

## NEW YORK STATE ENACTS IMPORTANT HEALTH LAW CHANGES

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**New York State recently amended its health insurance laws in order to permit terminated employees and young adult children of covered employees to continue group coverage in certain situations where coverage would otherwise end. These changes will affect nearly all insured employer group health plans in New York.**

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### COBRA EXTENSION TO 36 MONTHS

New York State recently amended its “mini-COBRA” law extending the required continuation period following a termination of employment to 36 months. All insured group health plans in New York will be subject to the new requirement, including plans subject to federal COBRA requirements. This change is effective for insurance policies or contracts that are issued, renewed or modified on or after July 1, 2009.

The New York mini-COBRA law generally applies to insured group health plans sponsored by New York employers with fewer than 20 employees. Plans sponsored by employers with 20 or more employees and self-insured plans are subject to federal COBRA. Like the federal law, the New York law requires that employees and dependents be offered the opportunity to continue group health coverage at their cost in certain situations where coverage would otherwise end, including termination of employment. Until very recently, the New York law mirrored federal COBRA and required that 18 months of continued coverage be offered following a termination of employment or reduction of work hours.

On July 29, 2009, Governor Paterson signed into law an amendment to the mini-COBRA law<sup>1</sup>, which extends the required continuation period to 36 months, regardless of the qualifying event. The new law applies to all group health policies offered in New York, *including* those provided by employers subject to federal COBRA requirements. Under the new law, all New York employees covered by an insured employer health plan, and the covered dependents of such employees, will be entitled to continue such coverage at their cost for up to 36 months after termination of employment or termination of membership in an eligible class.

The New York law applies only to health insurance policies that provide hospital, surgical or medical expenses. Dental and vision policies would not be affected. In addition, the New York law does not apply to self-insured health plans.

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<sup>1</sup> Laws of 2009, Chapter 236.

Although the New York mini-COBRA law applies to insurers and does not directly regulate employers, employers who sponsor insured plans in New York should consider whether to notify employees about this extension of COBRA coverage.

## COVERAGE OF DEPENDENT CHILDREN THROUGH AGE 29

Governor Paterson also recently signed into law another amendment to the Insurance Law<sup>2</sup> that requires New York insurers to permit children to elect continued coverage under their parents' group health policies through the age of 29. There are two separate components to this new requirement. Both are effective for policies or contracts issued, renewed or modified on or after September 1, 2009. Thus, for most group health policies, the new benefit will apply on the policy's first annual renewal date on or after September 1, 2009. The new requirements do not apply to self-insured group health plans.

### *"Make Available" Requirement*

The new law requires insurers that offer group health policies with dependent coverage to offer sponsoring employers a coverage option under which the unmarried child of a participant would be covered through age 29, regardless of whether the child is financially dependent on the parent. Prior to enactment of this law, there was no minimum age to which group health policies were required to cover dependent children, and most policies ended such coverage when the child reached age 19, or age 23 if a full-time college student.

Under the new law, New York insurers must make this option available to employers, but employers are not required to offer this coverage option as part of their plans.

### *"Young Adult Option"*

The new law also provides that, *even if an employer does not offer* the coverage option described above, the insurer must still permit a dependent child to elect continued coverage under a parent's group health policy through age 29. The cost of the continued coverage cannot exceed 100% of the single premium rate. For purposes of this "young adult option," a "dependent child" means an unmarried child living or working in New York who is not eligible for coverage under any other group health plan or Medicare. The continued coverage can be elected by the dependent child or the parent during the following periods:

- within 60 days after the date that the dependent child's coverage would otherwise end as a result of reaching the maximum age under the policy;
- within 60 days after newly meeting the eligibility requirements - for example, within 60 days after losing other group health coverage or moving back to New York State; and
- during an annual 30-day open enrollment period under the parent's group health policy.

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<sup>2</sup> Laws of 2009, Chapter 240.

Dependent children whose coverage terminated prior to the date the new law takes effect for the parent's group health policy will have 12 months from that date to elect coverage. Coverage of the child will be retroactive if elected within 60 days after the child would otherwise have "aged out" of eligibility under the parent's policy; in all other cases, the child's coverage is prospective and will begin within 30 days after the insurer receives notice of the election and the premium payment.

Under the new law, the insurer must notify employees of this new continuation coverage option. Sponsors of insured group health plans in New York should consider whether to revise their COBRA election forms in order to advise employees of this option and its effect on COBRA coverage.

***If you have any questions regarding this or other employee benefits law topics, please contact Robert W. Patterson (716.843.3910, [rpatterson@jaeckle.com](mailto:rpatterson@jaeckle.com)) or Michele O. Heffernan (716.843.3850, [mheffernan@jaeckle.com](mailto:mheffernan@jaeckle.com)).***

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