

# NEW JERSEY, NEW YORK, AND PENNSYLVANIA REQUIRE DEPENDENT HEALTH INSURANCE COVERAGE TO AGE 30: THREE NEW MODELS FOR HEALTH INSURANCE CONTINUATION

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In the summer of 2009, New York and Pennsylvania became the latest states to require insurance companies to provide broad-based health insurance continuation for young adults through age 30. Although there has been a steady move in the last decade to extend the date at which dependents “age off” their parents’ coverage, the majority of states require the extension only until a child reaches his or her early to mid-twenties. Moreover, most states’ continuation extension requires that the child be a student or disabled, and be financially dependent on the parent, and/

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or share a residence with the parent when not enrolled in school. In 2006, New Jersey became the first state to require insurers to extend health coverage to dependents until age 30 and without any requirement of financial dependence, common residence, or student status. Amendments were made to the New Jersey statute in 2008, and now continuation coverage is required until age 31. The “age 30” continuation extension beyond a child’s mid-twenties and without regard to the traditional parent-child dependency relationship represents a shift from coverage for dependents as children and students to coverage for (quasi) independent young adults.

The continuation requirements in New Jersey, New York, and Pennsylvania share some basic terms and concepts, but, interestingly, each state’s regime is fundamentally different in many respects. For instance, each state is different in determining whether an employer must provide continuation coverage, what coverage is offered, how the cost of the cov-

erage is determined, and whether the dependent is eligible for Federal or state “mini” COBRA coverage following the age 30 continuation period. This article will review six similarities between the three states’ requirements and explore ten differences. Please note that the legislation in New York and Pennsylvania was recently enacted and only limited guidance has been issued by regulators. The discussion herein will evolve as more guidance is released.

## BACKGROUND

Health care reform in the United States has typically taken the form of incremental extensions of coverage to additional groups, extended and subsidized continuation periods after coverage is lost, and mandated health benefits. Some of the more recent examples of these incremental changes are described in Exhibit 1:

Aside from the Medicare Part D prescription drug program and the Obama Administration’s health care reform proposal, the majority of recent health care changes and

reform have been incremental. The impact of these incremental changes, both singularly and cumulatively, raise a number of plan design, compliance, financial, and communication issues. New Jersey, New York, and Pennsylvania have taken three very different approaches to extend coverage to young adults. An examination of these new regimes may provide an indication as to what other states or the Federal government may soon require. In fact, extending coverage for dependents up to age 27 has been proposed in Congress as part of the health reform legislation and, also in 2009, legislation was passed in Wisconsin requiring coverage extension through age 27 for fully insured plans, regardless of dependency status. Reviewing these models will help employers and regulators identify the benefits and burdens of each approach and gain a better understanding of what changes may impact group health plans in the near future.

## **SIX KEY SIMILARITIES BETWEEN NJ, NY, AND PA CONTINUATION REQUIREMENTS**

### **Similarity #1: Requirements Apply Only to Fully Insured Plans**

In all three states, the “young adult” continuation requirements apply only to fully insured arrangements, which are subject to state law regulation. Many large employers sponsor self-insured health plans, which are not subject to state law regulation, and to which the age 30 continuation requirements do not apply. The Federal Employee Retirement Income Security Act of 1974 (ERISA) contains broad state law preemption rules that apply to self-insured plans, thereby ex-

### EXHIBIT 1

#### **Examples of Incremental Health Care Reform**

##### **Extensions to Additional Groups**

- **Expansion of State Children’s Health Insurance Program (SCHIP) coverage multiple factors above the poverty level and beyond traditional Medicaid eligibility**
- **Extended coverage for children who must take an academic level of absence due to medical reasons (Michelle’s Law)**
- **Extending dependent coverage for students through a child’s mid-twenties**

##### **Extended Continuation Periods after Coverage is Lost**

- **Extension of COBRA continuation periods under state law, including New York’s recent extension of its mini-COBRA health continuation law to a maximum of 36 months**

##### **Subsidized Continuation Periods after Coverage is Lost**

- **65% Federal COBRA subsidy under the 2009 economic stimulus package (ARRA) and the extension thereof under the 2010 defense reauthorization bill**
- **Trade Act Health Coverage Tax Credit**

##### **Mandated Health Benefits**

- **Benefit level mandates. For example, mental health parity**
- **Coverage requirements for specific procedures. For example, fertility treatments**

empting self-insured plans from state law regulation.

