

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

MARY JO BANE  
Commissioner



(518) 474-9475

LOCAL COMMISSIONERS MEMORANDUM

DSS-4037EL (Rev. 9/89)

Transmittal No: 92 LCM-84

Date: June 12, 1992

Division: Administration

TO: Local District Commissioners

SUBJECT: Legislation Which Impacts the Child Support Enforcement Program

ATTACHMENTS: Relevant Sections of Chapter 41 of the Laws of 1992  
(Not Available On-Line)

Effective April 2, 1992, legislation was enacted which has an impact on your district's child support enforcement program. A summary of the provisions and their program impact follow. We are providing you with this information for your review and action in advance of revisions to Department regulations and the Child Support Enforcement Manual (CSEM Vol. 1).

1. ENFORCEMENT OF RETROACTIVE SUPPORT

Statutory Change - Sections 236 and 240 of the Domestic Relations Law (DRL) and Sections 440, 449 and 545 of the Family Court Act (FCA) have been amended to clearly state that retroactive support shall be "support arrears/past due support" and shall be enforceable by income execution (including the additional amount for the reduction of arrears), and in any other manner provided by law. (See sections 139, 140, 141, 142, 143, and 144 of attachment).

Program Impact - These amendments clarify that the entire amount of retroactive support as established by the court is immediately subject to administrative enforcement remedies [i.e., income execution including provisions of Civil Practice Law and Rules Section 5241(b), the additional amount to reduce arrears, and other remedies if otherwise eligible], regardless of any court ordered amount for periodic payment to satisfy the retroactive support which may have been set by the court. In consideration of legislative intent, OCSE has determined that retroactive support should not be included in the amount of past-due support reported to consumer reporting agencies, and, as such, will modify the Child Support Management System (CSMS) accordingly.

Revised Policy Regarding Court Ordered Arrears - Because we have clear and explicit legal authority for the inclusion of retroactive support as "support arrears/past due support" and the recognition that retroactive support is subject to all administrative enforcement, NYS OCSE has reexamined the current procedures regarding court ordered arrears with periodic payment (expressed on CSMS as Arrears Set At Balance-ASAB). As you may know, court ordered arrears balances which have not been granted as a money judgment are not reflected on CSMS as past-due at the time such arrears data is entered on the system. Effective with court orders for arrears entered on CSMS on or after June 29, 1992, CSMS procedures will be revised so that the entire amount of any new order for arrears set by the court (with the exception of repayment of blood test or confinement costs not granted as a money judgment) will be reflected as past due and, as such, will be subject to any and all administrative enforcement mechanisms. This procedural change will ensure uniformity in enforcement of all child support arrears/past due support obligations.

2. EFFECTIVE DATE OF COURT ORDER

Statutory Change - FCA 440, 449 and 545 have been amended to provide that the effective date of the court order for child support is the earlier of the date the petition was filed or, in public assistance cases, the date public assistance became effective for the children for whom support is sought (See sections 142, 143 and 144 of attachment).

(Note: This amendment does not alter existing FCA 545 (2), which provides that at the discretion of the court, in paternity cases, the effective date of a court order may be from the date of a child's birth).

Program Impact - Child support enforcement workers need to ascertain the date public assistance (i.e., cash assistance programs which involve an assignment of support rights: ADC, HR and Title IV-E Foster Care) became effective for children for whom support is sought, and include the information on the support petition or otherwise make it available to the court for a determination of the effective date of the order.

Child support staff should review the "IVA APP Date" provided on the CSMS Child Screen (IVDJCH) for the relevant period of public assistance case activity for the children. In situations where a child was born on public assistance, local districts should use the child's date of birth. It is anticipated that CSMS will be enhanced to make permanent the "Auth From" date on IVDJCH.

Prompt filing of the petition after referral and obtaining orders for temporary child support will mitigate the impact of this provision on local districts and respondents. This law is intended to provide additional reimbursement for the costs of public assistance by requiring the court to calculate the amount of retroactive support owed beginning from the date public assistance becomes effective for children. Please note that this provision only applies to child support. Any spousal support which may be sought is only retroactive to the date of petition filing. Modifications are being made to the support petitions and orders on CSMS Document Generation Module which will be available soon.

