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New Illinois and Federal Laws Mandate Continuing Medical Coverage for Older Dependents

Recent legislation at the federal and state levels has added new requirements for extending coverage under medical benefit plans and insurance policies in the case of older dependents (in some cases up to age 30). These changes will become effective in 2009 or 2010 depending upon the plan's year-end and the renewal date of any health insurance policy (in the case of an insured plan).

New Federal Requirement

"Michelle's Law" was recently enacted to allow seriously ill college students who are covered as dependents under self-insured and insured health plans and would otherwise lose coverage, to continue coverage when they take a medically necessary leave of absence.

The new law (Pub Law 110-381) amends ERISA, the Internal Revenue Code and the Public Health Service Act to extend coverage for the lesser of one year after the first day of the medically necessary leave of absence or until the date on which the plan would otherwise terminate such coverage. To qualify for the extended coverage, the plan (or insurer) must be provided with a certification from the student's attending physician stating that the dependent is suffering from a severe illness or injury and that the leave of absence is medically necessary.

This new requirement will be effective in plan years beginning after October 8, 2009. Employers should anticipate making the following changes: amending plan documents, summary plan descriptions and contracts with health care providers, insurers and administrators; communications with employees and dependents; and administrative processes.

New Illinois Requirement on Insured Health Plans/Policies

Although this new Illinois statute (Pub Act 95-0958) started out closely resembling the federal statute referred to above, the governor's amendment dramatically broadened its reach. In addition to enacting a requirement similar to Michelle's Law, the new Illinois statute provides that policies of accident and health insurance or managed care plans that cover dependents shall not terminate or deny an election of coverage for an unmarried dependent due to age before the dependent's 26th birthday. Policies or plans shall have an initial enrollment period of at least 90 days during which an insured may elect coverage of an unmarried dependent. In addition, coverage for the person cannot terminate or deny an election of coverage for an unmarried dependent due to age before the dependent's 30th birthday if the dependent meets certain military service requirements. There are strict notice requirements. This new law goes into effect in Illinois when a group or individual policy or managed care plan is amended, delivered, issued or renewed after June 1, 2009.

Additional Concerns/Issues

Two additional issues should be addressed by plan sponsors and administrators. First, although coverage is being extended, neither of these laws changes who does or does not qualify as an eligible dependent for tax purposes (Internal Revenue Code Section 152). As a result, coverage may be extended to a dependent who is not "tax-eligible" under the Code, and therefore the employer must impute income to the employee for the value of coverage provided to the dependent (minus the amount of contributions paid for such coverage). Secondly, there is no guidance as to how COBRA is intended to integrate with these new requirements. It is unclear whether Congress intends the COBRA continuation period to start at the end of the extension of coverage.

If you have any questions or would like to discuss these new laws and their implications, please contact any of the attorneys in Katten's Employee Benefits and Executive Compensation Practice.

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