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## Group Health Insurance

### New Law Will Have Significant Impact on Group Health Plans Insured in New York

By PAUL M. HAMBURGER AND JONATHAN J. BOYLES

**A**lthough the New York Senate has been in a political stalemate for much of the summer, significant group health plan legislation was passed by the legislature and signed by Gov. David A. Paterson on July 29. The new legislation will extend dependent coverage and expand Consolidated Omnibus Budget Reconciliation Act (COBRA) protections to health plan participants in the state, and may raise interesting questions in its coordination with the federal COBRA statute.

Under one piece of legislation, insurers and HMOs must offer group health plan policyholders the option to cover dependents through age 29. If an employer does not elect to extend coverage through age 29, the insurer is required to offer "COBRA-like" continuation coverage for dependents through age 29. A second bill extends New York's "mini-COBRA" statute coverage to 36 months.

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#### Dependent Coverage Changes.

Under the new law (S. 6030), dependent coverage under insured group policies must be made available through age 29 without regard to financial dependence or status as a student. Married dependents and dependents who are eligible for employer-sponsored coverage through their own employment are not covered by the bill. The quality and cost of the dependent's employer-sponsored coverage are not factors that affect the rule.

If the dependent is eligible for any coverage through his or her employer, or covered by Medicare, the dependent is not covered by the legislation. The bill only applies to dependents who live, work or reside in New York or the service area of the insurer.

Although insurers must make this option available, policyholders are not required to extend coverage for dependent children under an insured group health plan through age 29. Instead, employers may decide whether or not they wish to take advantage of this new law and cover dependents through age 29. If an employer does not elect to extend coverage through age 29, the insurer is still required to offer continuation coverage for dependents through age 29 as a type of continuation coverage (akin to COBRA continuation coverage).

Employers are not required to pay for this continuation coverage. Continuation coverage ceases if a dependent ceases to meet the statute's definition of dependent (i.e., unmarried, under age 30, not eligible for other coverage and not covered by Medicare). Nevertheless, if a dependent falls out of the state's definition

but later re-qualifies as a dependent (e.g., becomes divorced or is no longer eligible for employer group health coverage), the dependent may again elect dependent continuation coverage within 60 days of meeting the eligibility requirements or during annual open enrollment periods.

Given the high cost of health insurance and perception that younger people are generally healthy, the multiple windows to elect continuation coverage may cause adverse selection, which could affect pricing in community-rated insurance policies. In some respects, the continuation coverage requirement is similar to New York's "mini-COBRA" statute, except that the dependent continuation requirement applies to all employers who offer insured group health coverage (regardless of size), whereas New York's mini-COBRA statute only applies to employers who are not otherwise subject to the federal COBRA statute (i.e., have fewer than 20 employees), subject to one new modification described below.

The legislation will generate interesting results due to the interaction of the New York State dependent continuation requirements and the federal COBRA statute. For instance, if a 22-year-old dependent ages out of coverage under a parent's New York insured group health plan and the dependent meets the eligibility requirements, the dependent could be eligible to continue coverage under the federal COBRA statute and under New York's dependent continuation coverage requirement. Describing the different continuation coverage options will present communication challenges to employers and insurers.

Similar problems regarding the relationship between federal COBRA and the New York dependent continuation requirement could arise when dependents move in and out of dependent coverage. One unanswered question, for example, is whether a dependent who re-qualifies for dependent continuation coverage (after having lost that coverage) could then be entitled to federal COBRA coverage a second time if the child later loses that second period of dependent eligibility.

The dependent coverage and continuation requirements are effective on Sept. 1, 2009, and apply to contracts issued, renewed, modified, altered or amended on or after that date. Many insurance contracts have limited initial terms and thereafter contain one-year evergreen provisions. Moreover, new legislative changes

may require policies to be amended prior to renewal. Therefore, many (if not most) policies will be subject to these new requirements for the 2010 year.

### **Mini-COBRA Coverage Extension.**

Under a second bill (S. 5471), New York's "mini-COBRA" statute will now extend coverage from 18 to up to 36 months following the loss of employer-sponsored coverage due to job loss. New York's mini-COBRA statute generally only covers insured plans if the employer has fewer than 20 employees. However, under this new extension, if federal COBRA coverage is exhausted under an insured group health plan maintained by a larger employer, the legislation also allows qualified beneficiaries the opportunity to extend coverage under New York law for an additional 18-month period, for up to a total of 36 months following the date federal COBRA continuation coverage began.

In effect, a 36-month continuation period will apply to all New York group insurance policies, regardless of the size of the employer. The COBRA change is effective as of July 1, 2009, and applies to all contracts issued, renewed, modified, altered or amended on or after that date. Insured group health plans will need to amend their state "mini-COBRA" notices, as well as their federal COBRA notices, for this new rule. For large nationwide employers with operations in New York, consideration should be given to separate New York COBRA notices for any insured plan offerings.

### **Special Considerations for Self-Insured Plans.**

The bills' changes present special plan design challenges for employers that sponsor fully insured and self-insured benefits side by side within their health benefit offerings. Additionally, notices, plan documents, summary plan descriptions, and other communications material must be reviewed and revised in light of these changes. Although technically these changes only apply to insured plans, it is also possible that employers with self-insured plans might consider amendments to their self-insured offerings in order to bring them in synch with 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 resources personnel who are involved in plan administration.