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CLIENT ALERT

NEW YORK'S EXTENSION OF HEALTH CARE COVERAGE

On July 29, 2009, New York Governor David Paterson signed two bills into law amending New York State insurance laws that impact requirements under employer group health plans.

1. Continuation Coverage Extended to 36 Months

The new legislation amended New York State Insurance Law Section 3221(m) to double from 18 months to 36 months the period that an employee may continue group health insurance coverage following a "qualifying event" that results in loss of that coverage. In general, a "qualifying event" includes termination of employment, death, Medicare entitlement and divorce or legal separation.

It is important for employers to note that New York's continuation coverage rules for group health plans differ in several respects from the federal "COBRA" law governing such coverage. For example, New York's "mini-COBRA" rules apply to smaller employers (2-19 employees) and also permit individuals who have fewer than 36 months of COBRA coverage to extend that coverage for up to 36 months.

The new state continuation coverage rules generally apply to any health insurance contract issued, renewed, modified or amended on or after July 1, 2009. In general, self-insured plans are not subject to these rules.

2. Dependent Health Care Coverage Extended Through Age 29

The legislation also amends New York Insurance Law Section 3216 to require health insurers to offer policyholders the option to cover dependent children through age 29. A "dependent child" for this purpose generally includes any unmarried child under the age of 29 who is not Medicare eligible or insured under another group policy, and

who lives, works or resides in New York State. There is no requirement that the child be financially dependent on his or her parents.

Although an employer is not technically required to offer this extended dependant covered under its group health plan, this option must be offered to individuals in a COBRA-like manner even if the employer's plan does not include such coverage. As a practical matter, however, an employer may need to offer such coverage as it is likely that insurance companies subject to the new rules will in the first instance amend all customer policies to offer extended dependant care coverage. Consequently, it may be administratively difficult to carve out this benefit and offer it separately, particularly if a plan is not "experience rated."

In general, this extension of continuation coverage is effective for all covered contracts issued, renewed, modified, amended or altered on or after September 1, 2009.

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Application of the new rules and coordination with federal COBRA can be tricky, and employers should take care to understand how their plans will be impacted to avoid penalties. If you should have any questions regarding these changes to the New York State Insurance Law, please contact us.

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