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ADVISORY BULLETIN
07-SEH-02

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To: SEH Program Members and Interested Parties

From: Ellen DeRosa, Executive Director

Re: State Continuation of Coverage

N.J.S.A. 17B:27A-27 requires small employers not subject to the Consolidated Omnibus Budget Reconciliation Act or "COBRA," to offer continuation of coverage to qualified beneficiaries covered under New Jersey small employer health benefits plans. While state continuation has provisions that in some respects resemble COBRA, there are important differences between the two continuation laws. This advisory bulletin sets forth answers to commonly asked questions about continuation rights (including those addressed in prior bulletins, 97-SEH-02 and 98-SEH-06 and 05-SEH-01), and includes a copy of the continuation law.

Although this new bulletin is very similar to 05-SEH-01, the purpose of this new bulletin is to include some new Q&As, address continuation rights for civil union partners and domestic partners, as well as eliminate the comparison between the pre-2005 continuation law and the continuation law as amended by P.L. 2004, c. 162.

I. Highlights of State Continuation

Eligible Continuees

Employees who are terminated or whose hours of employment are reduced to less than 25 hours per week have the option the option to continue coverage. Such employees may also select continuation for any eligible dependents. A spouse and/or dependent children may continue coverage in the event of the death of the employee, divorce, or a child ceasing to be an eligible dependent (e.g., by reason of age or loss of full-time student status).

Note that under the small employer plans, "spouse" includes a domestic partner as defined in P.L. 2003, c. 246 if the employer elected to include coverage for domestic partners, and a civil union partner as defined in P.L. 2006, c. 103. Whenever the term "spouse" is used in this

bulletin, it should be understood as including a legally married spouse, a domestic partner as defined in P.L. 2003, c. 246 and a civil union partner as defined in P.L. 2006, c. 103.

Duration of State Continuation

The New Jersey continuation law provides continuation periods of up to 18 months for employees in the event of termination of employment or reduction in work hours, and 36 months for a spouse or dependent child in the event of the death of the employee or divorce of the employee for the spouse, or a dependent child that ceases to be a dependent child under the terms of the plan. An employee who is determined to have been disabled under the Social Security Act is eligible to continue for up to 29 months.

Cost of State Continuation

Employers may charge up to 102 percent of premium for any period of continuation except that an employer may charge up to 150 percent of the premium for months 19 through 29 if the employee is determined to have been disabled under the Social Security Act.

Written Election of State Continuation and Payment of Premium

An employee must make a written election for continued coverage within 30 days of a qualifying event. The same period of election, 30 days, applies for a spouse or dependent child electing State continuation. There is no standard form developed by the SEH Board or any other state agency to elect State continuation. The first premium must be paid within 30 days of making a continuation election. An employer cannot require the first premium to be paid when the election is made.

II. Answers to Commonly Asked Questions About State Continuation

Set forth below are answers to commonly asked questions.

Q: What employers are subject to State continuation?

A: A New Jersey small employer (2-50 eligible employees) that purchases a New Jersey health benefits plan to cover its employees is subject to State continuation, unless it is subject to COBRA, a federal law. COBRA generally covers group health plans maintained by employers with 20 or more employees in the prior year. For guidance on the federal law, private sector entities should contact the Federal Department of Labor, Employee Benefits Security Administration (web address: www.dol.gov/ebsa), and public-sector entities should contact the Federal Department of Health and Human Services (web address: www.cms.hhs.gov/hipaa/hipaa1/cobra/default.asp) for guidance.

Q.: Does New Jersey State continuation apply in the event of dissolution of a civil union?

Yes. As discussed in 07-SEH-01, a former civil union partner may 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 divorce. Even though an employer with 20 or more employees may be subject to Federal law, COBRA, if that employer is a small employer (i.e. an employer with 2 – 50 employees) the former civil union partner would be entitled to make an election under the New Jersey State continuation law.

Q: Does New Jersey State continuation apply to a church plan issued as a small employer plan?

A: Yes.

Q: If a 22-year-old full-time student graduates from college may he or she elect State continuation of coverage under his or her parents' small employer plan?

A: Yes.

Q: Is State continuation of coverage applicable to dental coverage?

A: No, just medical and hospitalization coverage.

Q: If a New Jersey employer offers coverage approved by another state to cover its employees that live, reside or work out-of-State, is the plan subject to New Jersey State continuation?

