THE
7 NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER THIS CLAUSE SHALL NOT
8 EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR THE DIFFERENCE
9 BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE SELF-SUPPORT RESERVE,
10 WHICHEVER IS LESS.

11 (IV) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPHS (I) AND
12 (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED SIXTEEN
13 OF THIS PART ARE DETERMINED BY THE COURT TO BE UNAVAILABLE, AND THE
14 CHILD IS DETERMINED ELIGIBLE FOR COVERAGE UNDER THE STATE'S CHILD HEALTH
15 INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE TWENTY-FIVE OF THE
16 PUBLIC HEALTH LAW, THE COURT SHALL PRORATE EACH PARENT'S SHARE OF THE
17 COST OF THE FAMILY CONTRIBUTION REQUIRED UNDER SUCH CHILD HEALTH INSUR-
18 ANCE PLAN IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE
19 COMBINED PARENTAL INCOME, AND STATE THE AMOUNT OF THE NON-CUSTODIAL
20 PARENT'S SHARE IN THE ORDER. THE COURT MAY ORDER THE NON-CUSTODIAL
21 PARENT TO PAY HIS OR HER SHARE OF THE FAMILY CONTRIBUTION FOR MONTHS
22 PRIOR TO THE ISSUANCE OF THE COURT'S ORDER, UPON A SHOWING THAT THE
23 CHILD WAS ENROLLED IN THE CHILD HEALTH INSURANCE PLAN DURING SUCH
24 MONTHS, AND SUCH SHARE SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND
25 SHALL BE SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCEMENT
26 OF SUPPORT ARREARS/PAST DUE SUPPORT. IN ADDITION, THE COURT SHALL
27 PRORATE EACH PARENT'S SHARE OF OTHER HEALTH CARE EXPENSES NOT COVERED BY
28 THE CHILD HEALTH INSURANCE PLAN, IN THE SAME PROPORTION AS EACH PARENT'S
29 INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE NON-CUSTODIAL
30 PARENT'S SHARE AS A PERCENTAGE IN THE ORDER. THE TOTAL AMOUNT OF CASH
31 MEDICAL SUPPORT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER
32 THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR
33 THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE
34 SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

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

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

41 (B) SET FORTH IN THE ORDER THE FACTORS IT CONSIDERED, THE AMOUNT OF
42 EACH PARTY'S SHARE OF THE COST, THE REASON OR REASONS THE COURT DID NOT
43 ORDER SUCH PRO RATA APPORTIONMENT, AND THE BASIS FOR THE AMOUNT AWARDED.

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

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

50 (A) "CASH MEDICAL SUPPORT" MEANS AN AMOUNT ORDERED TO BE PAID TOWARD
51 THE COST OF HEALTH INSURANCE PROVIDED BY A PUBLIC ENTITY OR BY A PARENT
52 THROUGH EMPLOYMENT OR OTHERWISE, AND/OR FOR OTHER HEALTH CARE EXPENSES
53 NOT COVERED BY INSURANCE.

54 (B) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPH ONE AND
55 CLAUSES (I) AND (II) OF SUBPARAGRAPH TWO OF PARAGRAPH (C) OF SUBDIVISION
56 ONE OF THIS SECTION ARE DETERMINED BY THE COURT TO BE AVAILABLE, THE

