

GOVERNOR'S PROGRAM BILL

2009

MEMORANDUM

AN ACT to amend the insurance law, in relation to extending state continuation benefits from eighteen months to thirty-six months.

Purpose:

This bill would help ensure continued access to group health insurance by extending the period of continuation coverage under a group contract or group remittance contract from 18 months to 36 months.

Summary of Provisions:

Section 1 of the bill would amend Insurance Law § 3221 to require commercial insurers offering group policies to extend the period of state continuation coverage from 18 months to 36 months for employees or members. Section 1 of the bill would also allow an employee or member who has otherwise exhausted federal continuation benefits under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") to maintain coverage for up to 36 months, if the employee or member is entitled to less than 36 months of federal COBRA benefits.

Section 2 of the bill would amend Insurance Law § 4304 to require not-for-profit corporations and health maintenance organizations ("HMOs") offering group remittance contracts to extend continuation benefits from 18 months to 36 months, under the same terms and conditions as commercial insurers.

Section 3 of the bill would amend Insurance Law § 4305 to require not-for-profit corporations and HMOs offering group contracts to extend continuation benefits from 18 months to 36 months, under the same terms and conditions as commercial insurers.

Section 4 of the bill would provide that the bill take effect on July 1, 2009 and apply to all contracts issued, renewed, modified, altered or amended on or after that date.

Existing Law:

Insurance Law § 3221(m) permits individuals covered under commercial group or blanket accident and health insurance policies that are not subject to federal COBRA law to elect to participate in state continuation coverage in the event of job loss, reduction in work hours or loss of eligibility. Such individuals must elect state continuation coverage within 60 days of the event which qualifies them for coverage or within 60 days of receiving notice of the right to elect such coverage. There is no cost to the employer for continuation coverage. The former employee or member pays the full premium, which is capped at 102 percent of the group rate.

The period of continuation coverage for employees or members is limited to 18 months, at which time the former employee loses their right to continuation coverage. In cases where dependents lose coverage due to divorce, separation, or aging off a parent's policy, the period of continuation coverage is 36 months.

Insurance Law § 4304(k) sets forth provisions similar to those of Insurance Law § 3221(m), permitting the election of state continuation coverage for group remittance contracts with a hospital service, health service or medical expense indemnity corporation.

Insurance Law § 4305(e) sets forth provisions similar to those of Insurance Law § 3221(m), permitting the election of state continuation coverage for group contracts with a hospital service, health service or medical expense indemnity corporation.

Chapter 18 of the Employee Retirement Income Security Act, 29 U.S.C. § 1161, et seq., provides for continuation coverage and additional standards for group health plans.

Chapter 6A of the Public Health Service Act, 42 U.S.C. § 300bb-1, et seq., provides for continuation coverage under State and local group health plans.

The American Recovery and Reinvestment Act of 2009 expanded access to federal COBRA and state continuation benefits for laid-off workers by providing a 9-month, 65% subsidy of premiums.

Legislative History:

This is a new bill.

Statement of Support:

COBRA allows workers to continue their group health insurance coverage for 18 months if their employment is involuntarily terminated or if they lose their coverage due to a reduction in work hours. However, COBRA only applies to employers with 20 or more employees. To address this gap, the State's "Mini-COBRA" law requires small employers (with less than 20 employees) to offer an 18-month State health insurance continuation benefit similar to COBRA.

This bill would allow workers, regardless of the size of their employer, to extend their health insurance continuation benefit from 18 months to 36 months, at no direct cost to the State or employers. Currently, those who do not have access to group health insurance (including those that exhaust their continuation benefits) must purchase coverage on an individual basis. New York's individual health insurance market is standardized, with very comprehensive benefits and prohibitively high premiums. Continuation coverage is available at an average cost of \$400 per month for single coverage. The average cost of individual health insurance coverage currently exceeds \$900 per month (higher in certain regions). While the Healthy NY program offers a less expensive option, it is not available to everyone due to eligibility requirements.

Current national unemployment rates are at a 24-year high. New York's unemployment rate was close to eight percent as of February 2009, up from six percent in November 2008, and climbing at a rate that exceeds the national average. An increasing number of workers are experiencing extended periods of job loss or being forced to work part-time. All of these factors contribute to a loss of group health insurance coverage. Also, as companies downsize, older workers are often offered early retirement options as an alternative to lay-offs. These individuals may not have retiree health benefits, and can be years away from Medicare.