A: No. The laws of the other state would govern. Check the out-of-state coverage for a provision addressing continuation rights, if any.

Q: Which employees are eligible for State continuation?

A: Any employee whose employment was terminated for a reason "other than for cause" and any employee whose hours of employment were reduced to less than 25 per week after the effective date of coverage for that employee.

Q: What does "for cause" mean?

A: The law does not offer a definition and the SEH Board is not in a position to make a determination as to whether a termination may or may not have been "for cause."

Q: Does an employee need to be covered by the group plan for a certain period of time before he or she is eligible for State continuation of coverage?

A: No. As long as the employee was covered by the group plan, he or she is eligible for State continuation. There is no minimum duration of coverage requirement. Coverage may have been for as short a period as one day.

Q: Is State continuation of coverage available for newly acquired dependents where birth, adoption, marriage, domestic partnership or civil union occurs after the qualifying event?

A: Yes.

Q: Is State continuation of coverage available for existing dependents who were not on the plan?

A: No.

Q: If an employee who is enrolled for family coverage elects to waive coverage for him/herself upon entitlement to Medicare, do the dependent spouse and children have a right to elect continuation?

A: No. N.J.S.A. 17B:27A-27 lists the specific circumstances under which a dependent may elect continuation (death, divorce, or ceasing to be an eligible dependent). A voluntary waiver of coverage is not an event that would allow the dependents to elect continuation. They may wish to investigate their coverage options in the individual market.

Q: Would an employee's absence for medical leave be considered a "qualifying event" and entitle the employee to State continuation rights?

A: Yes. If the employee is no longer working 25 hours per week on a regular basis, the employer should offer the person State continuation.

Q: May a person with a qualifying event continue coverage even if there are no eligible employees covered under the plan?

A: If the employer is still in business and chooses to offer the plan, then the person may continue under State continuation of coverage. However, if the employer is no longer in business, or chooses not to offer the plan, then continuation of coverage under that plan shall not be available to the person otherwise eligible for State continuation.

Q: What should be included in the employer's notification to an employee regarding his or her State continuation rights?

A: The law is not specific in this regard, but the SEH Board recommends that the following information be provided in writing to the employee:

- A statement that the employee may elect to continue under the group policy for up to 18 months from the qualifying event;
- A statement that the employee has 30 days from the qualifying event to elect to the employer in writing to continue coverage;
- A statement that the amount of premium to be paid and to whom the payment should be sent. The required premium payment shall not exceed 102% of the premium paid for similarly situated covered persons, or 150% for an employee that has been determined to have been disabled under the Social Security Act;
- The monthly premium due date; and
- A statement that the first payment of premium is due from the continuee within 30 days of the employee's written election to continue coverage.

Q: Must an employer notify a spouse or dependent of continuation rights at the time of the qualifying event?

A: No.

Q: Will the health status of an employee or dependent on State continuation affect the premium for the group?

A: No. Carriers may not consider health status in determining rates for anyone covered under the employer's plan, including those on State continuation of coverage.

Q: What rates will apply to a spouse or dependent child since there is no special rate tier for spouse-only coverage or dependent-only coverage?

A: At this time, carriers have some flexibility in identifying the rate for spouse-only or dependent-only coverage. However, the carrier must apply a consistent rule for all State and Federal continuees. The employer may still charge no more than 102 percent of premium charged by the carrier, or 150 percent for an employee that has been determined to have been disabled.

Q: Does the continuee pay the employer or the carrier for State continuation of coverage?

A: The continuee pays the employer. The employer will remit the continuee's payment to the carrier.

Q: Does an employer need to pay a carrier for a continuee if it has not yet received payment for the coverage from the continuee?

A: No, an employer is not required to pay the carrier for the continuee's coverage prior to receiving payment from the continuee. If the employer does not receive payment from a

continuee before making payment to the carrier for the rest of the employer's group, the employer should advise the carrier that the continuee has not made payment by the due date. At that point, the continuee's coverage will be terminated. If payment is made by the continuee within the 30-day grace period, then the employer should pass along the payment to the carrier specifying that the payment is for the continuee and coverage will be reinstated for the continuee retroactively.

Q: Will continuees affect the minimum 75 percent participation requirement?

