

INSURANCE COMPANY LAW OF 1921 - HEALTH AND ACCIDENT INSURANCE
GROUP HEALTH POLICIES TO CONTINUE FOR PERIOD OF TIME AFTER
TERMINATION OF EMPLOYMENT OR MEMBERSHIP IN HEALTH MAINTENANCE
ORGANIZATIONS

Act of Jun. 10, 2009, P.L. 5, No. 2

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HB 1089

AN ACT

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

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

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

Section 635.4. Mini-COBRA Small Employer Group Health Policies.--(a) A group policy in effect or delivered or issued for delivery in this Commonwealth on or after the effective date of this section by an insurer which insures employes and their eligible dependents for hospital, surgical or major medical insurance shall provide that covered employes, 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 employe or eligible dependent who has been continuously insured under a group policy, or 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 employe 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," the children's health care program established under Article XXIII or the adult basic coverage insurance program established under Chapter 13 of the act of June 26, 2001 (P.L.755, No.77), known as the "Tobacco Settlement Act," and any successors thereto.

(3) Continuation must include any benefits provided under the group policy.

(4) (i) The group policy shall provide notice to the policyholder of the rights provided under this section. Unless already provided in the group policy, an insurer who has issued a group policy in effect as of the effective date of this section shall provide such notice to the policyholder within forty-five days of the effective date.

(ii) The employer of a covered employe under a group policy must notify the administrator or its designee, the covered employe and the insurer of a qualifying event within thirty days of the qualifying event. Notice to the covered employe shall include notice of the rights set forth in this section.

(iii) Each covered employe or eligible dependent shall notify the administrator or its designee of its election of continuation coverage under this section within thirty days of notice under subparagraph (ii). The coverage shall be effective as of the date of the qualifying event and shall be the same as the coverage in effect at the time of the qualifying event or any replacement coverage.

(iv) An administrator or its designee notified under subparagraph (iii) of an election of continuation coverage shall notify the insurer within fourteen days of the covered employe's or eligible dependent's election.

(v) 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.

(5) (i) The covered employe or eligible dependent requesting the continuation of coverage must pay to the administrator or its designee, on a monthly basis, the amount of contribution required to be paid by the covered employe or eligible dependent 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.

(iii) Nothing in this section shall require the employer to contribute to the deductible of the employe holding a health savings account as defined in the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 223 (d)) or other medical spending account as a component of the group policy after the termination date as long as scheduled payments have been made.

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

(A) the date nine months after the date the covered employe's or eligible dependent's coverage under the group policy would have terminated because of a qualifying event;

(B) if the employe or member fails to make timely payment of a required premium contribution, the end of the period for which contributions were made;

(C) the date on which the group policy is terminated.

(ii) A covered employe or eligible dependent shall provide written notice to the administrator or its designee within fourteen days if, pursuant to paragraph (2), coverage should not occur.

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

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

(d) In the case of a qualifying event consisting of the involuntary termination of the covered employe's employment occurring on or after the effective date of this section and before January 1, 2010, or such other date as specified by any amendment to or successor of section 3001 of Division B, Title III of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, 123 Stat. 115), a covered employe or eligible dependent shall be entitled to premium assistance as provided in section 3001 of Division B, Title III of the American Recovery and Reinvestment Act of 2009, pursuant to the procedures and requirements set forth therein.

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

(1) Persons who are not subject to the continuation and conversion provisions set forth in Title 1, Subtitle B, Part 6 of the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 29 U.S.C. § 1161 et seq.) or Title XXII of the Public Health Service Act (Public Law 99-272, 42 U.S.C. § 300bb-1 et seq.).

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

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

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

(1) "Administrator" means the person specifically designated by an employer by written agreement to manage the administration of a group policy issued to an employer or, if an administrator is not so designated, the employer.

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

(3) "Eligible dependent" means:

(i) With respect to a covered employe under a group health plan, any other individual who on the day before the qualifying event for that employe is a beneficiary under the plan:

(A) as the spouse of the covered employe; or

(B) as the dependent child of the employe.

(ii) In the case of a qualifying event described in paragraph (6)(ii), the term includes a covered employe.

(iii) In the case of a qualifying event described in paragraph (6)(vi), the term includes a covered employe who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan:

- (A) as the spouse of the covered employe;
- (B) as the dependent child of the employe; or
- (C) as the surviving spouse of the covered employe.

The term shall also include a child who is born to or placed for adoption with a covered employe during the period of continuation coverage under this section.

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

- (i) An accident only policy.
- (ii) A credit only policy.
- (iii) A long-term care or disability income policy.
- (iv) A specified disease policy.
- (v) A Medicare supplement policy.
- (vi) A Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement policy.
- (vii) A fixed indemnity policy.
- (viii) A dental only policy.
- (ix) A vision only policy.
- (x) A workers' compensation policy.
- (xi) An automobile medical payment policy under 75 Pa.C.S. (relating to vehicles).
- (xii) Any other similar policies providing for limited benefits.

(5) " Insurer " means a company or health insurance entity licensed in this Commonwealth to issue any health, sickness or accident policy or subscriber contract or certificate or plan that provides medical or health care coverage by a health care facility or licensed health care provider that is offered or governed under Article XXIV or other provision of this act or any of the following:

- (i) The act of December 29, 1972 (P.L.1701, No.364) , known as the "Health Maintenance Organization Act."
- (ii) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations).

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

- (i) The death of a covered employe.
- (ii) The termination, other than by reason of such employe's gross misconduct, or reduction of hours of the covered employe's employment.
- (iii) The divorce or legal separation of the covered employe from an eligible dependent.
- (iv) The covered employe becoming entitled to benefits under Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1395 et seq.).

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

(vi) A proceeding in a case under 11 U.S.C. (relating to bankruptcy), with respect to the employer from whose employment the covered employe retired at any time. In the case of an event described in this subparagraph, a loss of coverage includes a

substantial elimination of coverage with respect to an eligible dependent within one year before or after the date of commencement of the proceeding.

Section 2. This act shall take effect in 30 days.

APPROVED--The 10th day of June, A.D. 2009.

EDWARD G. RENDELL