1 COST OF PROVIDING HEALTH INSURANCE BENEFITS SHALL BE PRORATED BETWEEN
2 THE PARTIES IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS TO THE
3 COMBINED PARENTAL INCOME. IF THE CUSTODIAL PARENT IS ORDERED TO PROVIDE
4 SUCH BENEFITS, THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH COSTS
5 SHALL BE ADDED TO THE BASIC SUPPORT OBLIGATION. IF THE NON-CUSTODIAL
6 PARENT IS ORDERED TO PROVIDE SUCH BENEFITS, THE CUSTODIAL PARENT'S PRO
7 RATA SHARE OF SUCH COSTS SHALL BE DEDUCTED FROM THE BASIC SUPPORT OBLI-
8 GATION. IN ADDITION, THE COURT SHALL PRORATE EACH PARENT'S SHARE OF ALL
9 OTHER CASH MEDICAL SUPPORT, INCLUDING OTHER HEALTH CARE EXPENSES NOT
10 COVERED BY INSURANCE, IN THE SAME PROPORTION AS EACH PARENT'S INCOME IS
11 TO THE COMBINED PARENTAL INCOME, AND STATE THE NON-CUSTODIAL PARENT'S
12 SHARE AS A PERCENTAGE IN THE ORDER. UPON PROOF TO THE COURT THAT THE
13 CUSTODIAL PARENT HAS INCURRED HEALTH CARE EXPENSES, THE COURT SHALL
14 DETERMINE EACH PARENT'S SHARE THEREOF AND ORDER THE NON-CUSTODIAL PARENT
15 TO PAY HIS OR HER SHARE, REGARDLESS OF WHETHER THE CUSTODIAL PARENT HAS
16 ACTUALLY PAID THE EXPENSE AT THE TIME OF THE DETERMINATION. THE TOTAL
17 AMOUNT OF CASH MEDICAL SUPPORT DETERMINED BY THE COURT TO BE DUE SHALL
18 BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE SUBJECT TO ANY REMEDIES
19 AS PROVIDED BY LAW FOR THE ENFORCEMENT OF SUPPORT ARREARS/PAST DUE
20 SUPPORT. IN ADDITION, THE NON-CUSTODIAL PARENT'S PRO RATA SHARE OF SUCH
21 CASH MEDICAL SUPPORT SHALL BE PAID IN ONE SUM OR IN PERIODIC SUMS, AS
22 THE COURT DIRECTS, INCLUDING DIRECT PAYMENT TO THE HEALTH CARE PROVIDER;
23 PROVIDED, HOWEVER, THAT IF THE NON-CUSTODIAL PARENT IS DIRECTED TO MAKE
24 PERIODIC PAYMENTS, THE TOTAL OF ALL PERIODIC PAYMENTS UNDER THIS CLAUSE
25 SHALL NOT EXCEED TWENTY PERCENT OF THE PARENT'S GROSS INCOME. THE COURT
26 SHALL NOT ORDER A PAYMENT THAT WOULD REDUCE THE NON-CUSTODIAL PARENT'S
27 INCOME BELOW THE SELF-SUPPORT RESERVE.

28 (C) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPHS (I) AND
29 (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED SIXTEEN
30 OF THE FAMILY COURT ACT ARE DETERMINED BY THE COURT TO BE UNAVAILABLE,
31 IF THE CHILD IS DETERMINED ELIGIBLE FOR COVERAGE UNDER THE MEDICAL
32 ASSISTANCE PROGRAM ESTABLISHED PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE
33 OF THE SOCIAL SERVICES LAW, THE COURT SHALL ORDER THE NON-CUSTODIAL
34 PARENT TO PAY AN AMOUNT FOR SUCH CHILD EQUAL TO THE LESSER OF: (A) THE
35 AMOUNT THAT WOULD BE REQUIRED AS A FAMILY CONTRIBUTION UNDER THE STATE'S
36 CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE
37 TWENTY-FIVE OF THE PUBLIC HEALTH LAW FOR THE CHILD IF HE OR SHE WERE IN
38 A TWO-PARENT HOUSEHOLD WITH INCOME EQUAL TO THE COMBINED INCOME OF THE
39 NON-CUSTODIAL AND CUSTODIAL PARENTS; OR (B) THE ACTUAL AMOUNT EXPENDED
40 BY THE MEDICAL ASSISTANCE PROGRAM ON BEHALF OF THE CHILD OR CHILDREN.
41 IN THE CASE OF A CHILD AUTHORIZED FOR MANAGED CARE COVERAGE UNDER THE
42 MEDICAL ASSISTANCE PROGRAM, THE COURT SHALL SEPARATELY STATE THE MONTHLY
43 OBLIGATION. IN THE CASE OF A CHILD AUTHORIZED FOR FEE-FOR-SERVICE COVER-
44 AGE UNDER THE MEDICAL ASSISTANCE PROGRAM, THE COURT SHALL DETERMINE THE
45 MAXIMUM ANNUAL CASH SUPPORT OBLIGATION UNDER SUBCLAUSE (A) OF THIS
46 CLAUSE, WHICH SHALL BE EQUAL TO TWELVE TIMES THE MONTHLY CONTRIBUTION
47 CALCULATED UNDER SUCH SUBCLAUSE OR SUCH PORTION OF THE YEAR THAT THE
48 CHILD IS AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE, AND SHALL ORDER THE
49 NON-CUSTODIAL PARENT TO PAY UP TO THE MAXIMUM ANNUAL CASH SUPPORT OBLI-
50 GATION UPON PROOF TO THE COURT THAT THE PUBLIC ENTITY HAS INCURRED
51 HEALTH CARE EXPENSES. THE COURT MAY ORDER THE MONTHLY CONTRIBUTION
52 CALCULATED UNDER SUBCLAUSE (A) OF THIS CLAUSE TO BE PAID BY THE NON-CUS-
53 TODIAL PARENT FOR MONTHS PRIOR TO THE ISSUANCE OF THE COURT'S ORDER,
54 UPON A SHOWING THAT THE MEDICAL ASSISTANCE PROGRAM INCURRED HEALTH CARE
55 EXPENSES DURING SUCH MONTHS, REGARDLESS OF WHETHER THE MEDICAL ASSIST-
56 ANCE PROGRAM HAS ACTUALLY PAID THE EXPENSES AT THE TIME OF THE ORDER;

