



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
INDIVIDUAL HEALTH COVERAGE PROGRAM
& SMALL EMPLOYER HEALTH BENEFITS PROGRAM
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ADVISORY BULLETIN
08-SEH-01

May 29, 2008

To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties

From: Ellen DeRosa
Executive Director

Re: Adopted Amendments Regarding Coverage for Civil Union Partners

The Small Employer Health Benefits Program Board proposed amendments to the regulations and standard plans to comply with the requirements of P.L. 2006, c. 103. The Notice of Adoption was published in the May 19, 2008 *New Jersey Register*. Both the proposal and the adoption are posted on the website at <http://www.state.nj.us/dobi/sehpage.htm>

As stated in the notice of proposal, since the proposed amendments to the standard plans affect only specific sections of the policy forms, carriers will be given the option to implement the forms changes by using the Compliance and Variability Rider set forth at N.J.A.C. 11:21 Appendix Exhibit DD **or** may incorporate the change into the standard contracts, certificates, and evidences of coverage. The text to be included on the Compliance and Variability rider by those carriers that choose that option is set forth below.

Text to be included on Exhibit DD, Compliance and Variability Rider

Note the following text includes references to domestic partners. Such text should be omitted if the employer has not elected to cover domestic partners. The terms "Policy" and Policyholder" should be replaced with Contract and Contractholder, as appropriate to the plan being amended.

I. The Definition of Dependent is deleted and replaced with the following:

Dependent means an Employee's:

- a) legal spouse which shall include a civil union partner pursuant to P.L. 2006, c. 103 as well as same sex relationships legally recognized in other jurisdictions when such relationships provide substantially all of the rights and benefits of marriage. [and domestic partner pursuant to P.L. 2003, c. 246]; except that legal spouse shall be limited to spouses of a marriage as marriage is defined in the Federal Defense of Marriage Act, 1 U.S.C.A. 7, with respect to the provisions of the Policy regarding continuation rights

- b) required by the Federal Consolidated Omnibus Reconciliation Act of 1986 (COBRA), Pub. L. 99-272, as subsequently amended. (Civil union partners do not have COBRA rights in the event of dissolution of the civil union.)
- c) unmarried Dependent child who is under age 19; and
- c) unmarried Dependent child from age 19 until his or her 23rd birthday, who is enrolled as a full-time student at an Accredited School. Full-time student status will be as defined by the Accredited School. [Carrier] can require periodic proof of a Dependent child's status as a full-time student.

A Dependent is not a person who is:

- a) on active duty in the armed forces of any country; or
- b) eligible for coverage under this Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Dependent Coverage** section of this Policy.

An Employee's "unmarried Dependent child" includes:

- a) his or her legally adopted children,
 - b) his or her step-child if such step-child depends on the Employee for most of his or her support and maintenance,
 - c) the child of his or her civil union partner if the child depends on the employee for most of his or her support and maintenance, [and]
 - d) [the child of his or her domestic partner if the child depends on the employee for most of his or her support and maintenance, and] [
 - e)]children under a court appointed guardianship.
- [Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

II. The fourth paragraph of the **Enrollment Requirement** provision is deleted and replaced with the following:

When an Employee initially waives coverage under this Policy, the Plan Sponsor [or [Carrier]] should notify the Employee of the requirement for the Employee to make a statement that waiver was because he or she was covered under another group plan, if such other coverage was in fact the reason for the waiver, and the consequences of that requirement. If an Employee initially waived coverage under this Policy and the Employee stated at that time that such waiver was because he or she was covered under another group plan, and Employee now elects to enroll under this Policy, [Carrier] will not consider the Employee [and his or her Dependents] to be [a] Late Enrollee[s], provided the coverage under the other plan ends due to one of the following events:

- a) termination of employment or eligibility;
- b) reduction in the number of hours of employment;
- c) involuntary termination;
- d) divorce or legal separation or dissolution of the civil union [or termination of the domestic partnership];
- e) death of the Employee's spouse;
- f) termination of the Employer's contribution toward coverage; or
- g) termination of the other plan's coverage.

But, the Employee must enroll under this Policy within 90 days of the date that any of the events described above occur. Coverage will take effect as of the date the applicable event occurs.

III. The **Eligible Dependents for Dependent Health Benefits** provision is deleted and replaced with the following:

An Employee's eligible Dependents are the Employee's:

- a) legal spouse which shall include a civil union partner pursuant to P.L. 2006, c. 103 as well as same sex relationships legally recognized in other jurisdictions when such relationships provide substantially all of the rights and benefits of marriage. [and domestic partner pursuant to P.L. 2003, c. 246]; except that legal spouse shall be limited to spouses of a marriage as marriage is defined in the Federal Defense of Marriage Act, 1 U.S.C.A. 7, with respect to the provisions of the Policy regarding continuation rights required by the Federal Consolidated Omnibus Reconciliation Act of 1986 (COBRA), Pub. L. 99-272, as subsequently amended) (Civil union partners do not have COBRA rights in the event of dissolution of the civil union.)
- b) unmarried Dependent children who are under age 19; and
- c) unmarried Dependent children, from age 19 until their 23rd birthday, who are enrolled as full-time students at Accredited Schools. Full-Time students will be as defined by the Accredited School.

A Dependent is not a person who is:

- a) on active duty in the armed forces of any country; or
- b) insured for coverage under this Policy as an Employee.

