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ADVISORY BULLETIN
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To: Carriers that Issue or Renew Coverage in the SEH Market
And Interested Parties

From: Ellen DeRosa, Executive Director

Re: Civil Unions (P.L. 2006, c.103)

On December 21, 2006, P.L. 2006, c.103, sometimes referred to as the "New Jersey Civil Union Act" was enacted. P.L. 2006, c.103, effective February 19, 2007, provides in section 4a (as codified, N.J.S.A. 37:1-31) that "civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage." Section 5 (as codified, N.J.S.A. 37:1-32) provides a list of some of the benefits, rights and responsibilities civil union partners and marital spouses have in common, including "laws relating to insurance, health and pension benefits" in subparagraph e.

Purpose

This Advisory Bulletin is being issued to alert you to the fact that the New Jersey Civil Union Law is effective February 19, 2007. We urge you to seek specific guidance regarding the law from your legal counsel. We have received a number of inquiries and are issuing this Advisory Bulletin to address the most common inquiries. These include, when the law applies to plans, continuation rights, whether employers must elect to add coverage for civil union partners, and necessary amendments to the standard plans.

Effective Date

While benefit mandates generally apply to inforce plans on the first renewal on or after the effective date of the mandate, the new rights set forth in P.L. 2006, c.103 are effective on February 19, 2007. Thus, beginning February 19, 2007, all plans that include dependent coverage should be amended or administered to provide coverage to civil union couples. Coverage should not be deferred until the plan renewal date, and as of February 19, 2007 carriers should provide an opportunity to employees to make an

election to cover a dependent acquired through a civil union on or after February 19, 2007 in the same manner as the opportunity would be provided to cover a new spouse.

Continuation of Coverage

Footnote 25 from *Lewis v. Harris*, 188 N.J. 415, 459 (October 25, 2006), states: “We note that what we have done and whatever the Legislature may do will not alter federal law, which only confers marriage rights and privileges to opposite-sex married couples. *See* [1 U.S.C.A. § 7](#) (defining marriage, under Federal Defense of Marriage Act, as ‘legal union between one man and one woman’).” Based on this footnote in the New Jersey Supreme Court case, a civil union partner does not appear to constitute a qualified beneficiary, nor does dissolution of a civil union appear to constitute as a qualifying event under COBRA.

N.J.S.A. 17B:27A-27 applies to every policy or contract issued to a small employer in New Jersey. Based upon the enactment of the new law, in the event of the dissolution of a civil union, the former partner would appear to be entitled to elect continuation under N.J.S.A. 17B:27A-27 in the same manner as a former spouse is entitled to elect continuation in the event of a divorce. Although in practice, continuation pursuant to N.J.S.A. 17B:27A-27 is typically extended only to small employers with fewer than 20 employees, and continuation rights are provided pursuant to COBRA when employers have 20 or more employees, N.J.S.A. 17B:27A-27 applies to **all** small employers. (i.e. employers with 2 – 50 employees)

Is there an employer option?

Since the Domestic Partnership Act afforded employers an option to elect whether to add coverage for domestic partners to their plan, one question that has frequently been asked is whether the New Jersey Civil Union Act affords a similar option. In that regard Section 4a of the Act states that “civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage.”

Amendments to the Standard Plans

The SEH Board will be proposing amendments to the standard health benefits plans to address the requirements of P.L. 2006, c.103. Until the proposed amendments have been adopted, the Conformity with Law provision contained in each of the standard plans ensures that all carriers may administer all plans in compliance with the requirements of P.L. 2006, c.103.