3. INFORMATION ON COURT ORDERS

Statutory Change - DRL 240 and FCA 413 have been amended to provide that in any court order which establishes child support where the support amount deviates from the presumptive amount as calculated pursuant to the Child Support Standards Act (CSSA) of 1989, the court must set forth in the written order the presumptive amount of such party's pro rata share of the basic support obligation and the court's reasons for any deviation. These amendments place similar requirements on validly executed agreements or stipulations for the payment of child support where the support amount deviates from the presumptive amount as calculated pursuant to the CSSA. Where such agreements or stipulations are presented to a court for incorporation in an order, they must specify the amount that the basic child support obligation would have been and the reasons for deviation. In addition to this requirement on the party's (which includes local IV-D agency representatives who agree to stipulation in IV-D cases), any court order incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation (See sections 145, 146, 147 and 148 of attachment).

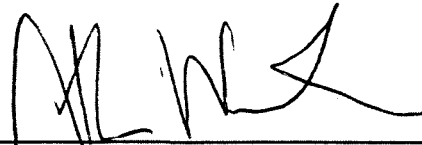
Program Impact - These changes to State law are made to achieve compliance with Federal regulations which require that a state's support guidelines (i.e. CSSA) be considered in any determination of support orders, including orders made by agreements and stipulations. Local district legal representatives and child support enforcement court workers should ensure that the CSSA amount is being determined in every case and, if the court deviates from CSSA, that both the CSSA amount and the reasons for deviation are included in the order. As a reminder, deviations below the CSSA may only occur in non-ADC cases (if at all), since Department regulations prohibit agreements or stipulations in public assistance cases below CSSA [(See 18 NYCRR 347.8(c)]. Modifications are being made to support orders on the CSMS Document Generation Module to accommodate these provisions, and will be available soon.

Date June 12, 1992

Trans. No. 92 LCM-84

Page No. 4

Please share this LCM with your Child Support Enforcement Coordinator and legal representatives for child support matters. If there are any questions, please contact your OCSE County Representative 1-800-342-3012.



---

Nelson M. Weinstock  
Deputy Commissioner  
for Administration

# STATE OF NEW YORK

S. 6806--A

A. 9306--A

## SENATE - ASSEMBLY

CHAPTER 41

EFFECTIVE 4/2/92

January 23, 1992

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to contain health care provider reimbursement rates; to amend the public health law, the social services law, the mental hygiene law and chapter 938 of the laws of 1990 amending the public health law, the social services law and the mental hygiene law, relating to assessing certain health care providers, in relation to assessments on certain health care providers; to authorize the transfer of certain funds to the department of social services medical assistance - local assistance appropriation from the bad debt and charity care pools; to amend chapter 166 of the laws of 1991, amending the tax law and other laws relating to deduction or credit by a shareholder and related provisions; to amend the social services law, in relation to payments and services under the medical assistance program; and to repeal certain provisions of the public health law, the social services law and chapter 938 of the laws of 1990 amending the public health law, the social services law and the mental hygiene law, relating to assessing certain health care providers, relating thereto; to amend the public health law and the social services law, in relation to assessing certain health care providers to authorize the transfer of certain funds and payments and services under the medical assistance program; in relation to the definition of medical assistance and eligibility therefor, establishment of a system of co-payments for medical assistance and utilization of home care and personal care services; amending the estates, powers and trusts law, in relation to disposition in trust for use; the surrogate's court procedure act, in relation to debtor debt; the penal law, in relation to medical assistance authorization card; and to amend chapter 266 of the laws of 1986 amending the civil practice law and rules and other laws relating to

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

LBD13062-04-2

malpractice and professional medical conduct; to amend the social services law, in relation to strengthening recipient employment service requirements and incentives, eliminating non-essential assistance, and controlling fraud and abuse and further in relation to the payment of security deposits for public assistance recipients and the character of home relief; to amend the executive law and the social services law, in relation to creating an office of welfare inspector general; to amend the domestic relations law, the family court act, the judiciary law and the social services law, in relation to child support establishment and to repeal subdivision ten of section 111-b of the social services law, relating thereto and to amend the domestic relations law, the family court act, in relation to support arrears/past due child support and to the enforceability; to amend the social services law, in relation to establishing fingerprint identification demonstration programs in the counties of Rockland and Onondaga for home relief recipients; and to amend the executive law and chapter 829 of the laws of 1990 amending the executive law relating to the elderly pharmaceutical insurance coverage program, in relation to the elderly pharmaceutical insurance coverage program and rebate agreements with drug manufacturers; to amend the public health law, in relation to continuing rate adjustments for certain hospitals and to provide for the repeal of certain provisions of this act at the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 122. Subdivision 2 of section 111-b of the social services law, as amended by chapter 809 of the laws of 1985, is amended to read as follows:

2. The department is hereby authorized to accept, on behalf of the state and the social services districts concerned, assignments of support rights owed to persons receiving (i) aid to dependent children pursuant to title ten of article five of this chapter or, (ii) where appropriate, foster care maintenance payments made pursuant to title IV-E of the federal social security act; provided however, that it will not be appropriate where such requirement will have a negative impact upon the health, safety or welfare of such child or other individuals in the household or impair the likelihood of the child returning to his or her family when discharged from foster care or, (iii) home relief pursuant to title three of article five of this chapter. Notwithstanding any inconsistent provisions of title six of this article or any other provisions of law, the department may enforce such assigned support rights either directly, through social services officials or, if there is in effect an approved agreement between the social services official and another governmental agency, through such other agency. In any proceeding to enforce such assignment, the official bringing such proceeding shall have the same rights as if the proceeding were being brought to enforce section four hundred fifteen of the family court act.

§ 123. Paragraph (i) of subdivision 4 of section 111-b of the social services law, as added by chapter 516 of the laws of 1977, is amended to read as follows:

(i) the action taken to carry out the provisions of sections one hundred fifty-eight, three hundred forty-nine-b, three hundred fifty-two and three hundred fifty-two-a of this chapter;

§ 124. Paragraphs a and b of subdivision 2 of section 111-c of the social services law, as added by chapter 685 of the laws of 1975, are amended to read as follows:

a. obtain assignments to the state and to such district of support rights of each applicant for or recipient of aid to dependent children or home relief required to execute such an assignment as a condition of receiving assistance;

b. report to the state all recipients of aid to dependent children or home relief with respect to whom a parent has been reported absent from the household;

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

LBD13062-04-2





§ 127. Section 158 of the social services law is amended by adding two new subdivisions (d) and (e) to read as follows:

(d) Application for or receipt of home relief shall operate as an assignment to the state and the social services district concerned of any rights to support from any other person as such applicant or recipient may have on their own behalf or on behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance. Applicants for or recipients of home relief shall be informed that such application for or receipt of such benefits will constitute such an assignment. Such assignment shall terminate with respect to current support rights upon a determination by the social services district that such person is no longer eligible for home relief, except with respect to the amount of any unpaid support obligation that has accrued.

(e) In addition to other eligibility requirements, each person who is applying for or receiving assistance under this title, and who is otherwise eligible for assistance under this title, shall be required, as a further condition of eligibility for such assistance:

(i) to assign to the state and the social services district any rights to support such person may have either on his own behalf or on behalf of

EXPLANATION—Matter in italics (underscoring) is new; matter in brackets [ ] is old law to be omitted.

LBD13062-04-2

any other family member for whom he is applying for or receiving aid;  
and

(ii) to cooperate with the state and the social services official, in accordance with standards established by regulations of the department consistent with federal law and regulations, in establishing the paternity of a child born out-of-wedlock for whom assistance under this title is being applied for or received, in their efforts to locate any absent parent and in obtaining support payments or any other payments or property due such person and due each child for whom assistance under this title is being applied for or received, except that an applicant or recipient shall not be required to cooperate in such efforts in cases in which the social services official has determined, in accordance with criteria, including the best interests of the child, as established by regulations of the department consistent with federal law and regulations, that such applicant or recipient has good cause to refuse to cooperate. Each social services district shall inform applicants for and recipients of home relief required to cooperate with the state and local social services officials pursuant to the provisions of this paragraph, that where a proceeding to establish paternity has been filed, and the allegation of paternity has been denied by the respondent, there shall be a stay of all paternity proceedings and related social services district proceedings until sixty days after the birth of the child. Such applicants and recipients shall also be informed that public assistance and care shall not be denied during a stay on the basis of refusal to cooperate pursuant to the provisions of this paragraph.

§ 139. Paragraph a of subdivision 7 of part B of section 236 of the domestic relations law, as amended by chapter 567 of the laws of 1989 and as designated by chapter 818 of the laws of 1990, is amended to read as follows:

a. In any matrimonial action, or in an independent action for child support, the court as provided in section two hundred forty of this chapter shall order either or both parents to pay temporary child support or child support without requiring a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of either or both parents may be unavailable. Where such information is available, the court may make an order for temporary child support pursuant to section two hundred forty of this article. Such order shall be effective as of the date of the application therefor, and any retroactive amount of child support due 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 child 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 not consider the misconduct of either party but shall make its award for child support pursuant to section two hundred forty of this article.

