



**STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004**

David A. Paterson
Governor

James J. Wrynn
Superintendent

**Circular Letter No. 22 (2009)
September 30, 2009**

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

RE: Health Insurance Coverage for Unmarried Young Adults through Age 29 (Chapter 240 of the Laws of 2009)

STATUTORY AND REGULATORY REFERENCES: Insurance Law §§ 308, 3216, 3221, 4235, 4304, 4305 and 4709

The purpose of this circular letter is to provide guidance and clarification to insurers regarding Chapter 240 of the Laws of 2009, which amended the Insurance Law to require an insurer to:

1) permit a young adult who has “aged off” of his or her parent’s group or group remittance^[1] health insurance policy or contract to independently purchase coverage through the parent’s group policy or contract through the age of 29 (the “young adult option”); and

2) offer group, group remittance or individual policy or contract holders an option to include a young adult through the age of 29 as a dependent under family coverage (the “make available option”).

I. Young Adult Option

Chapter 240 of the Laws of 2009 amended the Insurance Law to permit a young adult who exceeds the age for dependent coverage under his or her parent’s group or group remittance health insurance policy or contract to independently purchase coverage through the parent’s policy or contract through the age of 29.^[2]

This young adult option does not itself affect any continuation rights a young adult may have under the federal Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) or New York State continuation coverage (“mini-COBRA”), and a young adult does not have a separate federal COBRA or mini-COBRA right once coverage through the young adult option terminates. The young adult option also does not amend the maximum age for dependent coverage set forth in a parent’s group or group remittance health insurance policy or contract. Rather, this young adult option creates a new right that allows a young adult to purchase health insurance coverage through the parent’s group or group remittance health insurance policy or contract once the young adult no longer qualifies as a dependent due to age. There is a separate premium for the young adult option, which the young adult or the young adult’s parent must pay. A parent’s employer or other group policy or contract holder or group remittance agent is not required to pay all or part of the cost of this

young adult option. Further, a parent need not have family coverage for the young adult to take advantage of this option.

A. Applicability

The young adult option applies to every group and group remittance policy or contract delivered or issued for delivery in New York that provides hospital, surgical and medical coverage, and which further provides dependent coverage that terminates at a specified age. The young adult option also applies to Healthy NY group policies or contracts issued to small groups and sole proprietors. However, an insurer is not required to offer the young adult option in connection with individual, dental-only, vision-only, prescription drug-only, accident-only or specified disease policies or contracts. Similarly, a self-funded employee welfare benefit plan that is exempt from Insurance Law and regulations under the federal Employee Retirement Income Security Act ("ERISA") is not required to offer the option.

B. Eligibility

To qualify for the young adult option, a young adult must: (1) be a child of an employee or other group member insured under a group or group remittance health insurance policy or contract to which the law applies; (2) be age 29 or younger; (3) be unmarried; (4) not be insured by or eligible for coverage through the young adult's own employer-sponsored group policy or contract, whether insured or self-funded, provided that the policy or contract includes both hospital and medical benefits; (5) live, work or reside in New York State or the service area of the insurer's network-based policy or contract (as set forth and defined by the policy or contract); and (6) not be covered under Medicare. The young adult need not live with the parent, be financially dependent upon the parent, or be a student. Further, a young adult's eligibility for health insurance coverage through a former employer under federal COBRA or mini-COBRA does not disqualify the young adult from electing the young adult option. In addition, a young adult's children are not eligible for coverage under the young adult option, but may be eligible for health insurance coverage under other programs, such as the Child Health Plus program.

As noted above, the young adult option is available to eligible young adults who live, reside or work outside of the insurer's service area but within the State of New York. In every instance, the rules that apply to the young adult for accessing benefits under the group health insurance policy or contract are the same rules that apply to group members generally. For example, if the group policy or contract requires a person to use a network provider to obtain benefits for non-emergency care, then the young adult must obtain health care services through a network provider. If the group policy or contract requires a person to use a network provider to obtain a higher "in-network" level of reimbursement, then a young adult must use a network provider to obtain that higher level of reimbursement.

C. Coverage

If a group policy or contract holder or remitting agent offers its members a choice of coverages, then the young adult is entitled to the same coverage that is provided to the young adult's parent. The young adult's coverage is subject to all of the terms and conditions of the group policy or contract, including any applicable pre-existing condition limitations. If the group policy or contract holder or remitting agent replaces the parent's group health insurance policy or contract with another policy or contract, then the insurer must issue the same new coverage to the young adult.

D. Enrollment

Either the parent or the young adult may elect the young adult option and pay the premium, which the parent or young adult should remit to the group policy or contract holder or remitting agent; or to the insurer, if it has opted to directly receive premiums and administer billing in lieu of having the group policy or contract holder or remitting agent handle the receipt and billing of premiums. A young adult or parent has the following four opportunities to elect the young adult option.

1. When the Young Adult Would Otherwise Lose Coverage Due to Age

A young adult may elect the option within 60 days of the date that he or she would otherwise lose eligibility for coverage under the parent's group or group remittance health insurance policy or contract due to

age. In this case, coverage under the young adult option is retroactive to the date that the young adult would have otherwise lost coverage due to reaching a specified age.

