

## New York Enacts Extensions of Health Insurance Coverage

Two recently enacted New York laws merit the attention of employers maintaining group health plans whose benefits are insured by carriers selling insurance in New York. New York group health policies must now provide up to 36 months of continuation coverage following a loss of coverage. In addition, these policies must also offer health insurance coverage to certain dependent children through age 29. While the new laws do not directly affect self-insured plans, their enactment raises issues that should also be considered by certain employers maintaining such plans, as described below.

### Continuation Coverage Extended to 36 Months

Federal "COBRA" rules require employers with 20 or more employees who provide health care coverage to continue terminated coverage for employees and their dependents under certain circumstances. New York has a so-called "mini-COBRA" law that imposes similar continuation requirements on employers with fewer than 20 employees.

Under the New York COBRA extension law, participants in and beneficiaries of group health plans insured by New York health insurance carriers must be permitted 36 months of continuation coverage when a qualifying event results in a loss of their coverage, rather than the 18 months of coverage they are usually afforded. The law affects both New York plans subject to the New York mini-COBRA law and insured plans subject to federal COBRA. For plans subject to New York's mini-COBRA law, the new law merely changes the continuation period from 18 months to 36 months. For plans subject to federal COBRA, the law provides participants and beneficiaries the opportunity to extend their coverage under the plan for up to a total of 36 months from the date COBRA continuation coverage begins. Since the federal COBRA period is generally 18 months, the law provides an opportunity for an additional 18 months of continuation coverage. This law is effective as of July 1, 2009 and applies to all contracts issued, renewed, modified, altered or amended on or after that date.

### Dependent Coverage Extended Through Age 29

The law expanding dependent coverage requires New York insurers providing group health policies to treat a plan participant's child who is unmarried and not eligible for coverage through his or her employer or Medicare as an eligible dependent child through age 29. The law does not require that a child be financially dependent on the participant or a student in order to qualify as a dependent child, but the child must live, work or reside in New York or the insurer's service area to be eligible for continued coverage.

While the new rules require that New York insurance carriers provide these dependents with access to health insurance, employers are not required to purchase this extended coverage. If an employer does not purchase such coverage, insurers are still required to offer continuation coverage to such dependent children in a COBRA or mini-COBRA-like manner. Employers who elect to offer this coverage are not required to contribute anything to the cost of the premium. Under the new law, a dependent child who was previously covered under the plan may qualify for continuation coverage, even after a period during which he or she is not covered by the plan. For example, a dependent child who previously lost coverage under his or her parent's employer-sponsored plan can qualify for continuation coverage under that plan at any time after initially losing coverage so long as he or she is unmarried, under age 30, living, working, or residing in New York or in the insurer's service area, and not eligible for other coverage as described above.

An employee or dependent must make a written election to cover the dependent within (i) 60 days following the date the dependent would become ineligible under the employer's plan due to age, (ii) 60 days of meeting the eligibility requirements under the law for dependent children or (iii) during an annual 30-day open enrollment period. This law is effective as of September 1, 2009, and applies to contracts issued, renewed, modified, altered or amended on or after that date. Dependent children who lost coverage prior to this effective date have until August 31, 2010 to elect continuation coverage.

### Self-Insured Plans

Because of ERISA preemption, employers that maintain a self-insured plan are not required to comply with either of these new laws with respect to that plan. That being said, employers who offer fully-insured plans alongside any self-insured options will be required to comply with these laws for their fully-insured plans. For administrative ease, employers may decide to offer this expanded coverage under all plans. Furthermore, as information about these laws is more widely disseminated and as pressure to find access to comprehensive health insurance increases, employers who only self-insure their plans might choose to provide this expanded coverage as well. Self-insured employers who wish to consider these changes and how they might affect their group health plan should contact their third party administrators or benefits consultants.

If you would like to learn more about the issues raised in this alert or if you have any questions about your plan documents or disclosure obligations, please contact any member of the Employee Benefits Department or your usual Ropes & Gray advisor.

*This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances.  
This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.  
The contents are intended for general informational purposes only, and you are urged to consult your own  
lawyer concerning your own situation and any specific legal questions you may have.*