§ 140. Paragraph b of subdivision 9 of part B of section 236 of the domestic relations law, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

b. Upon application by either party, the court may annul or modify any prior order or judgment as to maintenance or child support, upon a showing of the recipient's inability to be self-supporting or a substantial change in circumstance or termination of child support awarded pursuant to section two hundred forty of this article, including financial hardship. Where, after the effective date of this part, a separation

agreement remains in force no modification of a prior order or judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. Provided, however, that no modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to section two hundred forty-four of this chapter. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance or child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance, or child support due shall be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past due support. 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 provisions of this subdivision shall not apply to a separation agreement made prior to the effective date of this part.

§ 141. Subdivision 1 of section 240 of the domestic relations law, as amended by chapter 818 of the laws of 1990, is amended to read as follows:

1. In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court must give such direction, between the parties, for the custody and support of any child of the parties, as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sec-

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

LBD13062-04-2

tions three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of aid to dependent children must contain either a request for child support enforcement services completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services and has declined them at this time. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Such direction shall require that where either parent has health insurance available through an employer or organization that may be extended to cover the child and when the court determines that the employer or organization will pay for a substantial portion of the premium on any such extension of coverage, that such parent exercise the option of additional coverage in favor of such child and execute and deliver any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child. When both parents have health insurance available to them and the court determines that the policies are complementary, the court may order both parents to exercise the option of additional coverage as provided herein. Such direction shall be effective as of the date of the application therefor, and any retroactive amount of child support due 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 child 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. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under section two hundred thirty-

six of this chapter. Upon the application of either parent, or of any other person or party having the care, custody and control of such child pursuant to such judgment or order, after such notice to the other party or parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of child support due 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 child 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.

§ 142. Paragraph (a) of subdivision 1 of section 440 of the family court act, as amended by chapter 818 of the laws of 1990, is amended to read as follows:

(a) Any support order made by the court in any proceeding under the provisions of article three-A of the domestic relations law, pursuant to a reference from the supreme court under section two hundred fifty-one of the domestic relations law or under the provisions of articles four, five or five-A of this act (i) shall direct that payments of child support or combined child and spousal support collected on behalf of persons in receipt of services pursuant to section one hundred eleven-g of the social services law, or on behalf of persons in receipt of public assistance be made to the support collection unit designated by the appropriate social services district, which shall receive and disburse funds so paid; and (ii) shall be effective as of the earlier of the date of the filing of the petition therefor, [with any] 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 support due [to] shall be support arrears/past due support and shall be paid in one sum or periodic sums, as the court directs, and any amount of temporary support which has been paid to be taken into account in calculating any amount of such retroactive support due. 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 not direct that support payments be made to the support collection unit unless the child, who is the subject of the order, is in receipt of pu-

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

LBD13062-04-2

blic assistance or child support services pursuant to section one hundred eleven-g of the social services law. Any such order shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules, or in any other manner provided by law. Where permitted under federal law and where the record of the proceedings contains such information, such order shall include on its face the social security number and the name and address of the employer, if any, of the person chargeable with support provided, however, that failure to comply with this requirement shall not invalidate such order.

§ 143. Section 449 of the family court act, as added by chapter 695 of the laws of 1981, is amended to read as follows:

§ 449. Effective date of order of support. 1. Any order of spousal support made under this article shall be effective as of the date of the filing of the petition therefor, and any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, to the petitioner, to the custodial parent or to third persons. Any amount of temporary support which has been paid shall be taken into account in calculating any amount of retroactive support due.

2. Any order of child support made under this article shall be effective as of the earlier of the date of the filing of the petition therefor, 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 support due shall be support arrears/past-due support and shall be paid in one sum or periodic sums, as the court shall direct, to the petitioner, to the custodial parent or to third persons. Any amount of temporary support which has been paid shall be taken into account in calculating any amount of retroactive support due. 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.

