



STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NEW YORK 12257

David A. Paterson
Governor

James J. Wrynn
Superintendent

Circular Letter No. 5 (2010)
February 17, 2010

TO: All Insurers Authorized to Write Accident and Health Insurance in New York, Article 43 Corporations, Article 45 Corporations, Article 47 Corporations and Health Maintenance Organizations (collectively, “insurers”)

RE: Amended Thirty-Six Month State Continuation Benefit Required by Chapter 498 of the Laws of 2009

STATUTORY REFERENCE: New York Insurance Law Sections 3221, 4304 and 4305

The purpose of this circular letter is to provide guidance and clarification to insurers regarding Chapter 498 of the Laws of 2009, which helps to provide continued access to group health insurance by ensuring that persons eligible for federal Consolidated Omnibus Reconciliation Act (“COBRA”) or state continuation (“mini-COBRA”) coverage receive up to a total of 36 months of coverage, regardless of when the group health insurance contract or policy was issued, renewed, modified, altered or amended.

A. Background

On July 29, 2009, Governor David A. Paterson signed into law Chapter 236 of the Laws of 2009, which permits a person who is an employee or member of a group to continue group health insurance coverage for up to 36 months, regardless of the reason that the person lost eligibility for coverage. See Circular Letter No. 23 (2009). However, Chapter 236 only applies to policies or contracts issued, renewed, modified, altered or amended on or after July 1, 2009. Therefore, under Chapter 236, a person could not take advantage of the 18-month extension of group health insurance coverage until the group policy or contract was renewed, modified, altered or amended. As a result, any person receiving federal COBRA or mini-COBRA coverage who exhausted the initial 18 months of coverage before the group policy or contract was renewed, modified, altered or amended was not entitled to an additional 18 months of coverage pursuant to Chapter 236.

B. Chapter 498 of the Laws of 2009

On November 19, 2009, Governor David A. Paterson signed into law Chapter 498 of the Laws of 2009, which amended Insurance Law §§ 3221(m), 4304(k), 4305(e), and section 4 of Chapter 236 of the

Laws of 2009. Chapter 498 helps to provide continued access to group health insurance by extending the applicability of Chapter 236 to every group health insurance policy or contract in effect on or after November 1, 2009, regardless of when the health insurance contract or policy was issued, renewed, modified, altered or amended.

Chapter 498 also creates a special enrollment period for an employee or member of a group who exhausted his or her federal COBRA or mini-COBRA coverage between July 1, 2009 and November 1, 2009, but prior to the group policy or contract's renewal, modification, alteration or amendment. This special enrollment period entitles an employee or member to extend his or her federal COBRA or mini-COBRA coverage for an additional 18 months, for up to a total of 36 months. Any gaps in coverage between July 1, 2009 and the effective date of the coverage issued during the special enrollment period will not reduce the total 36 months to which the employee or member is entitled. Additionally, an insurer must disregard such gaps in coverage for determining if a pre-existing condition limitation applies.

Further, coverage issued during the special enrollment period shall be prospective, and take effect not more than 30 days from the date of election and payment of the first premium. An employee or member cannot purchase retroactive continuation coverage.

The special enrollment period runs for 60 days following the group policy or contract holder or former employee or member's receipt of notice of the special enrollment period from the insurer or, if the group policy or contract holder or former employee or member does not receive notice, then within 6 months of November 19, 2009. Chapter 498 required that an insurer make reasonable efforts to provide written notice of the special enrollment period to all group policy or contract holders and former employees or members entitled to the special enrollment period by December 19, 2009. Any insurer that has not yet issued written notice of the special enrollment period should do so as soon as possible.

C. Effective Date

Chapter 498 is effective immediately. However, the amendments to Insurance Law §§ 3221(m), 4304(k), and 4305(e) will expire and be deemed repealed on July 1, 2010, and the amendment to section 4 of Chapter 236 of the Laws of 2009 will be deemed to have been in full force and effect as of July 1, 2009.

Please direct any questions regarding this circular letter to Heather M. Manikas, Senior Insurance Attorney, at hmanikas@ins.state.ny.us or (518) 486-7815.

Very truly yours,

Eugene Bienskie
Asst. Deputy Superintendent & Chief
Health Bureau