A: The 75 percent minimum participation requirement (N.J.S.A. 17B:27A-24; N.J.A.C. 11:21-7.5) applies only to eligible employees (i.e., those working 25 hours a week or more on a regular and permanent basis). Thus continuees will not be included in the calculation of the minimum eligible employee participation requirements.

Q: If the employer changes coverage or changes carriers, what happens to persons on State continuation of coverage?

A: If the employer modifies coverage or moves to another plan, the continuee has the right to continue under the amended or replacement coverage for the balance of the continuation period. Except that HMO carriers, are not required to offer continuation of coverage to a continuee who lives, resides or works in an area outside of the carrier's approved service area.

Q: What type of forms will an employee be required to complete to elect State continuation?

A: Some carriers may provide employers with the standard enrollment form (often called the HINT form) to be completed by the employee electing continuation. Other carriers may have created their own form, or may use a form similar to those used for employees to elect COBRA continuation.

Q: Can coverage under State continuation end before the applicable 18, 29 or the 36-month continuation period?

A: Yes, coverage under State continuation will cease prior to 18, 29 or 36 months if one of the following occurs:

- The employer chooses not to provide any health benefits plan to any employees;
- The person covered under State continuation fails to provide payment for premium in a timely manner. Premium payments shall be considered timely if made within 30 days after the due date;
- The person covered under State continuation becomes covered under another health benefits plan which contains no limitation or exclusion with respect to any preexisting condition of the covered person, or if a preexisting condition limitation is applicable, the date such limitation ends;
- The person covered under State continuation becomes entitled to benefits under Medicare.

Q: Since the New Jersey continuation law allows an extra continuation in the event of total disability, what happens to the other laws that provide extended coverage in the event of disability?

A: The right to continue coverage for up to 29 months in the event of total disability as provided under the New Jersey continuation law is in addition to the other protections that exist under New Jersey law for persons whose coverage ends as a result of total disability and persons

who are disabled as of the date the group plan is terminated. Please refer to the following provisions in the standard small employer plans for information on these protections: EXCEPTION to the Actively at Work Requirement; Extended Health Benefits and A TOTALLY DISABLED EMPLOYEE'S RIGHT TO CONTINUE GROUP HEALTH BENEFITS. For additional information, consult the laws: N.J.S.A. 17B:27-51.12 and N.J.A.C. 11:2-13.

Q: What other coverage options are available to terminated or part-time employees who do not wish to continue their existing coverage?

A: Residents of New Jersey not eligible for employer coverage or Medicare may be eligible for coverage in the individual market. Information, including a Buyer's Guide and a list of carriers and rates, is available on the Department of Banking and Insurance web site at: www.nj.gov/dobi/reform.htm. Certain dependents may wish to investigate whether they are eligible to make an election for Dependent to Age 30 coverage pursuant to P.L 2005, c. 375. Information is available on the Department of Banking and Insurance web site at: www.njdobi.org/dependentsunder30.htm.

Attached is a copy of the State continuation law.

N.J.S.A. 17B:27A-27

a. (1) Every policy or contract issued to a small employer in this State, including, but not limited to, policies or contracts which are subject to this act and which are delivered, issued, renewed, or continued on or after January 1, 1994, shall offer continued coverage under the plan to any employee whose employment was terminated for a reason other than for cause and to any employee covered by such plan whose hours of employment were reduced to less than 25 subsequent to the effective date of coverage for that employee.

(2) Every policy or contract issued to a small employer in this State, including, but not limited to, policies or contracts which are subject to P.L.1992, c.162 (C.17B:27A-17 et seq.) and which are delivered, issued, renewed, or continued on or after the effective date of P.L.2004, c.162, shall offer continued coverage under the plan to:

(a) any spouse who is a qualified beneficiary under the plan by reason of being the spouse of a covered employee on the day before the qualifying event;

(b) to any dependent child who is a qualified beneficiary under the plan by reason of being the dependent child of a covered employee on the day before the qualifying event, subject to the applicable terms of the plan; and

(c) to any such spouse or dependent child who is a qualified beneficiary under the plan whenever that spouse or dependent child is no longer entitled to coverage under the plan by reason of the death of the employee or the divorce of the employee from the spouse.

