

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 442 Session of 2009

INTRODUCED BY D. WHITE, PILEGGI, O'PAKE, BAKER, GORDNER,
ALLOWAY, RAFFERTY, BRUBAKER, ERICKSON, LOGAN, KASUNIC, WAUGH,
BROWNE, ORIE, WONDERLING, BOSCOLA, EARLL, SCARNATI, CORMAN,
STACK AND PIPPY, FEBRUARY 24, 2009

REFERRED TO BANKING AND INSURANCE, FEBRUARY 24, 2009

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," in health and accident insurance,
12 providing for group health policies to continue for period of
13 time after termination of employment or membership in health
14 maintenance organizations.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. The act of May 17, 1921 (P.L.682, No.284), known
18 as The Insurance Company Law of 1921, is amended by adding a
19 section to read:

20 Section 635.4. Mini-COBRA Small Employer Group Health
21 Policies.--(a) A group policy delivered or issued for delivery
22 in this Commonwealth after the effective date of this section by
23 an insurer which insures employes or members and their eligible

dependents for hospital, surgical or major medical insurance shall provide that covered employees or eligible dependents whose coverage under the group policy would otherwise terminate because of a qualifying event shall be entitled to continue their hospital, surgical or major medical coverage under that group policy subject to the following terms and conditions:

(1) Continuation shall only be available to a covered employee or eligible dependent who has been continuously insured under the group policy, and for similar benefits under any group policy which it replaced, during the entire three-month period ending with such termination. If employment is reinstated during the continuation period, then coverage under the group policy must be reinstated for the covered employee and any eligible dependents who were covered under continuation.

(2) Continuation shall not be available for any person covered under the group policy who:

(i) is covered or is eligible for coverage under Medicare;

(ii) fails to verify that he is ineligible for employer-based group health insurance as an eligible dependent; or

(iii) is or could be covered by any other insured or uninsured arrangement which provides hospital, surgical or major medical coverage for individuals in a group and under which the person was not covered immediately prior to such termination, excluding the medical assistance program established under the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

(3) Continuation need not include dental, vision care or prescription drug benefits or any other benefits provided under the group policy in addition to its hospital, surgical or major medical benefits, but continuation must include any benefits

1 mandated under this or any other act if those benefits are
2 provided under the group policy.

3 (4) (i) The group policy shall provide, at the time of
4 commencement of coverage under the plan, written notice to each
5 covered employe and adult eligible dependent of the employe, if
6 any, of the rights provided under this section.

7 (ii) The employer of a covered employe under a plan must
8 notify the administrator or its designee of a qualifying event
9 within thirty days of the date of the qualifying event.

10 (iii) Each covered employe or eligible dependent is
11 responsible for notifying the administrator or its designee of
12 the occurrence of any qualifying event within sixty days after
13 the date of the qualifying event and each eligible dependent who
14 is determined, under Title II or XVI of the Social Security Act
15 (49 Stat. 620, 42 U.S.C. § 301 et seq.), to have been disabled
16 at any time during the first sixty days of continuation coverage
17 under this section is responsible for notifying the plan
18 administrator or its designee of such determination within sixty
19 days after the date of the determination and for notifying the
20 plan administrator or its designee within thirty days after the
21 date of any final determination under Title II or XVI of the
22 Social Security Act that the eligible dependent is no longer
23 disabled.

24 (iv) In the case of a qualifying event described in
25 subsection (e)(5)(i), (ii), (iv) or (vi), the administrator or
26 its designee shall notify any eligible dependent with respect to
27 such event, of such dependent's rights under this section.

28 (v) In the case of a qualifying event described in
29 subsection (e)(iii) or (v) where the covered employe notifies
30 the administrator or its designee under subparagraph (iii), the

administrator or its designee shall notify any eligible dependent with respect to such event of such dependent's rights under this section.

(vi) For purposes of subparagraph (iv) and (v), any notification shall be made within fourteen days of the date on which the administrator or its designee is notified under subparagraph (ii) or (iii), whichever is applicable, and any such notification to an eligible dependent who is the parent or guardian of one or more eligible dependents shall be treated as notification to all other eligible dependents residing with such parent or guardian at the time such notification is made.

(vii) Except as otherwise specified in an election, any election of continuation coverage by an eligible dependent shall be deemed to include an election of continuation coverage on behalf of any other eligible dependent who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each eligible dependent is entitled to make a separate selection among such types of coverage.

(5) (i) The covered employee or eligible dependent requesting the continuation of coverage must pay to the group policyholder, on a monthly basis, the amount of contribution required to continue the coverage.

(ii) The premium contribution may not be more than one hundred five percent of the group rate of the insurance being continued on the due date of each payment; but, if any benefits are omitted as provided by paragraph (3), the premium contribution shall be reduced accordingly.

(iii) Nothing in this section shall require the employer to contribute to the deductible of the employee holding an HSA as

1 defined in the Internal Revenue Code of 1986 (Public Law 99-514,
2 26 U.S.C. § 223(d)) as a component of the group policy after the
3 termination date as long as scheduled payments have been made.

