



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
LEGISLATIVE AND REGULATORY AFFAIRS
PO Box 325
TRENTON, NJ 08625-0325

JON S. CORZINE
Governor

TEL (609) 984-3602
FAX (609) 292-0896

STEVEN M. GOLDMAN
Commissioner

BULLETIN NO. 06-11

TO: ALL INSURANCE COMPANIES, HEALTH SERVICE CORPORATIONS, HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: P.L. 2005, C. 375 CONTINUATION COVERAGE FOR ELIGIBLE DEPENDENTS UNTIL 30 YEARS OF AGE – GENERAL POSITIONS, QUESTIONS AND ANSWERS

P.L. 2005, c. 375¹ (Chapter 375), enacted on January 12, 2006 and effective on May 12, 2006, permits certain children of persons covered under group health plans the opportunity to maintain dependent coverage after reaching the limiting age specified in the health plan ("over-age dependents"). Chapter 375 applies to a covered employee's over-age dependents who: are under 30 years old, are not married, have no children, are either residents of New Jersey or are full-time students, and are not actually provided coverage under any other health benefit plan (eligible dependents). Chapter 375 allows the group contract holder to require an eligible dependent or covered employee to pay up to 102% of the cost of this coverage, as derived from the applicable portion of the charge for dependent coverage. Although the Department of Banking and Insurance (Department) is developing rules implementing Chapter 375, the rules will not be adopted prior to the effective date of the new law. However, carriers² need to take action in advance of the law's effective date in order to assure compliance. Consequently, and as a result of questions the Department has received on how to interpret and implement the law, the Department is issuing this bulletin to provide guidance to carriers. Please note that separate bulletins have been issued to address questions about rating methodology (Bulletin 06-06), and to provide a temporary supplemental enrollment/change form for purposes of compliance with the Health Information Interchange Technology Law (HINT), P.L. 1999, c. 154 (Bulletin 06-12).

¹ Assembly Bill 3759 (Fourth Reprint), in the 2004-2005 Legislative Session. The codified law appears at N.J.S.A. 17:48-6.19, 17:48A-7.13, 17:48E-30.1, 17B:27-30.5, 17B:27A-19.16, and 26:2J-10.3.

² The term carrier includes a health service corporation, hospital service corporation, medical service corporation, health maintenance organization and an insurer authorized to offer group health insurance.

A. When the Continuation Election Right becomes Operative

Chapter 375 states that its effective date is 120 days after enactment, i.e., May 12, 2006. Chapter 375 applies to all group health contracts, policies or plans that are delivered, issued, executed or renewed on or after the effective date. That is, the Chapter 375 continuation election right becomes operative for all group policies first issued on or after May 12, 2006, and for all existing policies upon their first renewal or anniversary date occurring on or after May 12, 2006. However, the law also states that an over-age dependent who aged-out of the group policy prior to May 12, 2006 (and who otherwise meets the definition of an eligible dependent) is to be provided the opportunity, beginning May 12, 2006 and for 12 months thereafter, to make a continuation election. Accordingly, carriers must permit over-age dependents who aged-out of a policy prior to May 12, 2006, and who otherwise meet the eligibility requirements of Chapter 375, to make an election for continuation pursuant to Chapter 375 (“Chapter 375 continuation election”) as of May 12, 2006 and continuing until May 11 2007, regardless of the anniversary date of the plan.

B. General Principles of Chapter 375

1. Chapter 375 applies only to health benefits plans³ and stand-alone prescription drug plans.
2. The continuation election right established by Chapter 375 applies only to policies that, by their terms, allow for dependent coverage but limit coverage for dependent children to some age younger than 30 years.
3. Chapter 375 applies if the policy is issued in New Jersey regardless of the state of the residence of the employee.
4. The Chapter 375 continuation election right is not limited to an election when a dependent reaches the limiting age of a policy, but may be re-established by the dependent multiple times as his or her circumstances change, until his or her 30th birthday.
5. The Chapter 375 continuation election right arises independently from the rights established under COBRA and N.J.S.A. 17B:27A-17.⁴
6. The Chapter 375 continuation election does not generate a separate policy (certificate)⁵ for the over-age dependent, but rather, it is an election to remain or be re-enrolled as a dependent through the parent’s (covered employee’s) certificate or evidence of coverage.

³ The term “health benefits plan” is typically defined in New Jersey statute and regulation as a benefits plan that pays or provides hospital and medical expense benefits for covered services, delivered by a carrier in New Jersey, excluding accident only, credit, disability, long-term care, hospital confinement indemnity and similar such coverage, CHAMPUS (TRICARE), CHAMPUS supplement coverage, coverage arising out of a workers’ compensation policy, automobile medical payment insurance, personal injury protection insurance, and similar such coverage. Chapter 375 does not apply to Medicare Advantage policies as a matter of federal law.

