

Mandatory Award of Health Care Expenses  
By Joel R. Brandes<sup>1</sup>

Mandatory Award of Health Care Expenses - In General

Former Domestic Relations Law § 240 (1-b) (c) (5), and Family Court Act § 413, subdivision 1 (c) (5), which were amended in 2009, required the court to prorate each parent's share of the reasonable health care expenses of the child, where such expenses are not covered by insurance, in the same proportion as each parent's income is to the combined parental income. They provided that the noncustodial parent's pro rata share of such health care expenses was to be paid in a manner determined by the court, including direct payment to the health care provider.<sup>2</sup>

Former Domestic Relations Law § 240(1)(d)<sup>3</sup> and Family Court Act § 416(f),<sup>4</sup> which provided for the proration of costs between the parties where private health insurance is ordered, were amended at the same time to provide that the cost of private health insurance, or the cost of any premium, family contribution, or health expense incurred as a result of enrollment in the State Child Health Insurance Program or Medical Assistance program shall be deemed "cash medical support." Each parent's contribution to the cost of such coverage is to be determined under the amended provisions of and Domestic Relations Law § 240 (1-b) (c) (5) and Family Court Act § 413, subdivision 1 (c) (5).<sup>5</sup>

Family Court Act §§ 514 and 545, respectively, were amended to provide that the necessary expenses incurred by or for the mother in connection with her pregnancy, confinement and recovery shall be deemed a cash medical support obligation and the court must determine the obligation of either or both parties to contribute to the cost

---

<sup>1</sup> Copyright © 2009 Joel R. Brandes Consulting Services, Inc., All Rights Reserved. For authorization to photocopy, please contact Joel R. Brandes Consulting Services, Inc., at [copypermission@nysdivorce.com](mailto:copypermission@nysdivorce.com). Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use. Joel R. Brandes Consulting Services, Inc. has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in your particular jurisdiction. Joel R. Brandes Consulting Services, Inc. is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

<sup>2</sup> Laws of 2009, Ch 215 § 2. (See also Family Court Act 413, subdivision 1 (c) (5), Laws of 2009, Ch 215 § 21).

<sup>3</sup> Laws of 2009, Ch 215 §8.

<sup>4</sup> Laws of 2009, Ch 215 § 7.

<sup>5</sup> Laws of 2009, Ch 215 § 7 & 8.

pursuant to Family Court Act § 413.<sup>6</sup>

According to the New York Assembly Legislative Memorandum these amendments bring New York into compliance with federal mandates set forth in the final medical support regulations for the child support enforcement program, released by the federal Department of Health and Human Services on July 21, 2008. The federal regulations require each state to define when private health insurance benefits, an element of support, are "reasonable in cost" and when such health insurance shall be considered "reasonably accessible."<sup>7</sup>

These amendments allow New York to comply with the federal final rules<sup>8</sup> pertaining to medical support, which requires states to define the terms "reasonable in cost" and "reasonably accessible" in relation to the availability of private health insurance, and also the federal mandate to set a reasonable income-based numeric standard for determining when cash medical support should be ordered. Under federal regulations, private health insurance is considered "available" when it is reasonable in cost and reasonably accessible as those terms are defined by a state. In the event that private health insurance is not "available", the regulations mandate that states seek an order for "cash medical support" until such time as private health insurance becomes available. Additionally, the final medical support regulations allow states to define when it is appropriate to seek cash medical support in addition to private health insurance benefits.<sup>9</sup>

Former Domestic Relations Law § 240 (1-b), subdivision (c) (5) was repealed and a new Domestic Relations Law §240 (1-b) (c) (5) was added. It provides, in part, that:

" 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." <sup>10</sup>

"Cash medical support" means an amount ordered to be paid toward the cost of

---

<sup>6</sup> Laws of 2009, Ch 215, §§ 7 & 8.

<sup>7</sup> See NY Legis Memo 215 (2009).

<sup>8</sup> 45 CFR 302.56; 303.31

<sup>9</sup> See NY Legis Memo 215 (2009).

