Summary of New Jersey Extended Medical Coverage for
<u>Dependents Up to Age 30</u>

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1. **<u>Overview</u>**. New Jersey has enacted legislation requiring insured medical plans in New Jersey to either extend dependent coverage until age **30**, or to permit dependents who lose medical coverage before age **30** to elect to continue their benefits until age **30**. The extended coverage is generally referred to as Chapter 375 continuation coverage.

   The New Jersey law applies to any health benefit policy **"issued"** in New Jersey, regardless of the state of residency of the employee. Accordingly, an employee in Colorado, receiving medical coverage under a New Jersey insured health plan, may be eligible to add their dependents back onto an employer's medical plan.

2. **<u>Plans Covered</u>**. The law applies to any "health benefits plan" that pays or provides hospital or medical expense benefits. The law does not apply to dental plans, accident plans, disability, long-term care, workers compensation and automobile medical payments. Self-insured medical plans are also **exempt** from this law, since ERISA will preempt state legislation.

3. **<u>Effective Date</u>**. The new law applies to insurance contracts, policies or plans that are issued or renewed **on or after <u>May 12, 2006</u>**. However, the New Jersey Department of Banking and Insurance Bulletin Number 06-11 provides that carriers must permit over-age dependents who aged-out of a policy prior to May 12, 2006, and who otherwise meet the eligibility requirements, to make an election for continued medical coverage **as of <u>May 12, 2006</u>** and continuing until May 11, 2007, **<u>regardless</u>** of the anniversary date of the policy. This immediate coverage may be a surprise to insurance carriers and employers.

4. **<u>Qualification Requirements</u>**. In order to qualify for coverage a dependent must be:

   - Under **30** years of age;
   - Unmarried;
   - Without his or her own dependents;
   - A resident in New Jersey or enrolled as a full-time student; and
   - Not covered under another group health plan or receiving Social Security benefits.

5. **<u>Notice of Rights</u>**. Notice must be provided to parents of this right through an insurance certificate. Notice must also be given to parents by their **employers**:

- On or before the date in which the dependent **ages-out** of coverage;

- At the time the dependent **loses extended coverage** due to marriage, leaving New Jersey or ending full-time student status; and

- When a dependent **loses extended coverage** due to becoming covered under another group health plan.

Employers must also notify parents immediately after the effective date of the law so that any dependent who previously "aged-out" of coverage will have an opportunity to reinstate coverage under the new law for the next **12** months.

Both insurance companies and employers will be required to issue notices of the new rules.

6. **<u>Coverage Election</u>**. Coverage can be elected by a dependent (or their parents) within **30** days prior to "aging-out" of coverage, within **30** days after meeting the qualification requirements, or during a future enrollment period (if the individual remains qualified or regains qualification under the law).

7. **<u>Cost of Coverage</u>**. The law does not require employers to pay for the cost of the extended coverage.

An insurer can charge a premium to the dependent or their parents, and the premium can be up to **102%** of the applicable premium.

The New Jersey Department of Banking and Insurance has issued guidance for carriers in determining rates. The law does not permit a carrier to use the single employee rate without adjustment. Accordingly, carriers are in the process of determining the manner in which rates will be determined based upon the group in which an over-aged child is covered, or the rates for a particular market.

Under an **"Integrated Option"**, charges incurred by a Chapter 375 dependent are combined with charges incurred by other family members covered by the policy for purposes of meeting the family deductible, maximum out-of-pocket expenses and other cost sharing limits. An insurance carrier may charge the premium for Chapter 375 dependent in the group premium billed to the employer. The employer may thereafter collect the premiums and forward them to the carrier. Under this scenario, the employer may retain, or the carrier may provide the employer with a credit for the **2%** administrative fee permitted under Chapter 375.

As an alternative, under a **"Stand Alone Option"**, charges for Chapter 375 dependents are **"separated"** from those charges incurred for other members of the family. In this event the Chapter 375 dependents cover charges do not apply toward meeting the family deductible, maximum out-of-pocket expenses or other cost sharing requirements. Instead, the Chapter 375 dependents covered charges are applied toward meeting a separate deductible, maximum out-of-pocket, etc. The carrier may bill the Chapter 375 dependent premium directly to the dependent, and retain the **2%** administrative charge.

8. **Premium Payment**. Premiums may be paid on a monthly basis. A **30** day grace period exists to make all payments. However, a carrier may permit eligible dependents to make payments in accordance with the same payment cycle options permitted for employers (i.e., contract holders).

9. **End of Coverage**. Coverage will end when a dependent fails to meet the law's qualification requirements, fails to make a premium payment, or when a parent loses coverage under a policy.

   If a dependent loses coverage because of a failure to meet the qualification requirements, the dependent can elect back into the coverage at a subsequent open enrollment period if he or she regains qualification under the law, such as by moving back to New Jersey or starting school.