⁴ Because COBRA is a federal law, subject to interpretation by the U.S. Department of Labor (USDOL), the Internal Revenue Service (IRS) and the U.S. Department of Health and Human Services (HHS), the Department is seeking guidance on this matter from the federal agencies. The Department will provide notice of the information it obtains. Preliminarily, the Department believes that the over-age dependent’s right to make a COBRA election because of age-out occurs at the time that he or she reaches the limiting age under the terms of the group plan; it does not arise when the dependent exhausts his or her c. 375 continuation rights.

⁵ Use of insurance terms in this bulletin should be inferred to include equivalent terms for all carriers.

7. The over-age dependent has the same rights as other dependents; the over-age dependent does not have the same rights as the covered employee.
8. The terms of the policy that apply to dependents generally apply to over-age dependents as well, except as Chapter 375 indicates otherwise.
9. Rules regarding discontinuance and replacement, extension of benefits and continuity of care, pre-existing condition exclusions and creditable coverage, among other general rules, apply to the Chapter 375 dependent and his or her continuation coverage consistent with the application to other covered dependents.

Questions and Answers

Applicability of the law

- Q1. Does Chapter 375 apply to dental policies offered by carriers other than dental service corporations (DSCs) and dental plan organizations (DPOs)?
- A1. No. Because Chapter 375 does not amend the statutes applicable to DSCs or DPOs, the Department does not believe that the statute was intended to apply to dental only coverage, regardless of the carrier involved.
- Q2. Is the law applicable to self-funded arrangements?
- A2. Except for the State Health Benefits Plan, the law does not apply to self-funded arrangements.
- Q3. Is any specific type of plan sponsor excluded from the law's application?
- A3. No.
- Q4. If an employer has multi-state work locations, including some in New Jersey, does the law apply to the employees located in New Jersey?
- A4. A determination of whether the law applies is based on where the policy is delivered, not on the work location of the employees.

Eligibility to enroll and possible termination causes

- Q5. Is an over-age dependent limited to seeking enrollment in the employer's policy under which the over-age dependent was enrolled when he or she reached the limiting age?
- A5. No. However, both the policy under which the dependent was enrolled at the time he or she lost coverage due to reaching the limiting age, and the policy under which the dependent is seeking enrollment must be fully-insured group policies issued in New Jersey.
- Q6. Is prior enrollment under a group policy sufficient for the Chapter 375 election?
- A6. A carrier may require that an over-age dependent have previously aged-out of a policy under which the covered employee was a certificateholder in order to be eligible for the Chapter 375 election.

- Q7. Is an over-age dependent's eligibility contingent upon his or her parent being a covered employee upon the date the over-age dependent seeks the Chapter 375 continuation election?
- A7. Yes.
- Q8. Is an over-age dependent's eligibility contingent upon the covered employee being a New Jersey resident?
- A8. No, but the employee must be covered under a group policy issued in New Jersey.
- Q9. Is an over-age dependent's eligibility contingent upon the dependent being a New Jersey resident?
- A9. No. However, if the over-age dependent is not a New Jersey resident, then he or she is only entitled to make the election and maintain coverage if he or she is a full-time student at an accredited institution of higher education (and meets all other eligibility requirements).
- Q10. Must the over-age dependent be enrolled full-time in an institution of higher education in New Jersey in order to be an eligible dependent?
- A10. No.
- Q11. May an over-age dependent re-establish eligibility after a period of ineligibility?
- A11. Yes.
- Q12. May a carrier make acceptance of a continuation election subsequent to a period of ineligibility contingent upon proof that the over-age dependent elected continuation pursuant to Chapter 375, COBRA or N.J.S.A. 17B:27A-27 when he or she first became eligible?
- A12. No.
- Q13. Is an over-age dependent's eligibility contingent upon a showing that the over-age dependent is not eligible for other coverage?
- A13. No, with one exception: an over-age dependent entitled to Medicare coverage is not entitled to continuation under the covered employee's plan pursuant to Chapter 375.
- Q14. At what point may a carrier terminate an eligible dependent's coverage upon the birth of a dependent's child?
- A14. A carrier may terminate the coverage of the dependent upon discharge of the dependent from the hospital following the birth of a child.
- Q15. Can an eligible dependent remain eligible or re-establish eligibility if parental rights with respect to a child are legally terminated, assuming other eligibility criteria are met?
- A15. Yes.
- Q16. Does an eligible dependent's continuing coverage terminate when a covered employee's coverage terminates?
- A16. Yes.