2. When a Change in Circumstances Newly Qualifies the Young Adult for Coverage

A young adult may elect the option within 60 days of newly meeting the eligibility requirements for the young adult option. For example, if the young adult loses his or her employer-sponsored group health insurance coverage, moves back to New York State, or gets divorced, then the young adult may become newly eligible for the young adult option. Further, it is possible for a young adult to elect this option on multiple occasions due to changes in the young adult's eligibility.

A young adult who elects the young adult option due to a change in circumstances is entitled to prospective coverage. The insurer should make coverage effective within 30 days of when the group policy or contract holder or remitting agent receives written notice of the election and payment of the first premium.

3. During the Annual 30-Day Open Enrollment Period

A young adult may elect the young adult option during the annual 30-day open enrollment period described in the group health insurance policy or contract. A young adult who elects the option during this time is entitled to prospective coverage no later than 30 days after the group policy or contract holder or remitting agent receives written notice of the election and payment of the first premium.

4. During the Initial 12-Month Open Enrollment Period

Chapter 240 states that for 12 months after the effective date of the law (September 1, 2009), a group member or young adult may elect prospective coverage for a young adult whose coverage terminated under the terms of the parent's group policy or contract prior to September 1, 2009. However, Chapter 240 also states that it applies to contracts issued, renewed, modified, altered or amended on or after September 1, 2009. Therefore, if an insurer does not renew, modify, alter or amend a group policy or contract on September 1, 2009, but rather at some later date, then a group member or young adult will not have a full 12 months to elect coverage through the young adult option. Accordingly, insurers are encouraged to allow group members and young adults a full 12 months from the date of the policy or contract's renewal, modification, alteration or amendment to elect the young adult option. A young adult who enrolls during this open enrollment period is entitled to prospective coverage no later than 30 days after the group policy or contract holder receives written notice of the election and payment of the first premium.

E. Notice

An insurer must provide to all group members (other than the eligible young adults) written notice in each certificate of coverage of the young adult option and the period during which the parent or young adult may elect the young adult option. An insurer must also provide notice to group members at least 60 days prior to the date their dependents will lose eligibility for group coverage due to age.

Chapter 240 further states that an insurer must notify group members in writing within 30 days of the effective date of the law (September 1, 2009) of a young adult's opportunity for a 12-month open enrollment period to elect the young adult option. However, as noted above, a young adult does not have the ability to elect the young adult option until an insurer renews, modifies, alters or amends a parent's group or group remittance health insurance policy or contract, which may occur at any time after September 1, 2009.

Thus, the law requires an insurer to notify group members of a right to elect an option that may not yet apply to their contract. Therefore, insurers are encouraged to notify group policy or contract holders in writing of the availability of this young adult option at the time the coverage becomes effective under the policy or contract (i.e., the date the policy or contract is renewed, modified, altered or amended). Insurers should further encourage group policy and contract holders to provide this valuable information to their members at this time.

F. Termination

Coverage through the young adult option ends when one of the following occurs: (1) the young adult voluntarily terminates coverage pursuant to the terms of the policy or contract; (2) the young adult's parent is no longer covered under the group or group remittance health insurance policy or contract (including coverage

under the group health policy or contract through federal COBRA or mini-COBRA); (3) the young adult no longer meets the eligibility requirements for the young adult option; (4) the required premium is not paid in full within the 30-day grace period; or (5) the group or group remittance policy or contract is terminated and not replaced. Termination of coverage under the young adult option does not trigger an independent right to federal COBRA or mini-COBRA.

G. Rating

The insurer shall charge a separate premium for the young adult option. With regard to community rated policies, the premium for the young adult option must be the group rate for one person under the group policy or contract. Chapter 240 does not set forth a provision to allow the application of an additional 2% administrative fee, as is the case with federal COBRA and mini-COBRA. The young adult option does not alter existing community rating requirements set forth in the Insurance Law and regulations promulgated thereunder.

H. Reporting

The Superintendent may request reports from insurers to evaluate the effectiveness of coverage, including quarterly enrollment reports. An insurer should work closely with group policy and contract holders and remitting agents to ensure the insurer's ability to meet all reporting requirements.

II. Make Available Option

In addition to the young adult option, Chapter 240 of the Laws of 2009 added new Insurance Law §§ 3216(a)(4)(C)[\[3\]](#), 4235(f)(1)(B), 4304(d)(1)(B), and 4305(c)(1)(B), which require an insurer to offer a "make available option." Under this option, every insurer that issues a policy or contract that provides coverage for dependent children must make available and, if requested by the policy or contract holder or remitting agent, extend coverage to qualifying young adults through age 29 as dependents under family coverage. Unlike the young adult option described above, if elected, this make available option increases the maximum age until which a young adult is considered a "dependent" under the policy or contract.