10. **Important Issues**. Important issues to be aware of include the following:

    - An insurance policy may **require** an over-aged dependent to have previously aged-out of a policy in order to be eligible to elect the extended benefit coverage. If the policy does not contain such a requirement, a dependent is not required to seek enrollment in an employer's policy in which he or she was enrolled prior to reaching any limiting age.

    - An over-aged dependent's eligibility is contingent upon his or her parent being a covered employee on the date the dependent seeks extended coverage.

    - The over-aged dependent is not required to be a New Jersey resident in order to obtain extended coverage. However, if not a resident, he or she must be a full-time student at an accredited institution of higher education. The educational institution is not required to be in New Jersey.

    - A carrier may not require an over-aged dependent to have elected federal COBRA or other coverage when eligible, in order to elect the extended New Jersey coverage.

    - An over-aged dependent's eligibility for coverage is generally not contingent upon showing that the individual is not eligible for other coverage. One exception is that an over-aged dependent entitled to Medicare coverage is not entitled to Chapter 375 coverage. Otherwise, it appears that a dependent who lives in New Jersey, who is eligible for employer group medical benefits, may still elect the Chapter 375 coverage instead of an employer's medical plan.

- An insurance carrier may cancel coverage for an eligible dependent upon discharge of the dependent from a hospital following the birth of a child.

- An eligible dependent's continuation coverage terminates when a covered employee's coverage ends.

- If an employer replaces an existing insurance policy, an eligible dependent's coverage rights continue unless the coverage is written outside the State of New Jersey or does not provide any dependent coverage (which is doubtful).

- A dependent's coverage may be terminated if the covered employee fails to pay any required premium payments, regardless of whether or not the dependent has paid for Chapter 375 continuation coverage.

- An eligible dependent's coverage may be terminated for non-payment, even if the employee continues to pay for the employee portion of coverage.

- Eligible dependents are generally **not entitled** to change coverage during an open enrollment period or during a HIPAA special enrollment period. Only the covered employee may effective a change in coverage.

- Pre-existing condition limitations **may apply** to eligible dependents, if they do not have prior creditable coverage.

- An eligible dependent may not be considered a "late enrollee" (for purposes of imposing a longer pre-existing condition exclusion) if the dependent elects coverage within **30** days prior to reaching the limiting age under a policy.

- An eligible dependent may also not be considered a late enrollee if an election is being made within **30** days after the individual establishes (or re-establishes) eligibility for reasons other than attaining the limiting age.

- An eligible dependent seeking Chapter 375 coverage during the "special" **12** month enrollment period from May 12, 2006 through May 11, 2007, may not be considered a late enrollee.

- Billing procedures will be worked out between carriers and employers. However, no employer can be compelled to collect a premium from a dependent, to collect the premium through a payroll deduction, or to contribute in any way for any premiums.

- When an eligible dependent loses eligibility for Chapter 375 coverage, the New Jersey Department of Insurance does not believe any COBRA rights exist, since the loss of coverage under a policy under Chapter 375 is not believed to be a qualifying event for purposes of COBRA. In addition, the individual would not be entitled to continuation rights under New Jersey statutes (N.J.S.A. 17B:27A-27).

11. **Imputed Income**. Similar to the extension of coverage to domestic partners, extending medical coverage to dependents up until age **30 may** create imputed income. To the extent a dependent is not an eligible dependent for federal income tax purposes, if any employer subsidy exists for the extended coverage employees will have the cost of such a subsidy imputed into their income. A review of the definition of dependent for federal income tax purposes is beyond the scope of this Summary. However, in general, a **"qualifying child"** is a child, who lives with an employee for more than half a year and either has not attained age **19**, or is a full-time student, who does not provided over half of their own support for the calendar year; or a **"qualifying relative"** who is a child of an employee, for whom a taxpayer provides over half of the individual's support for the calendar year. However, P&E does **not anticipate** employers wishing to subsidize any costs for dependents under the new law.

12. **Flex Plans**. A question will exist if entitlement to Chapter 375 coverage will be a "change in status" allowing an employee to change an election under a Flexible Benefits Plan established under Section 125 of the Code. In some instances, such as where a **25** year old child quits their job and returns to live at home, to attend graduate school, losing medical coverage previously provided by an employer, a change in status could exist permitting a new Flex Plan election (as a qualifying relative with a loss in employer coverage). However, if a **28** year old child without medical coverage simply returns home to live and is not a dependent for federal income tax purposes, no event exist to allow a change in election.

13. **Conclusion**. If anyone has any questions regarding these recent New Jersey changes, or if Palmieri & Eisenberg may be of assistance with regard to any other employee benefit or employment related matters, please do not hesitate to contact us.