Under certain circumstances, an incapacitated child is also a Dependent. See the **Incapacitated Children** section of this Policy.

An Employee's "unmarried Dependent child" includes:

- a) his or her legally adopted children,
- b) his or her step-child if such step-child depends on the Employee for most of his or her support and maintenance,
- c) the child of his or her civil union partner if the child depends on the employee for most of his or her support and maintenance, [and]
- d) [the child of his or her domestic partner if the child depends on the employee for most of his or her support and maintenance, and]
- e) children under a court appointed guardianship.

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.]

[Carrier] treats a child as legally adopted from the time the child is placed in the home for purpose of adoption. [Carrier] treats such a child this way whether or not a final adoption order is ever issued.

IV. The fourth paragraph of the **Enrollment Requirement** provision is deleted and replaced with the following.

When an Employee initially waives coverage for a spouse and/or eligible Dependent children under this Policy, the Plan Sponsor [or [Carrier]] should notify the Employee of the requirement for the Employee to make a statement that waiver was because the spouse and/or eligible Dependent children were covered under another group plan, if such other coverage was in fact the reason for the waiver, and the consequences of that requirement. If the Employee previously waived coverage for the Employee's spouse or eligible Dependent children under this Policy and stated at that time that, such waiver was because they were covered under another group plan and the Employee now elects to enroll them in this Policy, the Dependent will not be considered a Late Enrollee, provided the Dependent's coverage under the other plan ends due to one of the following events:

- a) termination of employment or eligibility;
- b) reduction in the number of hours of employment;
- c) involuntary termination;
- d) divorce or legal separation or dissolution of the civil union [or termination of the domestic partnership];
- e) death of the Employee's spouse;
- f) termination of the contribution toward coverage that was being made by the employer that offered the group plan under which the Dependent was covered; or
- g) termination of the other plan's coverage.

V. The **If An Employee's Marriage [or Domestic Partnership] Ends** provision of the **NEW JERSEY GROUP CONTINUATION RIGHTS (NJGCR)** section is deleted and replaced with the following:

If An Employee's Marriage or Civil Union [or Domestic Partnership] Ends

If an Employee's marriage ends due to legal divorce or legal separation or dissolution of the civil union [or termination of a domestic partnership], any Qualified Continuee whose group health benefits would otherwise end may elect to continue such benefits. The continuation can last for up to 36 months, subject to the When Continuation Ends section.

VI. The second paragraph of the **The Employer's Responsibilities** provision of the **NEW JERSEY GROUP CONTINUATION RIGHTS (NJGCR)** section is deleted and replaced with the following:

Upon being advised of the death of the Employee, divorce, dissolution of the civil union [termination of domestic partnership] or Dependent child's loss of eligibility, the Employer should notify the Qualified Continuee in writing, of:

- a) his or her right to continue this Policy's group health benefits;
- b) the monthly premium he or she must pay to continue such benefits; and
- c) the times and manner in which such monthly payments must be made.

VII. Item c) of the **When Continuation Ends** provision of the **NEW JERSEY GROUP CONTINUATION RIGHTS (NJGCR)** section is deleted and replaced with the following:

- c) with respect to continuation upon the Employee's death, the Employee's legal divorce or legal separation, dissolution of the civil union, [or termination of the domestic

partnership] or the end of an insured Dependent's eligibility, the end of the 36 month period which starts on the date the group health benefits would otherwise end;

VIII. The first paragraph of the **NEW JERSEY CONTINUATION RIGHTS FOR OVER-AGE DEPENDENTS** section is deleted and replaced with the following:

As used in this provision, "Over-Age Dependent" means an Employee's child by blood or law who:

- a) has reached the limiting age under the group plan, but is less than 30 years of age;
- b) is not married or in a civil union partnership;
- c) has no Dependents of his or her own;
- d) is either a resident of New Jersey or is enrolled as a full-time student at an Accredited School; and
- e) is not covered under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, and is not entitled to Medicare.

IX. Item a) of the **When Continuation Ends** provision of the **NEW JERSEY CONTINUATION RIGHTS FOR OVER-AGE DEPENDENTS** section is deleted and replaced with the following:

- a) the date the Over-Age Dependent:
 1. attains age 30
 2. marries or enters into a civil union partnership;
 3. acquires a Dependent;
 4. is no longer either a resident of New Jersey or enrolled as a full-time student at an Accredited School; or
 5. becomes covered under any other group or individual health benefits plan, group health plan, church plan or health benefits plan, or becomes entitled to Medicare

X. The first paragraph of the **IF AN EMPLOYEE'S MARRIAGE [OR DOMESTIC PARTNERSHIP] ENDS** provision of the **CONVERSION RIGHTS FOR DIVORCED SPOUSES** section is deleted and replaced with the following:

IF AN EMPLOYEE'S MARRIAGE OR CIVIL UNION [OR DOMESTIC PARTNERSHIP] ENDS

If an Employee's marriage ends by legal divorce or annulment or the employee's civil union is dissolved [or termination of the domestic partnership], the group health benefits for his or her former spouse ends. The former spouse may convert to an individual major medical policy during the conversion period. The former spouse may insure under his or her individual policy any of his or her Dependent children who were insured under this Policy on the date the group health benefits ends. See **exceptions** below.

If you have any questions concerning amending the standard plans or use of the compliance and variability rider, please contact me by email at ellen.derosa@dobi.state.nj.us or by phone at 609-633-1882 ext. 50302.