[ buck research ]

fyi® for your information®

Volume 32 | Issue 52 | August 24, 2009

# New York Laws Increase State COBRA Period and Age for Dependent Health Insurance Coverage

*On July 29, 2009, New York Governor David Paterson (D) signed into law three health reform bills – one extending the period for state health coverage continuation rights from 18 to 36 months, one requiring insurers to offer continued coverage for unmarried adults through age 29 under their parent's individual or group health insurance policies, and one instituting a series of managed care reforms.*

## Background

Like their federal counterparts, state lawmakers are looking for ways to make health insurance more affordable and health care more accessible during the current economic downturn. New York has joined this effort by enacting three health reform laws.

## Expansion of New York COBRA

Federal COBRA requires employers with 20 or more employees to permit employees and their covered family members to continue group health coverage for 18 months following the employee's termination of employment or reduction of hours. New York law provides similar coverage rights to employees of employers with fewer than 20 employees. New York's new law (A. 8400) amends the New York Insurance Law to require insurers that offer group coverage to extend the period of coverage from 18 months to 36 months following the loss of employer-sponsored coverage upon termination of employment. The new law also allows an individual entitled to less than 36 months of federal COBRA benefits who has exhausted those benefits to maintain his or her insured coverage for up to 36 months following the date federal COBRA coverage began. Thus, regardless of the qualifying event or their employer's size, New York employees and their covered family members that have insured health coverage will now be able to secure 36 months of continuation coverage.

The new law applies retroactively to all contracts issued, renewed, modified, altered, or amended on or after July 1, 2009.

> ***BUCK COMMENT.*** *The new law only applies to coverage provided through insurance – self-insured plans do not have to provide the extended coverage. This law will complicate health plan administration and communication for employers who offer both insured and self-insured group health plans, including HMOs, to New York employees.*



buckconsultants an ACS company

Volume 32 | Issue 52 | August 24, 2009

## Dependent Health Coverage for Adult Children

To reduce the number of uninsured, many states are extending the age or expanding the conditions under which adult children may be covered under their parents' health insurance. Since 2006, more than twenty-three states – and now New York – have enacted laws to do so. (See our June 16, 2009 *For Your Information*.) Until now, New York insurance law generally did not require insurers to extend dependent coverage in a family contract to any set age.

Recent legislation (A. 9038) amends the New York Insurance Law to require insurers to offer individual and group policyholders the option to cover dependent children through age 29. To qualify for "dependent child" status under the new law, a child must be under age 30, unmarried, and live, work or reside in New York State or the service area of the insurer. Although adult children do not have to be financially dependent on their parents or in student status to be eligible for continued coverage, they cannot be eligible for coverage under another employer-sponsored health plan (whether insured or self-insured) or covered by Medicare.

Importantly, the new law does not require an employer (the "policyholder" under group policies) to extend this dependent coverage – it is at the employer's option.

> ***BUCK COMMENT.*** *Given the complexity of administering a different age limit for insured and self-insured coverage, it is unlikely that most employers will choose this option, particularly because New York also provides the COBRA-like continuation right discussed below.*

The new law also requires insurers of group polices that have an age limit for dependent coverage to offer the employee or dependent child dependent coverage through age 29 as a type of continuation coverage similar to COBRA once that age has been reached. In this case, the employee would have to pay the full cost and no employer contribution would be required. The new law specifies that this coverage would have to be elected in writing by the employee or dependent child within one of the following timeframes –

- within 60 days following the date coverage would otherwise terminate due to reaching the age limit in the applicable group policy
- within 60 days after meeting the requirements for dependent child status if coverage previously ended (i.e., requalifying as a dependent)
- during an annual 30-day open enrollment period.

The new law applies to all policies and contracts issued, renewed, modified, altered or amended on or after September 1, 2009. It also permits dependent children whose coverage terminated prior to that date a 12-month period (or until August 31, 2010) to elect prospective coverage. The new option must be extended at policy inception and, for group contracts, at each anniversary date. The insurer must provide notice of this right in the certificate of coverage and to an affected individual at least 60 days prior to termination of coverage due to

reaching the age limit. It must also provide notice of the 12-month election period within 30 days after the law goes into effect with respect to a policy.

***BUCK COMMENT.*** *This extension of dependent eligibility only applies to insured coverage and does not apply to self-insured plans. Although the insurer is responsible for providing the election required by the new law, an employer providing coverage through a group health policy subject to New York law should ensure that its employee notices, election forms and summary plan descriptions reflect its availability.*

## Managed Care Reforms

The amendments to New York's managed care laws seek to ensure better access to health care services for consumers and improve provider protections. Among its key provisions, A. 8402 prohibits health plans from treating in-network providers as out-of-network just because the referring provider was out-of-network, and shortens the payment timeframes to providers for electronically submitted claims. The law also imposes certain limitations on the ability of health plans to delay or deny payments because of coordination of benefits, and allows the provisional credentialing of certain health care providers.

The law expands consumer protections through stricter regulation of preferred provider organizations (PPOs), exclusive provider organizations (EPOs), and "HMO look-alike" plans. It also establishes a new external appeal standard for rare disease treatments and reduces the time insurers have to review requests for post-hospital home health care.

These reforms generally take effect on January 1, 2010.

## Conclusion

The new laws are intended to provide New Yorkers with greater access to more affordable health care and evidence increasing health reform activity at the state level. Other states are considering and in some cases enacting similar laws.

Employers that sponsor insured group health benefits in New York will need to review their administrative procedures and amend their federal and state COBRA notices to reflect the new rules. New York employers should also coordinate with their insurers to make certain that the new requirements are satisfied. Further, employers should ensure that their forms, plan documents, summary plan descriptions, and other communication materials reflect any necessary changes relating to COBRA or dependent coverage, and that their human resources representatives are prepared to field questions from current or former employees.

Buck's consultants are available to assist you in this process.

---

*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*