4 (6) Continuation of coverage under the group policy for any
5 covered employee or eligible dependent shall terminate upon
6 failure to satisfy paragraph (2) or, if earlier, at the first to
7 occur of the following:

8 (i) the date nine months after the date the covered
9 employee's or eligible dependent's coverage under the group would
10 have terminated because of a qualifying event;

11 (ii) if the employee or member fails to make timely payment
12 of a required premium contribution, the end of the period for
13 which contributions were made;

14 (iii) the date on which the group policy is terminated.

15 (b) A covered employee shall be entitled to obtain a
16 conversion policy as stated in section 621.2. The right to a
17 converted policy pursuant to this act for a covered employee or
18 eligible dependent entitled to continuation of coverage under
19 this act shall commence upon termination of the continued
20 coverage provided for under this act.

21 (c) Coverage as required by this section may not be
22 conditioned upon, or discriminated on, the basis of lack of
23 evidence or insurability.

24 (d) This section shall only apply to those persons who
25 satisfy both of the following criteria:

26 (1) Persons who are not subject to the continuation and
27 conversion provisions set forth in Title 1, Subtitle B, Part 6
28 of the Employee Retirement Income Security Act of 1974 (Public
29 Law 93-406, 88 Stat. 829) or Title XXII of the Public Health
30 Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).

1 (2) Persons, and the eligible dependents of such persons,
2 who are employed by an employer that normally employed between
3 two and nineteen employees on a typical business day during the
4 preceding year.

5 (e) For purposes of this section, the following words and
6 phrases shall have the meanings given to them in this subsection
7 unless the context clearly indicates otherwise:

8 (1) "Covered employee" means an individual who is or was
9 provided coverage under a group policy by virtue of the
10 performance of services by the individual for one or more
11 persons maintaining the policy, including as an employee defined
12 in section 401(c)(1) of the Internal Revenue Code of 1986
13 (Public Law 99-514, 26 U.S.C. § 1 et seq.). Such term includes
14 employees and members as those terms are used in section 621.2.

15 (2) "Election period" means the period which:

16 (i) begins not later than the date on which coverage
17 terminates under the plan by reason of a qualifying event;

18 (ii) is of at least sixty days' duration; and

19 (iii) ends not earlier than sixty days after the later of:

20 (A) the date described in subparagraph (i); or

21 (B) in the case of any eligible dependent who receives
22 notice under subsection (a)(4)(iv), the date of such notice.

23 (3) "Group policy" means any group health insurance policy,
24 subscriber contract, certificate or plan which provides health
25 or sickness and accident coverage which is offered by an
26 insurer. The term shall not include any of the following:

27 (i) An accident only policy.

28 (ii) A credit only policy.

29 (iii) A long-term or disability income policy.

30 (iv) A specified disease policy.

1 (v) A Medicare supplement policy.
2 (vi) A Civilian Health and Medical Program of the Uniformed
3 Services (CHAMPUS) supplement policy.
4 (vii) A fixed indemnity policy.
5 (viii) A dental only policy.
6 (ix) A vision only policy.
7 (x) A workers' compensation policy.
8 (xi) An automobile medical payment policy under 75 Pa.C.S.
9 (relating to vehicles).
10 (xii) Any other similar policies providing for limited
11 benefits.

12 (4) "Insurer" means a company or health insurance entity
13 licensed in this Commonwealth to issue any health, sickness or
14 accident policy or subscriber contract or certificate or plan
15 that provides medical or health care coverage by a health care
16 facility or licensed health care provider that is offered or
17 governed under this act or any of the following:

18 (i) The act of December 29, 1972 (P.L.1701, No.364), known
19 as the "Health Maintenance Organization Act."

20 (ii) The act of May 18, 1976 (P.L.123, No.54), known as the
21 "Individual Accident and Sickness Insurance Minimum Standards
22 Act."

23 (iii) 40 Pa.C.S. Ch. 61 (relating to hospital plan
24 corporations) or 63 (relating to professional health services
25 plan corporations).

26 (5) "Qualifying event" means, with respect to any covered
27 employee, any of the following events which, but for the
28 continuation of coverage required under this section, would
29 result in the loss of coverage of an eligible dependent:

30 (i) The death of a covered employee.

1 (ii) The termination, other than by reason of such employee's
2 gross misconduct, or reduction of hours of the covered employee's
3 employment.

4 (iii) The divorce or legal separation of the covered employee
5 from an eligible dependent.

6 (iv) The covered employee becoming entitled to benefits under
7 Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C.
8 § 301 et seq.).

9 (v) A dependent child ceasing to be a dependent child under
10 the generally applicable requirements of the plan.

11 (vi) A proceeding in a case under 11 U.S.C. (relating to
12 bankruptcy), with respect to the employer from whose employment
13 the covered employee retired at any time. In the case of an event
14 described in this subparagraph, a loss of coverage includes a
15 substantial elimination of coverage with respect to an eligible
16 dependent within one year before or after the date of
17 commencement of the proceeding.

18 (f) The department may promulgate regulations as necessary
19 for the implementation and administration of this section.

20 Section 2. This act shall take effect in 120 days.