Although technically these changes only apply to insured plans, it is also possible that employers with self-insured plans may voluntarily consider amendments to their self-insured offerings in order to conform them to the insured plan requirements. These voluntary extensions of coverage under self-insured plans should be permitted; but require careful planning and coordination with plan administrators and human resource personnel who are involved in plan administration. In addition, large employers may also sponsor fully insured plans for specific employee groups (for example, for a smaller facility or for a specific population where the employer’s self-insured plan may only have access to a limited coverage network). For employers that sponsor a variety of self- and fully-insured options, the

state law continuation requirements present specific communication and plan design challenges if the state law continuation requirements are not mirrored in the self-insured options. Even for self-insured plans and employers that do not have insured policies in these states, the new continuations requirements are significant as they may indicate a trend that could be replicated by other states or the Federal government.

### **Similarity #2: Continuation Rights Apply to Health Care Coverage**

In all three states, the continuation rights only apply to health plans, sometimes referred to in the statutes as “group accident and health insurance plans” or “health care insurance.” The continuation rights do not apply to dental or standalone vision plans. Guidance from the New York Department of Insurance also provides that the continuation rights do not apply

## EXHIBIT 2

**Similarities Between NJ, NY, and PA Age 30 Continuation Requirements**

Similarity	Exceptions
Only fully insured plans covered	None
Only health care plans covered. Dental and other specified coverages excluded.	None
Policy itself must provide dependent coverage	None
Dependent must be unmarried	New Jersey also excludes parties to civil union
Financial dependence and residence not considered	None
Continuation through age 29 (until age 30)	New Jersey statute amended in 2008 to provide continuation through age 30 (until age 31)
Coverage terminates when terminated by the dependent, parent no longer enrolled, dependent loss of eligibility, premium not paid, or group policy terminated and not replaced.	In New Jersey, coverage will terminate if parent decides to terminate coverage for all dependents.

to vision only, pharmacy only, accident only, or specified disease coverage. The Pennsylvania statute includes a long list of insurance coverage that does not qualify for continuation rights: hospital indemnity, accident, specified disease, disability income, dental, vision, CHAMPUS supplement, Medicare supplement, long-term care, other limited benefit plans, and individual health insurance policies. Interestingly, the Wisconsin statute extending coverage to age 27 (adopted in 2009) applies to standalone vision and dental plans, and this appears to be the first statute extending vision and/or dental coverage without regard to the traditional parent-child dependency requirement for coverage eligibility.

### **Similarity #3: Policy Must Provide Dependent Coverage**

None of the continuation laws require that a policy provide dependent coverage. If an employer

only provides coverage for employees, the new laws will not require that dependent continuation coverage be provided.

### **Similarity #4: Dependent Must Be Unmarried**

All three states require that the dependent be unmarried. In New Jersey, the age 30 continuation rights do not apply to a dependent who is party to a civil union.

### **Similarity #5: Financial Dependence and Residence Not Considered**

Unlike the coverage extensions in some states for college students, neither financial dependence nor residence is relevant to eligibility for the age 30 continuation coverage in any of the three states.

### **Similarity #6: Termination**

In all three states, the age 30 continuation coverage ends upon the earliest of the following: (1) the dependent terminates coverage; (2) the parent is no longer enrolled in

insured employer coverage; (3) the dependent no longer satisfies the eligibility requirements; (4) the premium is not paid; or (5) the group insurance policy is terminated and not replaced. New Jersey also provides that coverage will terminate if a parent decides to terminate coverage for all of his or her dependents.

## **10 KEY DIFFERENCES BETWEEN NJ, NY, AND PA CONTINUATION REQUIREMENTS**

Although the New Jersey, New York, and Pennsylvania continuation requirements share some similarities, there are significant differences in the requirements. Ten key differences are described below.

### **Difference #1: Whether Employer Required to Provide Age 30 Continuation Coverage**

New Jersey requires the age 30 extension to be part of an employer's group policy if any dependent benefits are otherwise offered. In Pennsylvania, on the other hand, insurers are required to give employers the option to include the age 30 extension; employers are not required to provide the extension benefit.

New York has taken an interesting hybrid approach with two different options in how age 30 continuation coverage may be provided. The first option is the "make available requirement," under which insurers are required to give New York employers the option to add an age 30 extension rider to the policy, but employers are not required to include it in their benefit design. The rider has the effect of extending the qualifying dependent definition to age 30 within the employer's coverage for active employees, similar to the way that employers have extended

coverage for qualifying college students. If the employer declines to add the age 30 rider, the insurer is then required to provide a COBRA-like “young adult” continuation option under which the insurer must provide the dependent with the option to extend coverage outside of the employer’s plan for active employees.