§ 144. Subdivision 1 of section 545 of the family court act, as amended by chapter 849 of the laws of 1986 and as designated by chapter 892 of the laws of 1986, 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, [and any] 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 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 (a) the funeral expenses if the child has died, (b) the necessary expenses incurred by or for the mother in connection with her confinement and recovery, and (c) such expenses in connection with the pregnancy of the mother as the court may deem proper. When either parent has health insurance available through an employer or organization that may be extended to cover persons on whose behalf the petition is brought and when the court determines that the employer or organization will pay for a substantial portion of the premium on any such extension of coverage, any order of support shall require such parent to exercise the option of additional coverage in favor of such persons whom he or she is legally responsible to support and to execute and deliver any forms, notices, documents, or instruments to assure timely payment of any health insurance claims for such person. When more than one legally responsible relative has such health insurance available and the court determines that the policies are complementary, the court may order both legally responsible relatives to exercise the option of additional coverage as provided herein. Subsequently, for good cause shown, support may be continued in the discretion of the court.

§ 145. Paragraph (g) of subdivision 1-b of section 240 of the domestic relations law, as amended by chapter 818 of the laws of 1990, is amended to read as follows:

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered [and the reasons for the level of support and such]; the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided, however, and notwithstanding any other provision of law, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. In no instance shall the court order child support below twenty-five dollars per month. Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

§ 146. Paragraph (h) of subdivision 1-b of section 240 of the domestic relations law, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(h) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this subdivision, and that the basic child support obliga-

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

LBD13062-04-2



tion provided for therein would presumptively result in the correct amount of child support to be awarded. In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations[. The child support standards established by this subdivision shall not be applicable to such agreements or stipulations when executed] which deviate from the basic child support obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section. Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

§ 147. Paragraph (g) of subdivision 1 of section 413 of the family court act, as amended by chapter 818 of the laws of 1990, is amended to read as follows:

(g) Where the court finds that the non-custodial parent's pro rata share of the basic child support obligation is unjust or inappropriate, the court shall order the non-custodial parent to pay such amount of child support as the court finds just and appropriate, and the court shall set forth, in a written order, the factors it considered (and the reasons for the level of support and such); the amount of each party's pro rata share of the basic child support obligation; and the reasons that the court did not order the basic child support obligation. Such written order may not be waived by either party or counsel; provided however, and notwithstanding any other provision of law, including but not limited to section four hundred fifteen of this act, the court shall not find that the non-custodial parent's pro rata share of such obligation is unjust or inappropriate on the basis that such share exceeds the portion of a public assistance grant which is attributable to a child or children. In no instance shall the court order child support below twenty-five dollars per month. Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of health and human services, unpaid child support arrears in excess of five hundred dollars shall not accrue.

§ 148. Paragraph (h) of subdivision 1 of section 413 of the family court act, as added by chapter 567 of the laws of 1989, is amended to read as follows:

(h) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this subdivision and that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded. In the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing

contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations( . The child support standards established by this subdivision shall not be applicable to such agreements or stipulations when executed) which deviate from the basic child support obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to child support pursuant to this section. Any court order or judgment incorporating a validly executed agreement or stipulation which deviates from the basic child support obligation shall set forth the court's reasons for such deviation.

§ 149. Subdivision 4 of section 216 of the judiciary law, as added by chapter 567 of the laws of 1989 and as renumbered by chapter 455 of the laws of 1991, is amended to read as follows:

4. [Chief] The chief administrator of the courts shall collect data in relation to the number of cases in which the basic child support obligation, as defined in section two hundred forty of the domestic relations law and section four hundred thirteen of the family court act, was ordered; the number of cases in which the order deviated from such basic child support obligation and the reasons therefor; the incomes of the parties(,); the number of children, and the amount of child support awarded pursuant to the child support standards act(,); and amounts of alimony or maintenance, or allocations of property included in orders or judgments that include a provision for child support pursuant to the child support standards act, and shall report such data to the legislature and the governor on or before the first day of February of each year. In collecting such data, the chief administrator shall not disclose the identities of the parties or disclose information that would tend to reveal the identities of the parties.

§ 150. Subdivision 10 of section 111-b of the social services law, as added by chapter 567 of the laws of 1989, is REPEALED and a new subdivision 10 is added to read as follows:

10. The commissioner must review the child support standards act at least once every four years to ensure that its application results in the determination of appropriate child support amounts. As part of such review, the commissioner must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from the basic child support obligation. The analysis of the data must be used to ensure that such deviations are limited and, if appropriate, necessary revisions to the child support standards act must be submitted to the legislature to accomplish such purpose.

§ 151. Sections one hundred forty-eight through one hundred fifty-three of this act shall apply to all petitions, motions and applications for child support pending on the effective date.