This bill extends a more affordable private health insurance option, at no direct cost to the State or employers. This bill would allow individuals to maintain their existing coverage for a longer period of time through continuation coverage. Without such option, many of these individuals would be uninsured after 18 months.

Budget Implications:

This bill will have not have a material impact on State finances.

Effective Date:

The bill would take effect on July 1, 2009 and would apply to all contracts issued, renewed, modified, amended or altered on or after that date.

PROGRAM BILL # 11

S.

Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

INSURLA
(Relates to extending state contin-
uation benefits from eighteen to
thirty-six months)

Ins. extend COBRA benefits 36 mos

AN ACT

to amend the insurance law, in
relation to extending state contin-
uation benefits from eighteen months
to thirty-six months

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

- | | | | | |
|-----------------|-----------------|----------------|------------------|----------------|
| s20 Adams | s03 Foley | s24 Lanza | s12 Onorato | s09 Skelos |
| s15 Addabbo | s08 Fuschillo | s39 Larkin | s37 Oppenheimer | s14 Smith |
| s55 Alesi | s22 Golden | s01 LaValle | s11 Padavan | s25 Squadron |
| s48 Aubertine | s47 Griffio | s40 Leibell | s21 Parker | s58 Stachowski |
| s42 Bonacic | s06 Hannon | s52 Libous | s30 Perkins | s16 Stavisky |
| s46 Breslin | s36 Hassell- | s45 Little | s61 Ranzenhofer | s35 Stewart- |
| s50 DeFrancisco | Thompson | s05 Marcellino | s56 Robach | Cousins |
| s32 Diaz | s10 Huntley | s62 Maziarz | s41 Saland | s60 Thompson |
| s17 Dilan | s07 Johnson, C. | s43 McDonald | s19 Sampson | s49 Valesky |
| s29 Duane | s04 Johnson, O. | s13 Monserrate | s23 Savino | s59 Volker |
| s33 Espada | s34 Klein | s18 Montgomery | s31 Schneiderman | s53 Winner |
| s44 Farley | s26 Krueger | s38 Morahan | s28 Serrano | s57 Young |
| s02 Flanagan | s27 Kruger | s54 Nozzolio | s51 Seward | |

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

- | | | | | |
|-------------------|------------------|-------------------|-----------------|------------------|
| a049 Abbate | a047 Colton | a098 Gunther | a027 Mayersohn | a076 Rivera, P. |
| a001 Alessi | a010 Conte | a139 Rawley | a019 McDonough | a056 Robinson |
| a021 Alfano | a032 Cook | a148 Rayes | a104 McEneny | a067 Rosenthal |
| a105 Amedore | a142 Corwin | a083 Reastie | a017 McKevitt | a118 Russell |
| a084 Arroyo | a107 Crouch | a028 Hevesi | a022 Meng | a012 Saladino |
| a035 Aubry | a063 Cusick | a048 Hinkind | a102 Miller | a113 Sayward |
| a136 Bacalles | a045 Cymbrowitz | a018 Hooper | a052 Millman | a029 Scarborough |
| a099 Ball | a138 DelMonte | a144 Hoyt | a103 Molinaro | a016 Schimel |
| a124 Barclay | a034 DenDekker | a060 Hyer-Spencer | a132 Morelle | a140 Schimminger |
| a014 Barra | a116 Destito | a042 Jacobs | a037 Nolan | a145 Schroeder |
| a040 Barron | a085 Diaz | a095 Jaffee | a128 Oaks | a122 Scozzafava |
| a082 Benedetto | a081 Dinowitz | a057 Jeffries | a069 O'Donnell | a038 Seminerio |
| a079 Benjamin | a114 Duprey | a131 John | a137 O'Mara | a064 Silver |
| a073 Bing | a003 Eddington | a112 Jordan | a051 Ortiz | a100 Skartados |
| a055 Boyland | a004 Englebright | a074 Kavanagh | a150 Farment | a093 Spano |
| a008 Boyle | a130 Errigo | a065 Kellner | a088 Faulin | a121 Stirpe |
| a089 Bradley | a072 Espallat | a129 Kolb | a141 Peoples | a011 Sweeney |
| a044 Brennan | a071 Farrell | a135 Koon | a039 Peralta | a110 Tedisco |
| a092 Brodsky | a005 Fields | a025 Lancman | a058 Perry | a002 Thiele |
| a046 Brook-Krasny | a123 Finch | a091 Latimer | a023 Pheffer | a061 Titone |
| a147 Burling | a007 Fitzpatrick | a013 Lavine | a068 Powell | a031 Titus |
| a117 Butler | a143 Gabryszak | a050 Lentol | a087 Fretlow | a062 Tobacco |
| a101 Cahill | a090 Galef | a125 Lifton | a146 Quinn | a054 Towns |
| a096 Calhoun | a133 Gantt | a127 Lopez, P. | a097 Rabbitt | a115 Townsend |
| a043 Camara | a036 Gianaris | a053 Lopez, V. | a009 Raia | a015 Walker |
| a106 Cenestrari | a149 Giglio | a126 Lupardo | a006 Ramos | a041 Weinstein |
| a026 Carrozza | a066 Glick | a111 Magee | a134 Reilich | a020 Weisenberg |
| a086 Castro | a108 Gordon | a120 Magnarelli | a109 Reilly | a024 Weprin |
| a119 Christensen | a075 Gottfried | a059 Maisel | a078 Rivera, J. | a070 Wright |
| a033 Clark | a077 Greene | a030 Markey | a080 Rivera, N. | a094 Zebrowski |