<sup>10</sup> Domestic Relations Law § 240 (1-b) (c) (5), Laws of 2009, Ch 215 § 2. (See also Family Court Act § 413, subdivision 1 (c) (5)), Laws of 2009, Ch 215 § 1.

health insurance provided by a public entity or by a parent through an employer or organization, including 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.<sup>11</sup>

It also provides, in part:

(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.<sup>12</sup>

(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.<sup>13</sup>

#### Private Health Insurance Benefits - Available - Obligation to Exercise Option

---

<sup>11</sup> Domestic Relations Law § 240 (1-b), (c) (5), Laws of 2009, Ch 215 § 2. (See also Family Court Act § 413, subdivision 1 (c), (5)), Laws of 2009, Ch 215 § 1).

<sup>12</sup> Domestic Relations Law § 240 (1-b) (c) (5) (v). See also Family Court Act § 413, subdivision 1 (c)(5)(v).

<sup>13</sup> Domestic Relations Law § 240 (1-b) (c) (5) (vi). See also Family Court Act § 413, subdivision 1 (c)(5)(vi).

Every order directing the payment of support must provide that if either parent currently, or at any time in the future, has health insurance benefits" available that may be extended or obtained to cover the child, that parent is required to exercise the option of additional coverage in favor of the child and execute and deliver any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for the child.<sup>14</sup>

"Available health insurance benefits" means any health insurance benefits that are reasonable in cost and that are reasonably accessible to the person on whose behalf the petition is brought. Health insurance benefits that are not reasonable in cost or whose services are not reasonably accessible to such person shall be considered unavailable.<sup>15</sup>

#### Private Health Insurance - Available - Mandatory Orders

When the person on whose behalf the petition is brought is a child, the court must consider the availability of health insurance benefits to all parties and must take the following action to ensure that health insurance benefits are provided for the benefit of the child.<sup>16</sup>

If the child is presently covered by health insurance benefits, the court must direct in the order of support that the coverage be maintained, unless either parent requests the court to make a direction for health insurance benefits pursuant to Domestic Relations Law § 240 subdivision 1, (c) (2).<sup>17</sup>

#### Private Health Insurance - Unavailable - Obligation to Pay Cash Medical Support

If the child is not presently covered by health insurance benefits and if only one parent has available health insurance benefits, the court must direct in the order of support that such parent provide health insurance benefits.<sup>18</sup>

---

<sup>14</sup> Domestic Relations Law § 240(1)(a), as amended by Laws of 2002, Ch. 624.

<sup>15</sup> Domestic Relations Law 240, subdivision 1 (b) (2) as added by Laws of 2009, Ch 215, §4. See also Family Court Act 416 (d)(2) as added by Laws of 2009, Ch 215,§3.

<sup>16</sup> Domestic Relations Law § 240, subdivision 1(c).

<sup>17</sup> Domestic Relations Law § 240, subdivision 1(c).

<sup>18</sup> Domestic Relations Law § 240, subdivision 1(c).

If the child is not presently covered by health insurance benefits, and if both parents have available health insurance benefits, the court must direct in the order of support that either parent or both parents provide such health insurance.<sup>19</sup>

The court must make its determination based on the circumstances of the case, including, but not limited to, the cost and comprehensiveness of the respective health insurance benefits and the best interests of the child.<sup>20</sup>

If neither parent has available health insurance benefits, the court must direct in the order of support that the custodial parent apply for the state's child health insurance plan and the medical assistance program. If eligible for such coverage, the court must prorate the cost of any premium or family contribution in accordance with Domestic Relations Law § 240, subdivision 1(d). A direction issued under Domestic Relations Law § 240, subdivision 1(c) does not limit or alter either parent's obligation to obtain health insurance benefits when they become available, as required pursuant to Domestic Relations Law 240, subdivision 1(c).<sup>21</sup>

The cost of providing health insurance benefits pursuant to Domestic Relations Law § 240, subdivision 1(c) must be prorated between the parties in the same proportion as each parent's income is to the combined parental income.<sup>22</sup>

If the custodial parent is ordered to provide such benefits, the noncustodial parent's pro rata share of such costs must be added to the basic support obligation. If the noncustodial parent is ordered to provide such benefits, the custodial parent's pro rata share of such costs must be deducted from the basic support obligation.<sup>23</sup>

Where the court find that such proration is unjust or inappropriate, the court must: (1) order the parties to pay such amount of the cost of health insurance benefits as the court finds just and appropriate; (2) add or subtract the amount so that the noncustodial parent's pro rata share of the costs is added to the basic support obligation. If the noncustodial parent is ordered to provide the benefits, the custodial parent's pro rata share of such costs must be deducted from the basic support obligation; and (3) set forth in the order the factors it considered, the amount of each party's share of the cost and the reason or reasons the court did not order such pro rata

---

<sup>19</sup> Domestic Relations Law § 240, subdivision 1(c).