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

LBD13062-04-2

§ 165. This act shall take effect immediately, provided that:

(a) sections three, fifty-six, ninety-three, ninety-four, ninety-six, ninety-seven, ninety-eight and one hundred fifty-six through one hundred fifty-nine of this act shall take effect April 1, 1992;

(b) sections ten, fourteen, fifteen, thirty-seven, forty-eight, fifty-seven and one hundred two of this act shall be deemed to have been in full force and effect as of January 1, 1991;

(c) section fifty-eight of this act shall be deemed to have been in full force and effect as of March 31, 1992;

(d) section sixty-two of this act shall take effect: (i) insofar as it relates to limits on payments for in-patient services provided to home relief recipients, shall take effect May 1, 1992; (ii) insofar as it relates to other limits on services for home relief recipients, shall take effect July 1, 1992; and (iii) in other respects shall take effect upon promulgation of pertinent regulations but in no event later than July 1, 1993 provided that limitations on inpatient nursing homes services shall not apply to persons who are inpatient nursing home residents on the effective date of this act;

(e) sections sixty-three, sixty-eight through seventy-six, seventy-nine through eighty-two and eighty-nine of this act shall take effect July 1, 1992;

(f) section sixty-six of this act shall take effect September 1, 1992;

(g) section sixty-seven of this act shall take effect May 1, 1992;

(h) section eighty-four of this act shall take effect October 1, 1992;

(i) section eighty-six of this act shall take effect immediately, but shall apply only to trusts created on or after such date;

(j) section eighty-eight of this act shall take effect January 1, 1993;

(k) section ninety-one of this act shall take effect June 1, 1992;

(l) section ninety-two of this act shall apply to determinations of rebate amounts made on and after April 1, 1992;

(m) section one hundred four of this act shall take effect on the first day of the month following thirty days after this act shall have become a law and shall not apply to any arrearages satisfied prior to such date;

(n) section one hundred six of this act shall be deemed to have been in full force and effect as of October 31, 1991;

(o) the commissioner of health is authorized to promulgate on an emergency basis any regulation he or she determines necessary to implement any provision of this act upon its effective date;

(p) the commissioner of social services is authorized to promulgate on an emergency basis any regulation he or she determines necessary to implement any provision of this act upon its effective date, including those provisions relating to determination of client eligibility by social services districts to meet emergency circumstances or prevent eviction and including regulations changing the periods of ineligibility for home relief pursuant to subdivision 5 of section 131 and subdivision 4 of section 341 of the social services law, provided that any such emergency regulation shall be submitted to the legislature upon its promulgation.

(q) the commissioners of health and social services may take any steps necessary to implement this act prior to its effective date;

(r) the provisions hereof shall become effective notwithstanding the failure of the commissioners of health and social services to promulgate regulations implementing this act;

(s) provided, however, that nothing contained herein shall be deemed to affect the application, qualification, expiration or repeal of any provision of law amended by any section of this act and such provisions shall be applied or qualified or shall expire or be deemed repealed in the same manner, to the same extent and on the same date as the case may be as otherwise provided by law except as provided for in sections fifty-four and one hundred sixty-three of this act;

(t) provided, however, that the provisions of section one, three and fifty-six of this act shall expire and be deemed repealed on and after April 1, 1993;

(u) provided, further, that the provisions of subparagraph (i) of paragraph (a) of subdivision 8 of section 365-a of the social services law, as added by section sixty-two of this act shall expire and be deemed repealed on and after July 1, 1994; and the provisions of subparagraph (ii) of paragraph (a) of subdivision 8 of section 365-a of the social services law, as added by section sixty-two of this act shall expire and be deemed repealed on and after December 31, 1993;

(v) provided still further that the provisions of subdivision 12 of section 367-a of the social services law, as added by section sixty-seven of this act shall expire and be deemed repealed on and after December 31, 1993;

(w) provided that the provisions of section 367-o and 367-n of the social services law, as added by sections seventy-eight and seventy-nine of this act, and section eighty, and eighty-one of this act shall expire and be deemed repealed on and after July 1, 1994;

(x) provided further that the provisions of paragraph (a), (b), (d), (e), (f) and (g) of subdivision 6 of section 367-a of the social services law, as added by, and the amendatory language of paragraph (c) of such subdivision as added by section ninety-one of this act, shall expire and be deemed repealed on and after April 1, 1995 and on such date the provisions of paragraph (c) shall be read as set out immediately preceding the effective date of this act;

(y) and provided further that the provisions of subdivision (f) of section 158 of the social services law as added by section one hundred thirty-five of this act shall expire and be deemed repealed on and after July 1, 1994.

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

LBD13062-04-2