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What do the latest changes to the Domestic Relations Law mean?

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Last month this column addressed recent changes to New York State statutes that impacted matrimonial practice.

On Aug. 1, yet another law was enacted that will affect every separation agreement and stipulation of settlement entered into in New York. This change to the Domestic Relations Law needs to be noted and incorporated by every family law practitioner as the new DRL section 177 states that the provisions are "prerequisites for divorce."

The law reads as follows:

"S 177. Prerequisites for Divorce. 1. Prior to accepting and entering as a judgment any stipulated agreement between the parties in an action for divorce, the judge shall ensure that there is a provision in such agreement relating to the health care coverage of each individual. Such statement shall either (a) provide for the future coverage of the individual; or (b) state that the individual is aware that he or she will no longer be covered by his or her spouse's health insurance plan and that the individual will be responsible for him or her own health insurance coverage. Every agreement accepted by the court must contain the following statement, signed by each party, to ensure that the provisions of this subdivision are adhered to:

'I, (spouse), fully understand that upon the entrance of this divorce agreement, I may no longer be allowed to receive health coverage under my former spouse's health insurance plan. I may be entitled to purchase health insurance on my own through a COBRA option, if available, otherwise I may be required to secure my own health insurance.'

[A line for the spouse's signature and the signing date is included here.]

2. Prior to rendering a decision in an action for divorce, the judge shall ensure that he or she notifies both parties that once the judgment is entered, a person may or may not be eligible to be covered under his or her spouse's health insurance plan, depending on the terms of the plan. If, prior

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to accepting an agreement and entering the judgment thereon, the judge determines that the provisions of this section have not been met, the judge shall require the parties to comply with the provisions of subdivision one of this section and may grant a 30-day continuance to afford the parties an opportunity to procure their own health insurance coverage."

The entire language of the law is included because it is ambiguous, and certainly not clear, about what is to be done to comply with the requirement.

Does it mean we need to include the specific language within the quotation marks in a separation agreement, along with a special signature place within the agreement? If so, where is the place for the other party to sign (as stated just before the quotation)?

May we just insert a provision stating the acknowledgement regarding the insurance without using the personal pronoun "I," just like other provisions, and both parties then sign the agreement? What about oral stipulations? Do the parties need to sign a separate document setting this forth?

Furthermore, the required statement technically is not even correct, since it states "upon the entrance of this divorce agreement, I may no longer be allowed to receive health coverage." As most matrimonial practitioners know — and the statute itself states several times — the critical event in losing health insurance coverage is entry of the judgment, not the agreement.

This law takes effect Nov. 1 (90 days after it became a law). That doesn't leave much time to figure out what needs to be done, especially as many separation agreements are in the process of being written right now, but may not be signed or the judgment entered until after Nov. 1. Readers are encouraged to respond with ideas of how best to comply with this new requirement.

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