<sup>20</sup> Domestic Relations Law § 240, subdivision 1(c).

<sup>21</sup> Domestic Relations Law § 240, subdivision 1(c).

<sup>22</sup> Domestic Relations Law § 240, subdivision 1(d).

<sup>23</sup> Domestic Relations Law § 240, subdivision 1(d).

apportionment.<sup>24</sup>

Where health insurance benefits are determined by the court to be unavailable, the court must order the non-custodial parent to pay cash medical support.<sup>25</sup>

In addition, the court must pro rate each parent's share of reasonable health care expenses not reimbursed or paid by insurance, the medical assistance program, or the state's child health insurance plan, in the same proportion as each parent's income is to the combined parental income. The court must state the non-custodial parent's share as a percentage in the order.<sup>26</sup>

The non-custodial parent's cash medical support obligation may 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.<sup>27</sup>

If either party establishes that cash medical support would be unjust or inappropriate pursuant to Domestic Relations Law § 240 (1-b) (f), the court must order the parties to pay cash medical support as the court finds just and appropriate, considering the best interests of the child.<sup>28</sup>

#### Private Health Insurance Benefits - Determination of Availability

In order to be deemed "available" private health insurance benefits must be

---

<sup>24</sup> Domestic Relations Law § 240, subdivision 1(d).

<sup>25</sup> Domestic Relations Law § 240, subdivision (1-b), (c)(5)(v)(C), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1, (c)(5)(v)(C), Laws of 2009, Ch 215, §1.

<sup>26</sup> Domestic Relations Law § 240 (1-b), (c) (5) (v), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1, (c)(5)(v), Laws of 2009, Ch 215, §1.

<sup>27</sup> Domestic Relations Law § 240 (1-b), (c) (5), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5), Laws of 2009, Ch 215, §1.

<sup>28</sup> Domestic Relations Law § 240 (1-b), (c) (5) (vi)(A),Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(vi)(A),Laws of 2009, Ch 215, §1.

"reasonable in cost" and "reasonably accessible".<sup>29</sup>

Private health insurance benefits are presumed to be "reasonable in cost" where the cost of premiums and deductibles for private health insurance attributable to the child(ren) is not more than 5 % of the combined parental gross income. Benefits will not be considered "reasonable in cost" if the cost to a parent of extending coverage to the child(ren) would reduce the income of that parent below the self support reserve. The presumption of cost reasonableness may be rebutted if the court finds that the cost borne by a parent is unjust or inappropriate. This finding must 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.<sup>30</sup>

The cost of health insurance benefits refers to the cost of the premium and deductible attributable to adding the child or children to existing coverage or the difference between the costs for self-only and family coverage.<sup>31</sup>

Private health insurance benefits are presumed to be "reasonably accessible" where the child lives within the geographic area covered by the plan or lives within thirty minutes or thirty miles of services covered by the health insurance benefits or through benefits provided under a reciprocal agreement.<sup>32</sup>

The presumption of accessibility may be rebutted for good cause shown which may include, but is not limited to, a consideration of the special health needs of the child. The court must set forth its finding and the reasons for its finding in the order of support.<sup>33</sup>

---

<sup>29</sup> Domestic Relations Law § 240, subdivision 1 (b) (3), Laws of 2009, Ch 215, § 4. See also Family Court Act § 416 (d)(3), Laws of 2009, Ch 215, § 3.

<sup>30</sup> Domestic Relations Law §240, subdivision 1 (b) (3) as added by Laws of 2009, Ch 215, §4. See also Family Court Act § 416 (d)(3) as added by Laws of 2009, Ch 215, §3.

<sup>31</sup> Domestic Relations Law 240, subdivision 1 (b) (3) as added by Laws of 2009, Ch 215, §4. See also Family Court Act 416 (d)(3) as added by Laws of 2009, Ch 215,§3.