Whether the New York age 30 coverage is provided by the employer or the insurer, there is largely no difference in the benefits provided. As discussed below, under both New York options, the age 30 qualifying dependent is required to be enrolled in the same benefit plan as his or her parent and the dependent’s claims experience can affect the total policy cost, under either option. Employers may choose to not include the age 30 rider in their active coverage in order to limit the complexity of their core benefits and perhaps to avoid some of the difficult communication problems in describing dependent eligibility and, as described below, the multiple enrollment points, termination events, and impact on continuation options. In addition, employers that subsidize dependent coverage generally must also subsidize the age 30 coverage if provided under the active plan through the age 30 policy rider.

### **Difference #2: Residency Requirement**

Both New Jersey and Pennsylvania require that the qualifying age 30 dependent be a state resident or be enrolled as a full-time student at an accredited institution of higher education. In New York, the extension is not provided to non-resident students, but it is provided to those who work or live (even if not a resident) in

#### EXHIBIT 3

#### New York’s Two Options for Age 30 Continuation Coverage

Option 1: “Make Available Requirement”	Option 2: “Young Adult Option”
Insurer must provide the employer with the option to add an age 30 extension rider to the policy. The employer is not required to include the rider in its policy.	If the employer declines the age 30 extension rider, the insurer is required to provide the age 30 extension option outside the plan.
The dependent’s claims experience can affect the total policy cost under either option.	

New York, as well as in the service area of the insurer.

### **Difference #3: Disqualification if Eligible for Other Coverage**

In New York, a dependent will be disqualified from age 30 dependent coverage if he or she has or is eligible for any type of employer coverage (including COBRA/state continuation coverage), even if the cost of the coverage is high or the network is limited. As long as the coverage includes medical and hospitalization benefits, the dependent will be disqualified from age 30 dependent coverage, even if the dependent is not enrolled. Eligibility itself disqualifies coverage. Interestingly, Wisconsin’s age 27 extension excludes young adults eligible for additional employer-based coverage only if the amount of premium for which they are responsible is less than the responsibility under the parent’s employer-based coverage.

In contrast, New Jersey and Pennsylvania only provide for an exclusion if the dependent is enrolled in other coverage. Eligibility on its own is not a disqualification

### **Difference #4: Disqualification if Dependent Has Children?**

Dependents with children of their own are disqualified from age 30 continuation coverage under New Jersey and Pennsylvania law. In

New York, on the other hand, having children will not disqualify a dependent from age 30 continuation coverage eligibility, although the dependent’s children will not be eligible for the extension.

### **Difference #5: Requirement to Have “Aged-Out” of Parent’s Coverage**

New Jersey does not require the dependent to have “aged out” of the employer’s plan by having lost coverage upon reaching the dependent limiting age. Instead, New Jersey only requires that the dependent have had some type of “creditable coverage” under a group health plan, a church plan, an individual health benefits plan, or been covered by Medicare. Unlike other statutory enrollment rights (e.g., HIPAA special enrollment rights), the creditable coverage need not be continuous prior to the enrollment for age 30 continuation coverage. The only requirement is that the dependent have had previous creditable coverage at some point in his or her life. In New Jersey, the dependent need not have ever been covered under the parent’s plan in order to qualify for the age 30 continuation right.

By contrast, the New York statute only provides coverage for dependents who have aged out of the plan. Despite the wording of the statute, in practice, many insur-

ers do not appear to be requiring that the dependent have aged off a specific insured plan. This may be due to recordkeeping issues or the challenges insurers have faced in rapidly implementing the new rules. Therefore, it is possible that insurers could apply a more strict approach in the future.

The Pennsylvania statutory language is unclear, although it appears that there is no requirement that the dependent have aged off the policy.

#### **Difference #6: Plan Coverage Options**

In New Jersey, the age 30 dependent coverage will be identical to the coverage provided to the dependent prior to the termination of coverage. By contrast, in New York and Pennsylvania, both the parent and the qualifying age 30 dependent must be enrolled in the same coverage option. In New York, the parent and the dependent are required to be enrolled in the same product, even if the New York age 30 dependent continuation is provided outside the employer's plan under the insurer's young adult option. Therefore, New York and Pennsylvania dependents could have their coverage option changed by a parent's election during an open enrollment period, but a New Jersey dependent would appear to be unaffected by the parent's open enrollment change, unless the parent is no longer enrolled in any insured option.

#### **Difference #7: Enrollment Dates**

The New Jersey and New York laws both provide that a dependent can enroll mid-year if the dependent recently satisfied the eligibility rules, and both states provided an initial 12-month enrollment period after the statute was enacted to allow dependents who had lost

coverage to enroll in the new dependent coverage extension. Enrollment can be made without evidence of insurability. The Pennsylvania statute, on the other hand, does not include any mid-year enrollment provisions. Therefore, Pennsylvania dependents may be limited to annual open enrollment.