1 SUCH AMOUNTS SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT AND SHALL BE
2 SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCEMENT OF
3 SUPPORT ARREARS/PAST DUE SUPPORT. IN ADDITION, THE COURT SHALL PRORATE
4 EACH PARENT'S SHARE OF OTHER HEALTH CARE EXPENSES NOT COVERED BY THE
5 MEDICAL ASSISTANCE PROGRAM, IN THE SAME PROPORTION AS EACH PARENT'S
6 INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE NON-CUSTODIAL
7 PARENT'S SHARE AS A PERCENTAGE IN THE ORDER. IN THE CASE OF A CHILD
8 AUTHORIZED FOR FEE-FOR-SERVICE COVERAGE UNDER THE MEDICAL ASSISTANCE
9 PROGRAM, THE COURT SHALL DETERMINE THE MAXIMUM ANNUAL CASH SUPPORT OBLI-
10 GATION UNDER SUBCLAUSE (A) OF THIS CLAUSE, WHICH SHALL BE EQUAL TO
11 TWELVE TIMES THE MONTHLY CONTRIBUTION CALCULATED UNDER SUCH SUBCLAUSE.
12 THE TOTAL AMOUNT OF CASH MEDICAL SUPPORT THAT THE NON-CUSTODIAL PARENT
13 IS ORDERED TO PAY UNDER THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS
14 OR HER GROSS INCOME, OR THE DIFFERENCE BETWEEN THE NON-CUSTODIAL
15 PARENT'S INCOME AND THE SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

16 (D) WHERE HEALTH INSURANCE BENEFITS PURSUANT TO SUBPARAGRAPHS (I) AND
17 (II) OF PARAGRAPH TWO OF SUBDIVISION (E) OF SECTION FOUR HUNDRED SIXTEEN
18 OF THE FAMILY COURT ACT ARE DETERMINED BY THE COURT TO BE UNAVAILABLE,
19 AND THE CHILD IS DETERMINED ELIGIBLE FOR COVERAGE UNDER THE STATE'S
20 CHILD HEALTH INSURANCE PLAN PURSUANT TO TITLE ONE-A OF ARTICLE
21 TWENTY-FIVE OF THE PUBLIC HEALTH LAW, THE COURT SHALL PRORATE EACH
22 PARENT'S SHARE OF THE COST OF THE FAMILY CONTRIBUTION REQUIRED UNDER
23 SUCH CHILD HEALTH INSURANCE PLAN IN THE SAME PROPORTION AS EACH PARENT'S
24 INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE AMOUNT OF THE
25 NON-CUSTODIAL PARENT'S SHARE IN THE ORDER. THE COURT MAY ORDER THE
26 NON-CUSTODIAL PARENT TO PAY HIS OR HER SHARE OF THE FAMILY CONTRIBUTION
27 FOR MONTHS PRIOR TO THE ISSUANCE OF THE COURT'S ORDER, UPON A SHOWING
28 THAT THE CHILD WAS ENROLLED IN THE CHILD HEALTH INSURANCE PLAN DURING
29 SUCH MONTHS, AND SUCH SHARE SHALL BE SUPPORT ARREARS/PAST DUE SUPPORT
30 AND SHALL BE SUBJECT TO ANY REMEDIES AS PROVIDED BY LAW FOR THE ENFORCE-
31 MENT OF SUPPORT ARREARS/PAST DUE SUPPORT. IN ADDITION, THE COURT SHALL
32 PRORATE EACH PARENT'S SHARE OF OTHER HEALTH CARE EXPENSES NOT COVERED BY
33 THE CHILD HEALTH INSURANCE PLAN, IN THE SAME PROPORTION AS EACH PARENT'S
34 INCOME IS TO THE COMBINED PARENTAL INCOME, AND STATE THE NON-CUSTODIAL
35 PARENT'S SHARE AS A PERCENTAGE IN THE ORDER. THE TOTAL AMOUNT OF CASH
36 MEDICAL SUPPORT THAT THE NON-CUSTODIAL PARENT IS ORDERED TO PAY UNDER
37 THIS CLAUSE SHALL NOT EXCEED FIVE PERCENT OF HIS OR HER GROSS INCOME, OR
38 THE DIFFERENCE BETWEEN THE NON-CUSTODIAL PARENT'S INCOME AND THE
39 SELF-SUPPORT RESERVE, WHICHEVER IS LESS.

