

CLEMENTLAW

THE LAW OFFICES OF DANIEL E. CLEMENT

New York Divorce and Family Law Blog

[Cost of Medical Insurance -A Required Consideration in Divorce](#)

Posted on August 5, 2009 by [Daniel Clement](#)

In the present political climate, health care and medical insurance coverage are hot button topics. But, for those going through divorce, medical coverage has long been a fertile topic for consideration.

It was for this very reason that a law was enacted two years ago (and [discussed here](#)) requiring parties to a divorce to acknowledge that following the entry of divorce that they would no longer be eligible to a continuation of medical benefits derived solely by virtue of their marriage. I suppose too many people were caught off guard without medical coverage following a divorce.

Effective September 21, 2009, [the loss of health insurance benefits](#) will be one of the enumerated factors to be considered in determining maintenance and equitable distribution. The other factors contained in [Domestic Relations Law 236 Part B](#) include,

- a) the income and property of the respective parties including marital property distributed;
- b) the duration of the marriage and the age and health of both parties;
- c) the present and future earning capacity of both parties;
- d) the ability of the party seeking maintenance to become self supporting and, if applicable, the period of time and training necessary therefor;
- e) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage;
- f) the presence of children of the marriage in the respective homes of the parties;
- g) the tax consequences to each party;
- h) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;
- i) the wasteful dissipation of marital property by either spouse;
- j) any transfer or encumbrance made in contemplation of a matrimonial action without fair

consideration; and

k) any other factor which the Court shall expressly find to be just and proper.

While the consideration of the loss of insurance benefits is the first amendment to the equitable distribution law since it was enacted almost thirty years ago, I am not certain that this is a significant development.

From my experience, most attorneys have long recognized that the cost of medical coverage must be considered in settlement negotiations. No responsible adult can afford to be without health coverage and the insurance premiums can be potentially prohibitive.

In fact, the continuation of medical coverage under a “family plan” is a prime reason why many couples agree to a legal separation even after they sign a settlement agreement.

Even though the consideration of the cost or loss of medical insurance was not expressly provided for in the Domestic Relations Law, courts were always empowered to consider it under the catch-all "any other factor . . . the Court found to be proper" contained DRL 236. The new law makes consideration of the cost of health insurance mandatory.