<sup>32</sup> Domestic Relations Law § 240, subdivision 1 (b) (3) as added by Laws of 2009, Ch 215, § 4. See also Family Court Act § 416 (d)(3) as added by Laws of 2009, Ch 215,§ 3.

<sup>33</sup> Domestic Relations Law § 240, subdivision 1 (b) (3). See also Family Court Act § 416 (d)(3).

Where health insurance benefits are determined by the court to be available, the cost of providing health insurance benefits must 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 must be added to the basic support obligation. If the non-custodial parent is ordered to provide the benefits, the custodial parent's pro rata share of such costs must be deducted from the basic support obligation.<sup>34</sup>

#### Private Health Insurance - Availability

In order to be deemed "available" private health insurance benefits must be "reasonable in cost" and "reasonably accessible".<sup>35</sup>

#### Private Health Insurance - Payment for Share of Reasonable Cash Medical Support Expenses for Additional Unreimbursed Expenses

If the child covered by private health insurance incurs additional unreimbursed health care expenses, the court must order the non-custodial parent to pay his or her pro rata share of the reasonable cash medical support expenses. When combined with the cost to the parent for private health insurance or public coverage, the total payment for cash medical support may not cause his or her income to fall below the self-support reserve.<sup>36</sup>

#### Private Health Insurance - Not Available - Cash Medical Support

When private health insurance benefits are unavailable, the custodial parent must be directed to apply for State Child Health Insurance Program or Medical Assistance. The prior language allowing the court to apportion the cost of any premium, family contribution, or health expense associated with participation in such

---

<sup>34</sup> Domestic Relations Law § 240(1-b) (c) (5) (ii), Laws of 2009, Ch 215 § 2. (See also Family Court Act § 413, subdivision 1, (c) (5)(ii)), Laws of 2009, Ch 215 § 1.

<sup>35</sup> Domestic Relations Law § 240, subdivision 1 (b) (3), Laws of 2009, Ch 215, § 4. See also Family Court Act § 416 (d)(3), Laws of 2009, Ch 215, § 3.

<sup>36</sup> . Domestic Relations Law § 240 (1-b) (c) (5) (ii), as added by Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5), Laws of 2009, Ch 215, § 1.



plan or program was repealed.<sup>37</sup>

The state Medical Assistance program is promulgated in Social Services Law Article 5, Title 11. The State Child Health Insurance Program is promulgated in Public Health Law, Article 25, Title 1A.

The cost of providing health insurance benefits or benefits under the state's child health insurance plan or the medical assistance program, pursuant to Domestic Relations Law § 240, subdivision 1(c), is deemed cash medical support. The court must determine the obligation of either or both parents to contribute to the cost of providing health insurance benefits or benefits under the state's child health insurance plan or the medical assistance program, pursuant to Domestic Relations Law § 240 (1-b).<sup>38</sup>

Private Health Insurance - Cash Medical Support Determined Under Domestic Relations Law § 240 (1-b)(c) (5).<sup>39</sup>

The cost of private health insurance, or the cost of any premium, family contribution, or health expense incurred as a result of enrollment in the child health insurance plan or the medical assistance program is deemed cash medical support and each parent's contribution must be determined under the provisions of Domestic Relations Law § 240 (1-b)(c) (5).<sup>40</sup>

Private Health Insurance Benefits - Not Available - Application for State Child Health Insurance Program or Medical Assistance Program

Where private health insurance benefits, pursuant to Domestic Relations Law § 240 (1-b) (1) (c) (2) (i) and (ii) are not available the custodial parent will be ordered to

---

<sup>37</sup> Domestic Relations Law § 240(1)(c)(2)(iii), Laws of 2009, Ch 215, § 6. See also Family Court Act § 416 (e)(2)(iii), Laws of 2009, Ch 215, § 5.

<sup>38</sup> Domestic Relations Law § 240(1)(c)(2)(iii), Laws of 2009, Ch 215, § 8. See also Family Court Act § 416 (e)(2)(iii), Laws of 2009, Ch 215 § 7.

