



# Employee Benefits Law Information Memo

August 2009

Electronic Dispatch

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## NEW YORK STATE INSURANCE LAW CHANGES EXTEND CONTINUATION COVERAGE AND DEPENDENT COVERAGE UNDER INSURED MEDICAL PLANS

New York State Governor David Paterson recently signed legislation that will affect the administration of insured medical plans in New York State. The legislation generally extends the period that terminated employees may elect continuation coverage under an insured plan from 18 months to 36 months and requires medical insurers to offer continued coverage to employees' unmarried children through age 29, regardless of financial dependence.

### Extension of Continuation Coverage ("mini-COBRA") in New York

The New York State Insurance Law provisions that govern continuation coverage (so-called "mini-COBRA") generally extend federal COBRA-like continuation coverage requirements to employers with insured group health plans covering less than 20 employees in New York. Under the recent changes to the New York mini-COBRA requirements, all employers, regardless of size, must make continuation coverage in an insured medical plan available to New York employees for up to 36 months following the date of the qualifying loss of coverage. For employers subject to federal COBRA, this change will require an additional 18 months of continuation coverage to be provided under New York mini-COBRA, once 18 months of federal COBRA is exhausted.

This extension of the continuation coverage period (from 18 months to 36 months) applies to group hospital, surgical and other medical expense insurance contracts (including those contracts issued by not-for-profit corporations and health maintenance organizations ("HMOs")) that are issued, renewed or amended on or after July 1, 2009. The extension does not apply to self-insured group health plans (including health flexible spending accounts and similar benefits paid from an employer's general assets). The extension also is not applicable to dental, vision or employee assistance programs, as the New York mini-COBRA provisions do not apply to those types of programs.

Employers that sponsor insured medical plans that are (or will be) affected by the extension should check with the plans' insurance providers to review the implementation of the extension. Among the implementation issues to discuss are whether individuals who are already on continuation coverage when the insurance contract renews or is amended will be entitled to extended coverage and how notification of the additional continued coverage period will be provided. Affected plan sponsors also should amend the COBRA provisions in affected plans and summary plan descriptions ("SPDs") to reflect the continuation coverage extension. COBRA notices also should be reviewed and amended as appropriate.

Employers should also be aware of the potential cost impact on experience-rated insurance contracts. Additional claims experience, due to continued coverage, could cause insurance premiums to rise.

### Coverage of Dependents Through Age 29

Under the new legislation, health insurance providers must allow an unmarried child of an insured employee to continue health insurance coverage through age 29, regardless of financial dependence. The child must live, work or reside in New York (or the service area of the insurer), and must not be eligible for another employer-sponsored medical plan or be covered by Medicare.

Extended coverage through age 29 is effective for insurance contracts issued, renewed or amended on or after September 1, 2009 (including not-for-profit corporations and health maintenance organizations ("HMOs")). Children whose coverage terminated prior to the effective date of the legislation may elect prospective coverage during the 12-month period after the effective date.

Unlike the mandatory extension of the mini-COBRA continuation coverage period, an employer that sponsors an insured health plan is not required to amend its plan to extend coverage through age 29, or to subsidize the coverage beyond the age limitation set forth in the plan. Rather, this extension is triggered when the child ceases to be an eligible dependent under the plan, and works much like

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COBRA continuation coverage – the child must elect the coverage and is responsible for full payment of any required premium. The child must elect coverage within 60 days of termination of coverage, or during the annual enrollment period. Coverage will terminate when the child ceases to satisfy the eligibility requirements, or fails to pay the required premium within the 30-day grace period.

As with the extension of the mini-COBRA continuation coverage period, the changes to the dependent coverage rules do not apply to self-insured group health plans, health flexible spending accounts or similar reimbursement plans, or to dental, vision or employee assistance programs.

Employers that sponsor insured plans that are (or will be) affected by the new dependent coverage rules should consider whether affected plans should be amended to change the plans' definition of covered "dependent." An insurance carrier must allow an employer to purchase a policy to cover dependents through age 29. Affected employers that extend employer-provided dependent coverage through age 29 under the plan, or that otherwise subsidize extended dependent coverage, also should be aware that employer-provided coverage for an employee's child who is no longer a "dependent" for federal income tax purposes will result in imputed income for the employee (generally equal to the employer subsidy).

As with the extension of mini-COBRA, premiums on experience-rated insurance contracts may rise due to continued coverage and claims experience.

If you have any questions about this memorandum, please contact Darcie A. Falsioni in our Buffalo office (716-566-2862, [dfalsioni@bsk.com](mailto:dfalsioni@bsk.com)) or any of the other members of our Employee Benefits and Executive Compensation Practice Group listed below.

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### **PLEASE NOTE: Important HIPAA Information Coming In Our September Memorandum**

The Department of Health and Human Services ("HHS") recently issued interim final rules on the notification requirements that apply when the security/confidentiality of "protected health information" has been compromised. Although HHS has indicated that it will not impose sanctions for notification failures that occur before February 22, 2010, the rules are effective September 23, 2009.

Our September Memorandum will provide information on when a security "breach" has occurred, when notice of the breach is required, what must be included in a breach notification, and to whom the notice must be provided.

We are pleased to announce our new blog – "The New York Labor and Employment Law Report" ([www.nylaborandemploymentlawreport.com](http://www.nylaborandemploymentlawreport.com)) – created to provide both large and small employers with operations in New York State with timely updates on legal developments concerning labor and employment law, employee benefits, immigration and OSHA.