40 (E) UPON PROOF BY EITHER PARTY THAT CASH MEDICAL SUPPORT PURSUANT TO
41 CLAUSES (B), (C), OR (D) OF THIS SUBPARAGRAPH WOULD BE UNJUST OR INAP-
42 PROPRIATE PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION, THE COURT
43 SHALL:

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

46 (B) SET FORTH IN THE ORDER THE FACTORS IT CONSIDERED, THE AMOUNT OF
47 EACH PARTY'S SHARE OF THE COST, THE REASON OR REASONS THE COURT DID NOT
48 ORDER SUCH PRO RATA APPORTIONMENT, AND THE BASIS FOR THE AMOUNT AWARDED.

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

51 (3) WHEN THE PERSON ON WHOSE BEHALF THE PETITION IS BROUGHT IS A CHILD
52 IN ACCORDANCE WITH SUBDIVISION (E) OF THIS SECTION, HEALTH INSURANCE
53 BENEFITS SHALL BE CONSIDERED "REASONABLE IN COST" IF THE COST OF HEALTH
54 INSURANCE BENEFITS DOES NOT EXCEED FIVE PERCENT OF THE COMBINED PARENTAL
55 GROSS INCOME; PROVIDED, HOWEVER, THIS PRESUMPTION MAY BE REBUTTED UPON A
56 FINDING THAT THE COST IS UNJUST OR INAPPROPRIATE AND THE COURT SHALL SET

1 FORTH THE REASONS FOR SUCH FINDING IN THE ORDER OF SUPPORT. THE "COST"
2 OF HEALTH INSURANCE BENEFITS SHALL REFER TO THE COST OF EXTENDING EXIST-
3 ING HEALTH INSURANCE BENEFITS TO THE CHILD OR CHILDREN, OR THE DIFFER-
4 ENCE BETWEEN SELF-ONLY BENEFITS AND EXTENDING HEALTH INSURANCE BENEFITS
5 TO THE CHILD OR CHILDREN WHERE THERE IS NO EXISTING COVERAGE. IN NO
6 INSTANCE SHALL HEALTH INSURANCE BENEFITS BE CONSIDERED "REASONABLE IN
7 COST" IF A PARENT'S SHARE OF THE COST OF EXTENDING SUCH COVERAGE WOULD
8 REDUCE THE INCOME OF THAT PARENT BELOW THE SELF-SUPPORT RESERVE. HEALTH
9 INSURANCE BENEFITS ARE "REASONABLY ACCESSIBLE" IF THE CHILD LIVES WITHIN
10 THE GEOGRAPHIC AREA COVERED BY THE PLAN OR LIVES WITHIN FORTY-FIVE MILES
11 OF SERVICES COVERED BY THE HEALTH INSURANCE BENEFITS OR THROUGH BENEFITS
12 PROVIDED UNDER A RECIPROCAL AGREEMENT; PROVIDED, HOWEVER, THIS PRESUMP-
13 TION MAY BE REBUTTED FOR GOOD CAUSE SHOWN INCLUDING, BUT NOT LIMITED TO,
14 THE SPECIAL HEALTH NEEDS OF THE CHILD. THE COURT SHALL SET FORTH SUCH
15 FINDING AND THE REASONS THEREFOR IN THE ORDER OF SUPPORT.

