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August 2009

In July 2009, New York Governor David Paterson signed two bills that amend the state's insurance laws and affect group health plans sponsored by both large and small employers. The new laws lengthen the period that employer-sponsored health insurance coverage is available following termination of employment and expand the availability of health insurance coverage for older children.

Changes to New York Insurance Rules Provide Longer Coverage for Terminated Employees and Dependents

By Michelle P. Thomas

The State of New York is doing its part to keep its residents covered by health care. Governor David Paterson signed into law two bills increasing the period that individuals can continue coverage on an employer-sponsored group health plan and extending the time that children may remain on their parent's health plan. Both of these laws amend the state's insurance laws and apply to policies issued to both small and large employers.

Continuation Coverage

Group health insurance contracts issued or renewed in New York on or after July 1, 2009, must provide for up to 36 months of continuation coverage when a participant incurs a qualifying event. This increases the available continuation coverage period following a qualifying event for employees by an additional 18 months. Prior to this law, New York law provided for only 18 months of continuation coverage. Qualifying events include a termination of employment, divorce or legal separation, death of the employee, Medicare entitlement of employee, or ceasing to be a dependent child under the terms of the employer's plan if such event causes an individual to lose coverage under a group health plan. This law amends the New York "mini" COBRA law that applies to small employer plans (employers with less than 20 employees). Unlike mini-COBRA, the law also applies to insurance policies issued to large employers that are subject to federal continuation coverage laws under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

For large plans, the law provides that participants who are eligible for federal COBRA must be offered up to an additional 18 months of coverage if the participant was entitled to less than 36 months of federal COBRA. Under federal COBRA, employees and their families are eligible for up to 18 months of coverage following a termination of employment. Dependent children and spouses are eligible for up to 36 months of coverage following a divorce or legal separation, death of the employee, Medicare entitlement of the employee or loss of dependent child status. The New York law is primarily aimed at extending the coverage for individuals following a termination of employment.

If during the continuation coverage period the employer changes insurers, the law provides that the new insurer must continue the coverage for individuals who are being provided with continuation coverage. Continuation coverage ends upon the earlier of: (1) 36 months after the date of the qualifying event; (2) the last day of the month for which premiums are paid if the participant fails to make a required premium payment; or (3) the date the employer ceases to provide a health insurance policy.

No guidance has been issued to describe how this extended coverage should be administered by large employers. Perhaps out of ERISA preemption concerns, the law regulates not employers but the content of insurance policies issued in New York State. Therefore, it is unclear if employers have any enforceable obligations under this law or whether it will be fully administered by the insurance companies. It is anticipated that the New York Department of Insurance will be providing additional guidance so that employer and insurer obligations are clarified.

Dependent Coverage

Group health insurance contracts issued or renewed in New York on or after September 1, 2009, must allow participants to continue to cover their unmarried children up to age 29 as long as: (1) the child is not eligible for another employer-sponsored health insurance policy or Medicare and (2) lives, works or resides in New York or the insurer's service area. There is no requirement that the child be financially dependent on the parent.

Once this law becomes effective, the parent-employee may elect to purchase coverage for his/her child within: (1) 60 days after the date the coverage would have ended due to age based on the terms of the employer's plan; (2) 60 days after the child becomes a dependent child; or (3) during the plan's annual enrollment period. If the child's coverage has been terminated due to age prior to the date this law becomes effective, the child may rejoin the plan within the first 12 months after the law becomes effective for the parent-employee's plan.

The full cost of the coverage for the child may be passed along to the parent-employee. Employers are not required to pay any of the costs associated with the coverage of these children. Additionally, if the child does not meet the Internal Revenue Code's definition of dependent, then the premiums for the coverage may not be paid by the parent-employee on a pre-tax basis through the employer's cafeteria plan and any amount of the coverage paid by the employer must be included in the employee-parent's taxable income.

What Employers Should Do Now

Employers should first determine when these new laws will apply to their plans. Each group health insurance policy must be reviewed to determine its issue and/or renewal dates in order to identify when these new laws will apply to it. Second, large employers with health insurance plans should reach out to their insurers to determine how these new requirements will be administered. Third, all employers should review plan documents, summary plan descriptions, employee handbooks and other benefit summaries to determine whether these documents need to be amended to reflect these newly available benefits. Fourth, depending on the age that dependents cease to be eligible for the health plan, employers should determine whether any dependents who were removed from the plan when they ceased to meet the plan's definition of dependent will be eligible to re-join the plan after the law becomes effective and prepare notices for the affected employees. Lastly, employers must consider whether it will subsidize the cost of dependent coverage for individuals who are no longer dependents under the Internal Revenue Code and, therefore, not eligible for tax-free premiums. Once this decision is made, the plan document and payroll processes may need to be changed. Members of the human resources team should become familiar with these new laws and their application as questions are sure to arise from both current and former employees.

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