- Q17. Does the eligible dependent's coverage terminate if the employer or other group contract-holder replaces or revises the policy, or changes carriers?
- A17. Replacement of one group plan with another, or replacement of one carrier for another, does not eliminate the eligible dependent's option to retain continued coverage pursuant to a Chapter 375 election. However, if the replacement coverage is not subject to New Jersey law, or does not provide coverage for dependents, then the Chapter 375 continuation election right would not apply to the replacement coverage.
- Q18. May the eligible dependent's coverage be terminated if the covered employee fails to pay required premiums for coverage, notwithstanding payment by the eligible dependent of the required Chapter 375 continuation premium?
- A18. Yes.
- Q19. May the eligible dependent's coverage be terminated if the required Chapter 375 continuation premium is not paid, notwithstanding payment of all other relevant premiums for the covered employee's coverage?
- A19. Yes.

Miscellaneous terms and conditions

- Q20. May the eligible dependent change coverage during a group's open enrollment period or during a HIPAA-related special enrollment accruing to a covered employee, if the group has multiple plan options?
- A20. No, only the covered employee may effect a change in the coverage.
- Q21. Do the covered expenses incurred by an eligible dependent under continuing coverage through Chapter 375 contribute to the family deductible and family out-of-pocket maximum, if any?
- A21. Yes.
- Q22. Is a carrier required to comply with statutory newborn coverage requirements for children born to eligible dependents?
- A22. No. The requirement to cover a newborn is limited to the newborn of the covered employee, and does not extend to the newborn of a covered employee's dependents.
- Q23. May preexisting condition limitations apply to eligible dependents?
- A23. Yes, to the same extent that a preexisting condition limitation may be applied to other dependents under the policy. If the eligible dependent had prior creditable coverage, appropriate credit for such coverage must be applied.
- Q24. May an eligible dependent seeking continuation be considered a late enrollee (for purposes of imposing a longer preexisting condition exclusion) when the election is being sought within 30-days prior to reaching the limiting age on the policy in question?
- A24. No.

- Q25. May an eligible dependent seeking continuation be considered a late enrollee when the election is being sought within 30-days after the over-age dependent establishes (or re-establishes) eligibility for reasons other than obtaining the limiting age?
- A25. No.
- Q26. May an eligible dependent seeking continuation during the special 12-month enrollment period from May 12, 2006 through May 11, 2007 be considered a late enrollee?
- A26. No.
- Q27. May an eligible dependent seeking continuation be subject to the pre-existing conditions exclusion of the plan when the election is being sought during a group's open enrollment period?
- A27. Yes. As always, however, the carrier must also consider rules regarding creditable coverage to reduce any applicable preexisting condition exclusion limitation period.
- Q28. Must eligible dependents be given the option to make monthly payments?
- A28. Yes.
- Q29. Must eligible dependents be given the option to make payments on other than a monthly basis?
- A29. No. However, there is no prohibition against carriers allowing dependents the same payment cycle options permitted for contractholders or certificateholders.
- Q30. Who determines how billing is accomplished?
- A30. This is an issue to be worked out between the carrier and the group policyholder, but note: no employer can be *compelled* to collect the premium from the dependent, collect the premium through a payroll deduction, or contribute in any way to the premium.
- Q31. Is the carrier or the employer entitled to the 2% administrative fee calculated in the Chapter 375 dependent rate?
- A31. The carrier is entitled to the administrative fee.
- Q32. Does an eligible dependent who loses eligibility for coverage pursuant to Chapter 375 have the right to make a continuation election pursuant to COBRA?
- A32. See footnote 4. The Department does not believe a loss of coverage under a policy continued pursuant to a Chapter 375 election constitutes a qualifying event for purposes of COBRA.
- Q33. Does an eligible dependent who loses eligibility for continuation under Chapter 375 have the right to make a continuation election pursuant to N.J.S.A. 17B:27A-27?
- A33. No. The Department anticipates interpreting the interaction of N.J.S.A. 17B:27A-27 and Chapter 375 consistently with the interpretation of the interaction of COBRA and Chapter 375. See footnote 4, and the response to Q32.

Questions regarding this bulletin may be directed to the Office of Life and Health by phone at (609) 292-5427 x 50340, or by fax at (609) 633-0527. Please specify that the question concerns the Chapter 375 Questions and Answers bulletin.

The Department intends to propose rules in the near future to implement the provisions of Chapter 375. Notice of the proposed rulemaking will appear on the Department's website at www.state.nj.us/dohi/legsregs.htm. A copy of this bulletin will also be posted to the website.

4/4/06
Date

/s/ Steven M. Goldman
Steven M. Goldman
Commissioner

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