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

19 (3) WHEN THE PERSON ON WHOSE BEHALF THE PETITION IS BROUGHT IS A CHILD
20 IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVISION, HEALTH INSURANCE
21 BENEFITS SHALL BE CONSIDERED "REASONABLE IN COST" IF THE COST OF HEALTH
22 INSURANCE BENEFITS DOES NOT EXCEED FIVE PERCENT OF THE COMBINED PARENTAL
23 GROSS INCOME; PROVIDED, HOWEVER, THIS PRESUMPTION MAY BE REBUTTED UPON A
24 FINDING THAT THE COST IS UNJUST OR INAPPROPRIATE AND THE COURT SHALL SET
25 FORTH THE REASONS FOR SUCH FINDING IN THE ORDER OF SUPPORT. THE "COST"
26 OF HEALTH INSURANCE BENEFITS SHALL REFER TO THE COST OF EXTENDING EXIST-
27 ING HEALTH INSURANCE BENEFITS TO THE CHILD OR CHILDREN, OR THE DIFFER-
28 ENCE BETWEEN SELF-ONLY BENEFITS AND EXTENDING HEALTH INSURANCE BENEFITS
29 TO THE CHILD OR CHILDREN WHERE THERE IS NO EXISTING COVERAGE. IN NO
30 INSTANCE SHALL HEALTH INSURANCE BENEFITS BE CONSIDERED "REASONABLE IN
31 COST" IF A PARENT'S SHARE OF THE COST OF EXTENDING SUCH COVERAGE WOULD
32 REDUCE THE INCOME OF THAT PARENT BELOW THE SELF-SUPPORT RESERVE. HEALTH
33 INSURANCE BENEFITS ARE "REASONABLY ACCESSIBLE" IF THE CHILD LIVES WITHIN
34 THE GEOGRAPHIC AREA COVERED BY THE PLAN OR LIVES WITHIN FORTY-FIVE MILES
35 OF SERVICES COVERED BY THE HEALTH INSURANCE BENEFITS OR THROUGH BENEFITS
36 PROVIDED UNDER A RECIPROCAL AGREEMENT; PROVIDED, HOWEVER, THIS PRESUMP-
37 TION MAY BE REBUTTED FOR GOOD CAUSE SHOWN INCLUDING, BUT NOT LIMITED TO,
38 THE SPECIAL HEALTH NEEDS OF THE CHILD. THE COURT SHALL SET FORTH SUCH
39 FINDING AND THE REASONS THEREFOR IN THE ORDER OF SUPPORT.

40 S 5. Subparagraph (iii) of paragraph 2 of subdivision (e) of section
41 416 of the family court act, as added by chapter 624 of the laws of
42 2002, is amended to read as follows:

43 (iii) If neither parent has available health insurance benefits, the
44 court shall direct in the order of support that the custodial parent
45 apply for the state's child health insurance plan pursuant to title
46 one-A of article twenty-five of the public health law and the medical
47 assistance program established pursuant to title eleven of article five
48 of the social services law. [If eligible for such coverage, the court
49 shall prorate the cost of any premium or family contribution in accord-
50 ance with subdivision (f) of this section.] A direction issued under
51 this subdivision shall not limit or alter either parent's obligation to
52 obtain health insurance benefits at such time as they become available
53 as required pursuant to subdivision (c) of this section. NOTHING IN
54 THIS SUBDIVISION SHALL ALTER OR LIMIT THE AUTHORITY OF THE MEDICAL
55 ASSISTANCE PROGRAM TO DETERMINE WHEN IT IS CONSIDERED COST EFFECTIVE TO
56 REQUIRE A CUSTODIAL PARENT TO ENROLL A CHILD IN AN AVAILABLE GROUP

1 HEALTH INSURANCE PLAN PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION
2 ONE OF SECTION THREE HUNDRED SIXTY-SEVEN-A OF THE SOCIAL SERVICES LAW.

