

USE OF A LIMITED DIVORCE TO ALLOW FOR THE CONTINUATION OF HEALTH INSURANCE BENEFITS

New Jersey does not recognize legal separations, but there is an alternative—a divorce from bed and board. A divorce from bed and board is not a divorce in the truest sense. You are not free to re-marry. It can address issues related to distribution of property as though a judgment of absolute divorce has been entered. If one of the parties wants to complete the absolute divorce it must be granted as a matter of right.

Why would parties agree to such an arrangement? Historically, some parties have agreed to a limited divorce because of religious reasons. The most common reason today is to allow for the continuation of health insurance benefits. Many health insurance plans do not consider a divorce from bed and board an 'absolute' divorce which allows the non-member party to remain on his spouse's employee health insurance plan. This can be an important consideration if one of the parties to a divorce has significant health problems and cannot afford to obtain a separate health insurance plan, or the plan provides better coverage than a privately purchased plan.

One proviso; be careful about the language contained in your spouse's health insurance plan. Some plans exclude coverage for spouses who are 'legally separated' from the employee covered spouse. Although New Jersey does not recognize a 'legal separation', the plan could argue that a Judgment of Divorce from Bed and Board is equivalent to a 'legal separation'?

We suggest that you do your due diligence. Look at the health insurance plan summary and if necessary speak to an informed person at your spouse's employer to confirm that your coverage will not be compromised if a Judgment of Divorce from Bed and Board is entered by the Court. You want to avoid having the insurance carrier coming back at a later date taking the position that coverage ended upon the entry of the limited divorce and seeking reimbursement for payments it made, or worse, claiming there was a fraud committed by one or both of the parties.