<sup>39</sup> Domestic Relations Law § 240, subdivision 1 (d), Laws of 2009, Ch 215, § 8. See also Family Court Act § 416 (f), Laws of 2009, Ch 215, § 7

<sup>40</sup> Domestic Relations Law § 240, subdivision 1 (d), Laws of 2009, Ch 215, § 8. See also Family Court Act § 416 (f), Laws of 2009, Ch 215, § 7

pay cash medical support.<sup>41</sup>

Private Health Insurance - Not Available - Cash Medical Support - Application for State Child Health Insurance Program or Medical Assistance Program - Managed Care Coverage

For children authorized for managed care coverage under the Medical Assistance program, the non-custodial parent's obligation towards the portion of cash medical support for public coverage or benefits is the lesser of the amount that would be required as a family contribution under the State Child Health Insurance Plan, for the child or children if there were in a two-parent household with income equal to the combined income of the parents, or the actual amount paid by the Medical Assistance program, on behalf of the child or the children, to the managed care plan. The court must separately state the monthly obligation of the non-custodial parent for the portion of cash medical support associated with public coverage. The non-custodial parents cash medical support under this clause may not exceed 5 % of his or her gross income, or the difference between his or her income and the self-support reserve.<sup>42</sup>

Private Health Insurance - Not Available - Cash Medical Support - Application for State Child Health Insurance Program or Medical Assistance Program - Fee for service coverage.

For a child or children authorized for fee-for-service coverage under the medical assistance program ( who are not authorized for managed care coverage), the court must determine the non-custodial parent's maximum annual cash medical support obligation. It is equal to the lesser of the monthly amount that would be required as a family contribution under the state's child health insurance plan 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 must separately state in the order the non-custodial parent's maximum annual cash medical support obligation.<sup>43</sup>

The total annual amount that the non-custodial parent is ordered to pay under

---

<sup>41</sup> . Domestic Relations Law § 240 (1-b) (c) (5) (iii), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(iii), Laws of 2009, Ch 215, §1.

<sup>42</sup> Domestic Relations Law § 240 (1-b) (c) (5) (iii) (A), Laws of 2009, Ch 215, §2 . See also Family Court Act § 413, subdivision 1 (c)(5) (iii) (A), Laws of 2009, Ch 215, §1.

<sup>43</sup> Domestic Relations Law § 240 (1-b), (c) (5) (iii) (B). Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(iii)(B), Laws of 2009, Ch 215, §1.

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.<sup>44</sup>

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 must order the non-custodial parent to pay such incurred health care expenses up to the maximum annual cash medical support obligation. These amounts are support arrears/past due support subject to any remedies as provided by law for the enforcement of support arrears/past due support.<sup>45</sup>

#### Private Health Insurance - Not Available - Cash Medical Support - Child Eligible Under State Child Health Insurance Program

Where health insurance benefits pursuant to Domestic Relations Law § 240 (1-b), (1)(c) (2) (I) and (ii) 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 the court must prorate each parent's share of the cost of the family contribution required under the 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 may not be more than 5 % of his or her gross income, or the difference between the non-custodial parent's income and the self-support reserve, whichever is less.<sup>46</sup>

#### Private Health Insurance - Not Available - Reasonable Health Care Expenses Not Covered by Insurance

In addition, the court must pro rate each parent's share of reasonable health care expenses not reimbursed or paid by insurance, the medical assistance program, or the state's child health insurance plan, in the same proportion as each parent's income is to the combined parental income. The court must state the non-custodial

---

<sup>44</sup> Domestic Relations Law § 240 (1-b) (c) (5) (iii) (B). Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(iii)(B), Laws of 2009, Ch 215, §1.

<sup>45</sup> Domestic Relations Law § 240 (1-b) (c) (5) (iii) (B). Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(iii)(B), Laws of 2009, Ch 215, §1.

<sup>46</sup> Domestic Relations Law § 240 (1-b) (c) (5) (iv), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(iv), Laws of 2009, Ch 215, §1.

parent's share as a percentage in the order.<sup>47</sup>

The court may direct that the non-custodial parent's pro rata share of the health care expenses be paid in one sum or in periodic sums, including direct payment to the health care provider.<sup>48</sup>

The non-custodial parent's pro rata share of health care expenses determined by the court to be due and owing is support arrears/past due support subject to any remedies provided by law for the enforcement of support arrears/past due support.<sup>49</sup>

#### Private Health Insurance - Not Available - Cash Medical Support - Unjust or Inappropriate

If either party establishes that cash medical support would be unjust or inappropriate pursuant to Domestic Relations Law § 240 (1-b) (f), the court must order the parties to pay cash medical support as the court finds just and appropriate, considering the best interests of the child.<sup>50</sup> The Court must also 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.<sup>51</sup>

#### Requirements for child support orders - Directions for health insurance

The court must provide in the order of support that the legally responsible relative immediately notify the other party, or the other party and the support collection unit when the order is issued on behalf of a child in receipt of public assistance and

---

<sup>47</sup> Domestic Relations Law § 240 (1-b) (c) (5) (v), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(v), Laws of 2009, Ch 215, §1.