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

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

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

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

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

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

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

42 S 514. Liability of father to mother. The [father is liable to pay the
43 reasonable expenses of the mother's confinement and recovery and such
44 reasonable expenses in connection with her pregnancy as the court in its
45 discretion may deem proper; provided, however, where] NECESSARY EXPENSES
46 INCURRED BY OR FOR THE MOTHER IN CONNECTION WITH HER CONFINEMENT AND
47 RECOVERY AND THE NECESSARY EXPENSES IN CONNECTION WITH THE PREGNANCY OF
48 THE MOTHER SHALL BE DEEMED CASH MEDICAL SUPPORT, AND THE COURT SHALL
49 DETERMINE THE OBLIGATION OF EITHER OR BOTH PARENTS TO CONTRIBUTE TO THE
50 COST THEREOF PURSUANT TO SUBPARAGRAPH FIVE OF PARAGRAPH (C) OF SUBDIVI-
51 SION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ACT. WHERE the moth-
52 er's confinement, recovery and expenses in connection with her pregnancy
53 were paid under the medical assistance program on the mother's behalf,
54 the father may be liable to the social services district furnishing such
55 medical assistance and to the state department of [social services]
56 HEALTH for [the full amount of] medical assistance so expended, [as the

1 court in its discretion may deem proper] AND THE COURT SHALL DETERMINE
2 THE OBLIGATION OF THE FATHER TO CONTRIBUTE TO THE COST THEREOF PURSUANT
3 TO CLAUSE (III) OF SUBPARAGRAPH FIVE OF PARAGRAPH (C) OF SUBDIVISION ONE
4 OF SECTION FOUR HUNDRED THIRTEEN OF THIS ACT.

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

7 1. In a proceeding in which the court has made an order of filiation,
8 the court shall direct the parent or parents possessed of sufficient
9 means or able to earn such means to pay weekly or at other fixed periods
10 a fair and reasonable sum according to their respective means as the
11 court may determine and apportion for such child's support and educa-
12 tion, until the child is twenty-one. The order shall be effective as of
13 the earlier of the date of the application for an order of filiation,
14 or, if the children for whom support is sought are in receipt of public
15 assistance, the date for which their eligibility for public assistance
16 was effective. Any retroactive amount of child support shall be support
17 arrears/past-due support and shall be paid in one sum or periodic sums
18 as the court shall direct, taking into account any amount of temporary
19 support which has been paid. In addition, such retroactive child support
20 shall be enforceable in any manner provided by law including, but not
21 limited to, an execution for support enforcement pursuant to subdivision
22 (b) of section fifty-two hundred forty-one of the civil practice law and
23 rules. The court shall direct such parent to make his or her residence
24 known at all times should he or she move from the address last known to
25 the court by reporting such change to the support collection unit desig-
26 nated by the appropriate social services district. The order shall
27 contain the social security numbers of the named parents. The order may
28 also direct each parent to pay an amount as the court may determine and
29 apportion for the support of the child prior to the making of the order
30 of filiation, and may direct each parent to pay an amount as the court
31 may determine and apportion for [(i)] the funeral expenses if the child
32 has died[; (ii) the]. THE necessary expenses incurred by or for the
33 mother in connection with her confinement and recovery[;] and [(iii)
34 such] THE NECESSARY expenses in connection with the pregnancy of the
35 mother [as the court may deem proper] SHALL BE DEEMED CASH MEDICAL
36 SUPPORT, AND THE COURT SHALL DETERMINE THE OBLIGATION OF EITHER OR BOTH
37 PARENTS TO CONTRIBUTE TO THE COST THEREOF PURSUANT TO SUBPARAGRAPH FIVE
38 OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF
39 THIS ACT. WHERE THE MOTHER'S CONFINEMENT, RECOVERY AND EXPENSES IN
40 CONNECTION WITH HER PREGNANCY WERE PAID UNDER THE MEDICAL ASSISTANCE
41 PROGRAM ON THE MOTHER'S BEHALF, THE FATHER MAY BE LIABLE TO THE SOCIAL
42 SERVICES DISTRICT FURNISHING SUCH MEDICAL ASSISTANCE AND TO THE STATE
43 DEPARTMENT OF HEALTH FOR MEDICAL ASSISTANCE SO EXPENDED, AND THE COURT
44 SHALL DETERMINE THE OBLIGATION OF THE FATHER TO CONTRIBUTE TO THE COST
45 THEREOF PURSUANT TO CLAUSE (III) OF SUBPARAGRAPH FIVE OF PARAGRAPH (C)
46 OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ACT. In
47 addition, the court shall make provisions for health insurance benefits
48 in accordance with the requirements of section four hundred sixteen of
49 this act.