#### **Difference #8: Employer Required to Pay for Dependent Continuation Coverage?**

Neither New Jersey nor Pennsylvania requires employers to contribute to the cost of age 30 continuation coverage. In New York, employers are not required to subsidize the cost of age 30 continuation coverage if it is offered outside the plan by the insurer as the "young adult option." Nevertheless, if a New York employer elects to add the age 30 rider to its policy and it contributes to the cost of dependent coverage generally, then the employer will also be responsible for contributing to the cost of dependent coverage for the age 30 portion of the coverage. The subsidy for age 30 dependents must be at the same rate or percentage as for other dependents.

#### **Difference #9: Cost of Age 29 Coverage**

In New Jersey and Pennsylvania, the cost of the age 30 continuation coverage is based on the portion of the premium previously paid for the dependent's coverage (e.g., cost represented by the dependent's share of family coverage). In other words, the New Jersey and Pennsylvania age 30 continuation coverage cost equals the incremental increase in the total coverage cost. New Jersey also provides for a 2% administrative surcharge. New York, on the other hand, permits up to 102% of the single premium cost to be charged for the age 30 continuation coverage.

#### **Difference #10: COBRA Eligibility Following Age 30 Continuation Period**

Dependents are eligible for extended COBRA continuation following the loss of the age 30 eligibility in New Jersey and Pennsylvania, as well as under the "make available option" in New York. COBRA continuation coverage is available under these options because the coverage is provided as part of the employer's group health plan. In contrast, upon the loss of age 30 eligibility in New York under the young adult option, there is no COBRA continuation option, because the age 30 continuation right is provided by the insurer and not part of the group health plan.

New York dependents who age out of their parent's policy where an employer has not elected the age 30 rider are faced with difficult choices. On the one hand, the dependent could elect age 30 continuation coverage under the young adult option, but this coverage would terminate if the parent terminated employment, switched to a self-insured health option (if offered by the employer), or declined coverage altogether. In contrast, if the New York dependent elected COBRA continuation coverage, the continuation right would be unaffected by the parent's termination of employment, change in health option, or coverage decline. In addition, New York has also extended its mini-COBRA statute to provide for a maximum COBRA coverage for insured plans of up to thirty-six months (an additional eighteen months for most participants). The age 30 continuation

## EXHIBIT 4

## Differences Between NJ, NY, and PA Dependent Continuation Requirements

	New Jersey	New York	Pennsylvania
Employer Required to Provide Dependent Continuation Coverage	Yes	No; if employer declines, insurer must provide continuation option.	No
Residency Requirement for Dependent	Yes, exception for full-time student.	Yes, and includes dependents who work or live (even if not a resident) in New York, as well as in the service area of the insurer. No exception for students.	Yes, exception for full-time student.
Dependent Disqualified if Eligible for Other Coverage?	No, only disqualified if actually covered.	Yes	No, only disqualified if actually covered.
Dependent Disqualified if He or She Has Dependents?	Yes	No	Yes
Dependent Required to Age Out of Plan?	No	Yes, although requirement not enforced by some insurers	Unclear
Coverage Options	Same coverage as when lost coverage	Same coverage as parent (can change)	Same coverage as parent (can change)
Mid-year and special enrollment	Yes	Yes	No
Employer Required to Pay for Coverage	No	No, unless rider added to active policy. Then, same cost sharing must apply.	No
Cost	Incremental cost of additional coverage, 2% administrative surcharge	102% of Single Premium Cost	Incremental cost of additional coverage
COBRA Eligibility following Age 29 Coverage	Yes	Yes, if rider added to active policy. If young adult option provided by insurer, no COBRA entitlement	Yes
Effective Date, for contracts issued, renewed, modified, altered, or amended after	May 12, 2006	September 1, 2009	December 7, 2009

right may potentially provide a longer period of coverage than COBRA or state law continuation coverage, but the age 30 continuation right is also subject to some termination risks that are not present under COBRA and state law continuation rights.

### CONCLUSION

New Jersey, New York, and Pennsylvania have taken three very different approaches to extending health insurance coverage to young adults to age 30 (and age 31 in New Jersey). If the rapid adoption of state laws to extend coverage for

students until their mid-twenties is any indication, other states and the Federal government will likely be considering young adult continuation coverage proposals similar to those enacted by New Jersey, New York, and Pennsylvania.