§ 412. Married person's duty to support spouse. 1. A married person is chargeable with the support of his or her spouse and, except where the parties have entered into an agreement pursuant to section four hundred twenty-five of this article providing for support, the court, upon application by a party, shall make its award for spousal support pursuant to the provisions of this part.

2. For purposes of this section, the following definitions shall be used:

(a) "payor" shall mean the spouse with the higher income.

(b) "payee" shall mean the spouse with the lower income.

(c) "income" shall mean income as defined in the child support standards act and codified in section two hundred forty of the domestic relations law and section four hundred thirteen of this article without subtracting spousal support actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of the domestic relations law and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of this article.

(d) "income cap" shall mean up to and including one hundred eighty-four thousand dollars of the payor's annual income; provided, however, beginning March first, two thousand twenty and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(e) "guideline amount of spousal support" shall mean the sum derived by the application of subdivision three or four of this section.

(f) "self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of the domestic relations law and section four hundred thirteen of this article.

(g) "agreement" shall have the same meaning as provided in subdivision

three of part B of section two hundred thirty-six of the domestic relations law.

3. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of spousal support as follows:

(a) Where child support will be paid for children of the marriage and where the payor as defined in this section is also the non-custodial parent pursuant to the child support standards act:

(1) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph two of this paragraph.

(4) the court shall determine the lower of the two amounts derived by subparagraphs one and three of this paragraph.

(5) the guideline amount of spousal support shall be the amount determined by subparagraph four of this paragraph except that, if the amount determined by subparagraph four of this paragraph is less than or equal to zero, the guideline amount of spousal support shall be zero dollars.

(6) spousal support shall be calculated prior to child support because the amount of spousal support shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

(b) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this section is the custodial parent pursuant to the child support standards act:

(1) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph two of this paragraph.

(4) the court shall determine the lower of amounts derived by

subparagraphs one and three of this paragraph.

(5) the guideline amount of spousal support shall be the amount determined by subparagraph four of this paragraph except that, if the amount determined by subparagraph four of this paragraph is less than or equal to zero, the guideline amount of spousal support shall be zero dollars.

(6) if child support will be paid for children of the marriage but the payor as defined in this section is the custodial parent pursuant to the child support standards act, spousal support shall be calculated prior to child support because the amount of spousal support shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

4. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of spousal support as follows:

(a) the court shall perform the calculations set forth in subdivision three of this section for the income of the payor up to and including the income cap; and

(b) for income exceeding the cap, the amount of additional spousal support awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in paragraph (a) of subdivision six of this section; and

(c) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

5. Notwithstanding the provisions of this section, where the guideline amount of spousal support would reduce the payor's income below the self-support reserve for a single person, the guideline amount of spousal support shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no spousal support is awarded.

6. (a) The court shall order the guideline amount of spousal support up to the cap in accordance with subdivision three of this section,

unless the court finds that the guideline amount of spousal support is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of spousal support accordingly based upon consideration of the following factors:

(1) the age and health of the parties;

(2) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(3) the need of one party to incur education or training expenses;

(4) the termination of a child support award during the pendency of the spousal support award when the calculation of spousal support was based upon child support being awarded which resulted in a spousal support award lower than it would have been had child support not been awarded;

(5) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a support proceeding without fair consideration;

(6) the existence and duration of a pre-marital joint household or a pre-support proceedings separate household;

(7) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(8) the availability and cost of medical insurance for the parties;

(9) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(10) the tax consequences to each party;

(11) the standard of living of the parties established during the marriage;

(12) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;

(13) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party;

(14) any other factor which the court shall expressly find to be just and proper.

(b) Where the court finds that the guideline amount of spousal support is unjust or inappropriate and the court adjusts the guideline amount of spousal support pursuant to this subdivision, the court shall set forth, in a written decision or on the record, the guideline amount of spousal support, the factors it considered, and the reasons that the court adjusted the guideline amount of spousal support. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(c) Where either or both parties are unrepresented, the court shall not enter a spousal support order unless the court informs the unrepresented party or parties of the guideline amount of spousal support.

7. When a party has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the spousal support award based upon the needs of the payee or the standard of living of the parties prior to commencement of the spousal support proceeding, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly discovered evidence.

8. In any action or proceeding for modification of an order of spousal support existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this section, brought pursuant to this article, the spousal support guidelines set forth in this section shall not constitute a change of circumstances warranting modification of such spousal support order.

9. In any action or proceeding for modification where spousal support or maintenance was established in a written agreement providing for spousal support made pursuant to section four hundred twenty-five of this article or made pursuant to subdivision three of part B of section two hundred thirty-six of the domestic relations law entered into prior to the effective date of the chapter of the laws of two thousand fifteen

which amended this section, brought pursuant to this article, the spousal support guidelines set forth in this section shall not constitute a change of circumstances warranting modification of such spousal support order.

10. The court may modify an order of spousal support upon a showing of a substantial change in circumstances. Unless so modified, any order for spousal support issued pursuant to this section shall continue until the earliest to occur of the following:

(a) a written stipulation or agreement between the parties;

(b) an oral stipulation or agreement between the parties entered into on the record in open court;

(c) issuance of a judgment of divorce or other order in a matrimonial proceeding;

(d) the death of either party.