

Medical Benefits for a Dependent Spouse:
The Limited Judgment of Divorce and COBRA Privileges
(Under New Jersey and Federal Law)

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Divorce attorneys are frequently confronted with situations involving a dependent spouse in need of medical insurance benefits. What options are available to create viable provisions for medical insurance coverage incidental to matrimonial dissolution? Several options exist including the entry of a limited judgment of divorce, the exercise of COBRA privileges, or utilization of service-related military benefits. This article will briefly discuss considerations related to these options, and hopefully provide some guidance in making the appropriate selection.

Divorce from Bed and Board

A divorce *a mensa et thoro* is Latin for a divorce from table and bed, which is more commonly known as a divorce from bed and board. A divorce from bed and board is permissible pursuant to N.J.S.A. 2A:34-3. A judgment of this nature can only be entered by consent of the parties. Further, a judgment may be entered based upon the same causes of action as an absolute divorce. Conversion to a final judgment must be granted as a matter of right.

A divorce from bed and board is the New Jersey version of a legal separation, as it does not terminate the bond of matrimony. The parties are still legally married. It is often referred to as a decree of separate maintenance. In virtually all cases, the parties resolve collateral issues by way of a written property settlement agreement and enter into the limited judgment for purposes of maintaining medical benefits for the dependent spouse.

Maintenance of Medical Benefits

Because the marital bond continues to subsist as no final judgment of divorce is entered, the parties continue as husband and wife and the dependent spouse remains eligible for family medical benefits typically maintained by the payer spouse through employment. Each medical plan promulgates a summary plan description detailing eligibility and participation with regard to health-care benefits. The summary plan description includes definitions of dependents, typically children and spouses.

With regard to the definition of a spouse, most plans provide coverage for lawfully married spouses or state-recognized common-law spouses. However, there is often a disqualification for legally separated spouses unless coverage is otherwise required by state law. N.J.S.A. 2A:34-3 constitutes the state law requirement to obviate

the disqualification protocol. It is suggested that counsel mail a copy of the statute to the plan administrator if issues of qualification or eligibility arise. If necessary, a post judgment application can be made to join the insurance carrier to the matrimonial case for purposes of compelling recognition of the limited judgment.

The entry of a limited judgment of divorce will also permit the spouse of a military service member to continue medical and dental care at military facilities and coverage under the TRICARE program.

Common situations for use of a Limited Judgment

Several factual situations may exist suggesting utilization of a limited judgment of divorce. For example, a dependent spouse may be required to wait for a period of open enrollment for several months until medical insurance benefits are available through employment. Also, in a rehabilitative situation, a dependent spouse may need one or two years of additional education or training to achieve a circumstance of rehabilitation, and subsequent employment with medical benefits. There may also be a situation where the dependent spouse is one or two years away from Medicare eligibility.

In these situations, the limited judgment is entered for a period of time commensurate with the unique factual circumstance. Counsel most often include a specific period of time wherein the limited judgment can later be converted to an absolute judgment. Most courts accept a subsequent consent final judgment of divorce which includes a provision for each party to be responsible for the maintenance and cost of any health-care insurance. It is often good practice to have the consent final judgment executed contemporaneously with the property settlement agreement and held in escrow by counsel.

Contingent provisions for Conversion

What if it becomes necessary to convert to a final judgment prior to the stated time period articulated with the limited judgment? When representing the dependent spouse, we typically include a provision requiring the other spouse to be responsible for COBRA premiums for the balance of the agreed-upon term. Funds necessary to service the premiums can also be escrowed and provided for within the property settlement agreement. The tax characterization and consequences of such payments should also be in the agreement.

COBRA Benefits

In 1986, Congress passed the landmark Consolidated Omnibus Budget Reconciliation Act which included significant health-care benefit provisions for dependent spouses. The statute amended ERISA, the Internal Revenue Code and the Public Health Service Act to provide for the continuation of group health-care benefits at participant cost for individuals who might otherwise be terminated.

COBRA applies to "qualified beneficiaries" which include former employees, retirees, spouses of former employees or retirees, former spouses, dependent children or children born to adoption. It is applicable to both the private sector and state and local governments.

With regard to spouses, they may exercise benefits under the statute upon the voluntary or involuntary termination of employment of their spouse, a reduction in the number of hours of the spouse, in the event the working spouse becomes eligible for Medicare, upon the death of the worker spouse or upon divorce or legal separation. Interestingly, dependent children are also eligible as a result of any of the above-described qualifying events.

To qualify for benefits, the worker employee must have been using coverage for himself, his spouse or dependents. If the employed spouse was not participating in the health-care plan at work, COBRA benefits will not exist for the qualified individuals.

Upon the occurrence of the qualifying event, an employer must notify the health insurance plan within 30 days. The qualified beneficiaries must notify the plan within 60 days that they intend to elect benefits, and have 45 days thereafter to pay premiums, retroactive to the date of the qualifying event.

A divorced spouse may elect coverage for 36 months after the date of the qualifying event. The other qualifying individuals may elect coverage for 18 months. The premium cost is 102 percent of the cost paid by the participant spouse, along with a 2 percent administrative cost.

A military Cobra plan has been in effect since October 1, 1994. Divorced spouses of service members are also eligible for three years of coverage. They are not eligible if they remarry or maintain qualification for medical benefits under the 20/20/20 or 20/20/15 tests discussed below.

Military-Related Medical Benefits for Dependent Spouses

In the event either spouse served in the United States military, an additional option may exist for providing medical benefits to a dependent spouse. The so-called 20/20/20 test is satisfied if a former spouse was married to a service member for at least 20 years, the service member accrued 20 years of service and at least 20 years of the marriage overlapped 20 years of military service. The so-called 20/20/15 test is different in that only 15 years of the marriage overlapped 20 years of service.

Former spouses (not remarried) who meet the 20/20/20 test will qualify for TRICARE medical insurance, medical and dental benefits at military medical facilities as well as other significant benefits. Former spouses (not remarried) who meet the 20/20/15 test will qualify for medical benefits if they are under age 65 and are not yet eligible for Medicare. There are also three tiers of benefits depending upon the date of final judgment.

Counsel should consistently update their awareness of military-related medical benefits as they frequently change with annual military appropriations legislation.

Conclusion

Upon divorce, the best possible option for both parties is the maintenance of health insurance benefits through employment. If a dependent spouse is not working, a limited judgment, COBRA benefits or military related benefits present a nice variety of alternatives for the maintenance of health insurance coverage, a critical issue at any age.

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