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Paragraphs 4 and 6 of subsection (m) of section 3221 of the
2 insurance law, paragraph 4 as amended by chapter 501 of the laws of
3 1992, subparagraph D of paragraph 4 as amended by chapter 661 of the
4 laws of 1997, paragraph 6 as added by chapter 210 of the laws of 1987,
5 are amended to read as follows:

6 (4) Subject to paragraph one of this subsection, continuation of bene-
7 fits under the group policy for any person shall terminate at the first
8 to occur of the following:

9 (A) The date [eighteen] thirty-six months after the date the employ-
10 ee's or member's benefits under the policy would otherwise have termi-
11 nated because of termination of employment or membership; or

12 (B) The end of the period for which premium payments were made, if the
13 employee or member fails to make timely payment of a required premium
14 payment; or

15 (C) In the case of an eligible dependent of an employee or member, the
16 date thirty-six months after the date such person's benefits under the
17 policy would otherwise have terminated by reason of:

18 (i) the death of the employee or member;

19 (ii) the divorce or legal separation of the employee or member from
20 his or her spouse;

21 (iii) the employee or member becoming entitled to benefits under title
22 XVIII of the United States Social Security Act (Medicare); or

23 (iv) a dependent child ceasing to be a dependent child under the
24 generally applicable requirements of the policy; or

25 (D) [In the case of an employee or member who is determined, under
26 title II or title XVI of the Social Security Act, to have been disabled
27 at the time of termination of employment or membership or at any time
28 during the first sixty days of continuation of coverage, the date twen-

1 ty-nine months after the date the employee's or member's benefits under
2 the policy would otherwise have terminated because of termination of
3 employment or membership; provided, however, that if such employee or
4 member is no longer disabled, the benefits provided in this subparagraph
5 shall terminate the later of (i) the date provided by subparagraph (A)
6 of this paragraph, or (ii) the month that begins more than thirty-one
7 days after the date of the final determination under title II or title
8 XVI of the United States Social Security Act that the employee or member
9 is no longer disabled; or

10 (E)] The date on which the group policy is terminated or, in the case
11 of an employee, the date his employer terminates participation under the
12 group policy. However, if this clause applies and the coverage ceasing
13 by reason of such termination is replaced by similar coverage under
14 another group policy, the following shall apply:

15 (i) The employee or member shall have the right to become covered
16 under that other group policy, for the balance of the period that he
17 would have remained covered under the prior group policy in accordance
18 with this subparagraph had a termination described in this subparagraph
19 not occurred, and

20 (ii) The minimum level of benefits to be provided by the other group
21 policy shall be the applicable level of benefits of the prior group
22 policy reduced by any benefits payable under that prior group policy,
23 and

24 (iii) The prior group policy shall continue to provide benefits to the
25 extent of its accrued liabilities and extension of benefits as if the
26 replacement had not occurred.