<sup>48</sup> Domestic Relations Law § 240 (1-b) (c) (5) (v), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(v), Laws of 2009, Ch 215, §1.

<sup>49</sup> Domestic Relations Law § 240 (1-b) (c) (5) (v), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(v), Laws of 2009, Ch 215, §1.

<sup>50</sup> Domestic Relations Law § 240 (1-b) (c) (5) (vi)(A), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(vi)(A), Laws of 2009, Ch 215, §1.

<sup>51</sup> Domestic Relations Law § 240 (1-b) (c) (5) (vi)(B), Laws of 2009, Ch 215, §2. See also Family Court Act § 413, subdivision 1 (c)(5)(vi)(B), Laws of 2009, Ch 215, §1.

care or in receipt of services pursuant to Social Services Law § 111-g, of any change in health insurance benefits, including any termination of benefits, change in the health insurance benefit carrier, premium, or extent and availability of existing or new benefits.<sup>52</sup>

Where the court determines that health insurance benefits are available, the court must provide in the order of support that the legally responsible relative immediately enroll the eligible dependents named in the order who are otherwise eligible for the benefits without regard to any seasonal enrollment restrictions.<sup>53</sup>

The order must also direct the legally responsible relative to maintain the benefits as long as they remain available to that relative, and direct the legally responsible relative to assign all insurance reimbursement payments for health care expenses incurred for his or her eligible dependents to the provider of the services or the party actually having incurred and satisfied the expenses, as appropriate.<sup>54</sup>

If the court finds that a legally responsible relative willfully failed to obtain health insurance benefits in violation of a court order, that relative will be presumptively liable for all health care expenses incurred on behalf of the dependents from the first date the dependents were eligible to be enrolled to receive health insurance benefits after the issuance of the order of support directing the acquisition of such coverage.<sup>55</sup>

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 and care or in receipt of services pursuant to Social Services Law § 111-g, the court must also issue a separate order which must include the necessary direction to ensure the order's characterization as a qualified medical child support order as defined by section 609 of the employee retirement income security act of 1974 (29 U.S.C.A. 1169).<sup>56</sup>

The order must: (i) clearly state that it creates or recognizes the existence of the right of the named dependent to be enrolled and to receive benefits for which the legally responsible relative is eligible under the available group health plans, and shall clearly specify the name, social security number and mailing address of the legally

---

<sup>52</sup> Domestic Relations Law § 240, subdivision 1(e).

<sup>53</sup> Domestic Relations Law § 240, subdivision 1(f).

<sup>54</sup> Domestic Relations Law § 240, subdivision 1(f).

<sup>55</sup> Domestic Relations Law § 240, subdivision 1(l)

<sup>56</sup> Domestic Relations Law § 240, subdivision 1(h)

responsible relative, and of each dependent to be covered by the order; (ii) provide a clear description of the type of coverage to be provided by the group health plan to each such dependent or the manner in which the type of coverage is to be determined; and (iii) specify the period of time to which the order applies. The court may not require the group health plan to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in 42 U.S.C.A. 1396g.<sup>57</sup>

#### Requirements for child support orders - Social Security Number

The court must include in an order for support the social security number of the obligor.<sup>58</sup> The purpose of this requirement is to facilitate enforcement of the order.

---

<sup>57</sup> Domestic Relations Law § 240, subdivision 1(h)

<sup>58</sup> Domestic Relations Law § 240, as amended by Laws of 1998, c. 214, 58. Family Court Act § 416, as amended by Laws of 1998, c. 214, 57. There is an almost identical provision in Family Court Act § 416 (c), which refers to the “legally responsible relative”, rather than “parent”. See Laws of 2002. Ch. 624.