(3) The employee, spouse or dependent child shall make a written election for continued coverage within 30 days of a qualifying event. For the purposes of this section, "qualifying event" shall mean:

(a) the date of termination of employment;

(b) the date on which a reduction in an employee's hours of employment becomes effective;

(c) the date of death of the employee;

(d) the date of the divorce of the employee from the employee's spouse; or

(e) the date the dependent child ceases to be an eligible dependent.

(4) For the purposes of paragraphs (1) and (2) of this subsection a., the date on which a health benefits plan is continued shall be the anniversary date of the issuance of the plan.

b. Coverage continued pursuant to subsection a. of this section shall consist of coverage which is identical to the coverage provided under the policy or contract to similarly situated qualified beneficiaries. If coverage is modified under the policy or contract for any group of similarly situated qualified beneficiaries, this coverage shall also be modified in the same manner for persons who are qualified beneficiaries entitled pursuant to subsection a. of this section to continued coverage. Continuation of coverage may not be conditioned upon, or discriminate on the basis of, lack of evidence of insurability.

c. The health benefits plan may require payment of a premium by the employee, spouse or dependent child for any period of continuation coverage as provided for in this section, except that the premium shall not exceed 102%, or 150% in the case of continuation of coverage pursuant to paragraph (2) of subsection g. of this section, of the applicable premium paid for similarly situated beneficiaries under the health benefits plan for a specified period, and may, at the election of the payor, be made in monthly installments. No premium payment shall be due before the 30th day after the day on which the covered employee made the initial election for continued coverage.

d. Coverage continued pursuant to this section shall continue until the earlier of the following:

(1) The date upon which the employer under whose health benefits plan coverage is continued ceases to provide any health benefits plan to any employee or other qualified beneficiary;

(2) The date on which the continued coverage ceases under the health benefits plan by reason of a failure to make timely payment of any premium required under the plan by the former employee, spouse, or dependent child having the continued coverage. The payment of any premium shall be considered to be timely if made within 30 days after the due date or within such longer period as may be provided for by the policy or contract; or

(3) The date after the date of election on which the qualified beneficiary first becomes:

(a) Covered under any other health benefits plan, as an employee or otherwise, which does not contain a provision which limits or excludes coverage with respect to any preexisting condition of a covered employee or any spouse or dependent child who is included under the coverage provided the covered employee, for such period of the limitation or exclusion; or

(b) Entitled to benefits under Title XVIII of the Social Security Act, Pub.L.89-97 (42 U.S.C.s.1395 et seq.).

e. Notice shall be provided to employees in the certificate of coverage prepared for employees by the carrier on or about the commencement of coverage and by the small employer at the time of the qualifying event as to their continuation rights under the plan. A qualified beneficiary may elect continuation coverage offered pursuant to this section no later than 30 days after the qualifying event. For the purposes of this section, "qualified beneficiary" means any person covered under a small employer group policy who has a qualifying event.

f. The provisions of this section shall not apply to any person who is a qualified beneficiary for the purposes of continuation of coverage as provided in accordance with section 10002 of Title X of Pub.L.99-272 (29 U.S.C.s.1161 et seq.).

g. Continuation of coverage provided for under this section shall not exceed 18 months from the qualifying event, except that:

(1) In the case of a spouse or dependent child who is a qualified beneficiary, continuation of coverage shall extend until the date 36 months after the date the spouse's or dependent child's benefits under the policy or contract would otherwise have terminated by reason of the death of the employee, the divorce of the employee from the spouse or a dependent child ceasing to be a dependent child under the applicable provisions of the policy or contract; and

(2) In the case of an employee who is determined to have been disabled under Title II or XVI of the Social Security Act (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-1383) at the time of termination of employment or at any time during the first 60 days of continuation of coverage, 29 months after the date benefits under the policy or contract would have terminated pursuant to paragraph (1) of subsection a. of this section; provided, however, that if the employee is no longer disabled, continuation of coverage shall terminate on the later date of 18 months or the month that begins more than 31 days after the date of final determination under Title II or Title XVI of the Social Security Act (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-1383) that the employee is no longer disabled. The employee shall provide notification of the disability determination under Title II or XVI of the Social Security Act (42 U.S.C.ss.401-433 or 42 U.S.C.ss.1381-1383) to the carrier within 60 days of the date of that determination, and within 18 months of the date benefits under the policy or contract would have terminated pursuant to paragraph (1) of subsection a. of this section