27 (6) This subsection shall not be applicable where a continuation bene-
28 fit is available to the employee or member pursuant to Chapter 18 of the

1 Employee Retirement Income Security Act, 29 U.S.C. § 1161 et seq or
2 Chapter 6A of the Public Health Service Act, 42 U.S.C. § 300 bb - 1 et
3 seq. However, a group policy shall offer an insured who has exhausted
4 continuation coverage pursuant to Chapter 18 of the Employee Retirement
5 Income Security Act, 29 U.S.C. § 1161 et seq. or Chapter 6A of the
6 Public Health Service Act, 42 U.S.C. § 300 bb - 1 et seq. the opportu-
7 nity to continue coverage for up to thirty-six months from the date the
8 employee's or member's continuation coverage began, if the employee or
9 member is entitled to less than thirty-six months of continuation bene-
10 fits under federal law.

11 § 2. Paragraph 4 of subsection (k) of section 4304 of the insurance
12 law, as added by chapter 501 of the laws of 1992, subparagraph D as
13 amended by chapter 661 of the laws of 1997, is amended and a new para-
14 graph 5 is added to read as follows:

15 (4) Subject to paragraph one of this subsection, continuation of bene-
16 fits under the group remittance contract for any person shall terminate
17 at the first to occur of the following:

18 (A) The date [eighteen] thirty-six months after the date the employ-
19 ee's or member's benefits under the contract would otherwise have termi-
20 nated because of termination of employment or membership; or

21 (B) The end of the period for which premium payments were made, if the
22 employee or member fails to make timely payment of a required premium
23 payment; or

24 (C) In the case of an eligible dependent of an employee or member, the
25 date thirty-six months after the date such person's benefits under the
26 contract would otherwise have terminated by reason of:

27 (i) the death of the employee or member;

1 (ii) the divorce or legal separation of the employee or member from
2 his or her spouse;

3 (iii) the employee or member becoming entitled to benefits under title
4 XVIII of the United States Social Security Act (Medicare); or

5 (iv) a dependent child ceasing to be a dependent child under the
6 generally applicable requirements of the contract; or

7 (D) [In the case of an employee or member who is determined, under
8 title II or title XVI of the Social Security Act, to have been disabled
9 at the time of the termination of employment or membership or at any
10 time during the first sixty days of continuation of coverage, the date
11 twenty-nine months after the date the employee's or member's benefits
12 under the contract would otherwise have terminated because of termi-
13 nation of employment or membership; provided, however, that if such
14 employee or member is no longer disabled, the benefits provided in this
15 subparagraph shall terminate the later of (i) the date provided by
16 subparagraph (A) of this paragraph, or (ii) the month that begins more
17 than thirty-one days after the date of the final determination under
18 title II or title XVI of the United States Social Security Act that the
19 employee or member is no longer disabled; or

20 (E)] The date on which the group remittance contract with that remit-
21 ting agent is terminated or, in the case of an employee, the date his
22 employer terminates participation under the group remittance contract.
23 However, if this clause applies and the coverage ceasing by reason of
24 such termination is replaced by similar coverage under another group or
25 group remittance contract, the following shall apply:

26 (i) The employee or member shall have the right to become covered
27 under that other group or group remittance contract, for the balance of
28 the period that he would have remained covered under the prior group

1 remittance contract in accordance with this subparagraph had a termi-
2 nation described in this subparagraph not occurred, and

3 (ii) The minimum level of benefits to be provided by the other group
4 or group remittance contract shall be the applicable level of benefits
5 of the prior group remittance contract reduced by any benefits payable
6 under that prior group remittance contract, and

7 (iii) The prior group remittance contract shall continue to provide
8 benefits to the extent of its accrued liabilities and extension of bene-
9 fits as if the replacement had not occurred.