50 S 11. Subparagraph (i) of paragraph 2 of subdivision (b) of section
51 5241 of the civil practice law and rules, as amended by chapter 533 of
52 the laws of 1999, is amended to read as follows:

53 (i) Where the court orders the debtor to provide health insurance
54 benefits for specified dependents, an execution for medical support
55 enforcement may, except as provided for herein, be issued by the support
56 collection unit, or by the sheriff, the clerk of court or the attorney

1 for the creditor as an officer of the court; provided, however, that
2 when the court issues an order of child support or combined child and
3 spousal support on behalf of persons other than those in receipt of
4 public assistance or in receipt of services pursuant to section one
5 hundred eleven-g of the social services law, such medical execution
6 shall be in the form of a separate qualified medical child support order
7 as provided by subdivision [(f)] (J) of section four hundred sixteen of
8 the family court act and paragraph [(f)] (H) of subdivision one of
9 section two hundred forty of the domestic relations law. Such execution
10 for medical support enforcement may require the debtor's employer,
11 organization or group health plan administrator to purchase on behalf of
12 the debtor and the debtor's dependents such available health insurance
13 benefits. Such execution shall direct the employer, organization or
14 group health plan administrator to provide to the dependents for whom
15 such benefits are required to be provided or such dependents' custodial
16 parent or legal guardian or social services district on behalf of
17 persons applying for or in receipt of public assistance any identifica-
18 tion cards and benefit claim forms and to withhold from the debtor's
19 income the employee's share of the cost of such health insurance bene-
20 fits, and to provide written confirmation of such enrollment indicating
21 the date such benefits were or become available or that such benefits
22 are not available and the reasons therefor to the issuer of the
23 execution. An execution for medical support enforcement shall not
24 require a debtor's employer, organization or group health plan adminis-
25 trator to purchase or otherwise acquire health insurance or health
26 insurance benefits that would not otherwise be available to the debtor
27 by reason of his or her employment or membership. Nothing herein shall
28 be deemed to obligate or otherwise hold any employer, organization or
29 group health plan administrator responsible for an option exercised by
30 the debtor in selecting medical insurance coverage by an employee or
31 member.

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

35 (h) Priority. A levy pursuant to this section or an income deduction
36 order pursuant to section 5242 of this chapter shall take priority over
37 any other assignment, levy or process. If an employer or income payor is
38 served with more than one execution pursuant to this section, or with an
39 execution pursuant to this section and also an order pursuant to section
40 5242 of this chapter, and if the combined total amount of the deductions
41 to be withheld exceeds the limits set forth in subdivision (g) of this
42 section, the employer or income payor shall withhold the maximum amount
43 permitted thereby and pay to each creditor that proportion thereof which
44 such creditor's claim bears to the combined total. Any additional
45 deduction authorized by subdivision (g) of this section to be applied to
46 the reduction of arrears shall be applied to such arrears in proportion
47 to the amount of arrears due to each creditor. Deductions to satisfy
48 CURRENT support obligations[, including any additional deductions
49 authorized by subdivision (g) of this section,] shall have priority over
50 deductions for the debtor's share of health insurance premiums.
51 DEDUCTIONS TO SATISFY HEALTH INSURANCE PREMIUMS SHALL HAVE PRIORITY OVER
52 DEDUCTIONS FOR ARREARS AUTHORIZED BY SUBDIVISION (G) OF THIS SECTION.

53 S 13. This act shall take effect on the ninetieth day after it shall
54 have become a law and shall apply to any proceeding to establish or
55 modify a child support obligation, including a medical support obli-
56 gation, commenced after that date.