10 (5) A contract for which premiums are paid by a remitting agent for a
11 group issued by a hospital service, health service or medical expense
12 indemnity corporation shall offer an employee or member who has
13 exhausted continuation coverage pursuant to Chapter 18 of the Employee
14 Retirement Income Security Act, 29 U.S.C. § 1161 et seq. or Chapter 6A
15 of the Public Health Service Act, 42 U.S.C. § 300 bb - 1 et seq. the
16 opportunity to continue coverage for up to thirty-six months from the
17 date the employee's or member's continuation coverage began if the
18 employee or member is entitled to less than thirty-six months of contin-
19 uation benefits.

20 § 3. Paragraphs 4 and 7 of subsection (e) of section 4305 of the
21 insurance law, paragraph 4 as amended by chapter 677 of the laws of
22 1993, subparagraph D of paragraph 4 as amended by chapter 661 of the
23 laws of 1997, paragraph 7 as added by chapter 210 of the laws of 1987,
24 are amended to read as follows:

25 (4) Subject to paragraph one of this subsection, continuation of bene-
26 fits under the group contract for any person shall terminate at the
27 first to occur of the following:

1 (A) The date [eighteen] thirty-six months after the date the employ-
2 ee's or member's benefits under the contract would otherwise have termi-
3 nated because of termination of employment or membership; or

4 (B) The end of the period for which premium payments were made, if the
5 employee or member fails to make timely payment of a required premium
6 payment; or

7 (C) In the case of an eligible dependent of an employee or member, the
8 date thirty-six months after the date such person's benefits under the
9 contract would otherwise have terminated by reason of:

10 (i) the death of the employee or member;

11 (ii) the divorce or legal separation of the employee or member from
12 his or her spouse;

13 (iii) the employee or member becoming entitled to benefits under title
14 XVIII of the United States Social Security Act (Medicare); or

15 (iv) a dependent child ceasing to be a dependent child under the
16 generally applicable requirements of the contract; or

17 (D) [In the case of an employee or member who is determined, under
18 title II or title XVI of the Social Security Act, to have been disabled
19 at the time of termination of employment or membership or at any time
20 during the first sixty days of continuation of coverage, the date twen-
21 ty-nine months after the date the employee's or member's benefits under
22 the contract would otherwise have terminated because of termination of
23 employment or membership; provided, however, that if such employee or
24 member is no longer disabled, the benefits provided in this subparagraph
25 shall terminate the later of (i) the date provided by subparagraph (A)
26 of this paragraph, or (ii) the month that begins more than thirty-one
27 days after the date of the final determination under title II or title

1 XVI of the United States Social Security Act that the employee or member
2 is no longer disabled; or

3 (E)] The date on which the group contract is terminated or, in the
4 case of an employee, the date his employer terminated participation
5 under the group contract. However, if this clause applies and the cover-
6 age ceasing by reason of such termination is replaced by similar cover-
7 age under another group contract, the following shall apply:

8 (i) The employee or member shall have the right to become covered
9 under that other group contract, for the balance of the period that he
10 would have remained covered under the prior group contract in accordance
11 with this subparagraph had a termination described in this subparagraph
12 not occurred, and

13 (ii) The minimum level of benefits to be provided by the other group
14 contract shall be the applicable level of benefits of the prior group
15 contract reduced by any benefits payable under the prior group contract,
16 and

17 (iii) The prior group contract shall continue to provide benefits to
18 the extent of its accrued liabilities and extensions of benefits as if
19 the replacement had not occurred.

20 (7) This subsection shall not be applicable where a continuation bene-
21 fit is available to the employee or member pursuant to Chapter 18 of the
22 Employee Retirement Income Security Act, 29 U.S.C. § 1161 et seq or
23 Chapter 6A of the Public Health Service Act, 42 U.S.C. § 300 bb - 1 et
24 seq. However, a group contract shall offer an employee or member who
25 has exhausted continuation coverage pursuant to Chapter 18 of the
26 Employee Retirement Income Security Act, 29 U.S.C. § 1161 et seq. or
27 Chapter 6A of the Public Health Service Act, 42 U.S.C. § 300 bb - 1 et
28 seq. the opportunity to continue coverage for up to thirty-six months

1 from the date the employee's or member's continuation coverage began if
2 the employee or member is entitled to less than thirty-six months of
3 continuation benefits.

4 § 4. This act shall take effect on July 1, 2009 and shall apply to
5 policies and contracts issued, renewed, modified, altered or amended on
6 or after such date.