A policy or contract that provides family coverage typically terminates coverage for dependent children at a specified age. For example, many policies and contracts terminate coverage for non-students over the age 19 and full-time students over age of 23. However, when elected, the make available option permits an eligible young adult who reaches the maximum age of dependency under his or her parent's health insurance policy or contract to continue receiving coverage through the parent's health insurance policy or contract on the same basis as those "dependent" children who have not yet reached the maximum age of dependency under the policy or contract. Because the young adult is insured as a dependent under the policy or contract, all of the terms and conditions of the policy or contract apply, including any applicable pre-existing condition limitations.

The make available option is an optional benefit that a policy or contract holder or remitting agent may elect. With regard to individual policies or contracts, the individual policy or contract holder may elect the make available option. With regard to group and group remittance policies or contracts, only the group policy or contract holder or remitting agent may elect the make available option on behalf of all group members who receive family coverage. Thus, group members may not elect the make available option if the group policy or contract holder or remitting agent does not request the option from the insurer. If a group policy or contract holder elects the make available option, then all group members who receive family coverage under the group policy or contract must receive the make available option.

A. Applicability

An insurer must offer the make available option in conjunction with individual, group and group remittance hospital, surgical and medical policies or contracts that provide coverage for dependent children. Insurers must offer this option for all policies or contracts delivered or issued for delivery in New York State. Further, an insurer must offer the make available option in conjunction with both individual and group Healthy NY policies or contracts. An insurer, however, need not offer this option in conjunction with policies or contracts that provide dental-only, vision-only, prescription drug-only, accident-only or specified disease coverage. Moreover, an employee welfare benefit plan that is exempt from the Insurance Law and regulations

under ERISA does not need to offer the option.

B. Eligibility

Pursuant to Insurance Law §§ 3216(a)(4)(C), 4235(f)(1)(B), 4304(d)(1)(B), and 4305(c)(1)(B), to qualify for the make available option, a young adult must: (1) be a child of an individual policy or contract holder or a group member, insured under an individual or group insurance policy or contract to which the law applies; (2) be age 29 or younger; (3) be unmarried; (4) not be insured by or eligible for coverage through the young adult's own employer-sponsored group policy or contract, whether insured or self-funded, provided that the policy or contract includes both hospital and medical benefits; and (5) live, work or reside in New York State or the service area of the insurer's network-based policy or contract (as set forth and defined by the policy or contract). The young adult need not live with the parent, be financially dependent upon the parent, or be a student.

C. Notice

With regard to group and group remittance policies or contracts, an insurer must provide written notice of the make available option to the policy or contract holder or remitting agent prior to the inception of the group policy or contract and annually thereafter prior to the policy or contract's anniversary or renewal date, in order to provide adequate notice of this option. For individual policies, written notice of the availability of this option should be provided to the individual purchaser prior to the inception of all new contracts. Additionally, for existing individual policies, written notice of the availability of the make available option must be provided to the policyholder at the first renewal date following September 1, 2009.

D. Rating

An insurer should submit a rate filing that reflects the cost of the make available option to the Department's Health Bureau for the Department's prior approval. With regard to group and group remittance policies and contracts, an insurer should spread the cost of the coverage among all group or group remittance members with family coverage and not just among the eligible young adults. With regard to individual and small group policies and contracts, community rating rules apply, and an insurer must spread the cost of the make available option across all policy or contract holders in the rating pool who have purchased family coverage that includes the make available option.

III. Effective Date

Chapter 240 of the Laws of 2009 took effect September 1, 2009, and applies to contracts issued, renewed, modified, altered or amended on or after such date. An insurer must offer the young adult and make available options in conjunction with any new policies or contracts issued on or after September 1, 2009. For policies and contracts issued before September 1, 2009, an insurer is not required to offer the coverage until the policy or contract is renewed, modified, altered or amended and thus policy or contract holders, group members, and young adults would not be able to access these options. However, consistent with the Insurance Law and the terms of the policy or contract, insurers may offer the young adult and make available options prior to the date that the policy or contract would otherwise be renewed, modified, altered or amended. If an insurer should make the benefits available prior to the date required by law, then the insurer must do so in a fair and nondiscriminatory manner.

IV. Policy Form and Rate Submissions

An insurer must submit to the Department's Health Bureau any necessary amendments to policy or contract forms and premium rates for the young adult and make available options. An insurer must submit the initial rate filing in accordance with Insurance Law §§ 3201(c)(3) and 4308(b), and may not use the file and use alternative. To facilitate the prompt and efficient review and approval of form and rate submissions, an insurer should clearly identify the submission as an "age 29 submission."

Please direct all submissions to Eugene Bienskie, Assistant Deputy Superintendent and Chief, Health Bureau, New York State Insurance Department, One Commerce Plaza, Albany, NY 12257. For those submitting files through SERFF, please make the submission at <https://login.serff.com>.

Please direct any questions regarding this circular letter to Leigha O. Basini, Associate Insurance

Attorney, at ibasini@ins.state.ny.us or (518) 473-6107.

Very truly yours,

Eugene Bienskie
Assistant Deputy Superintendent and Chief,
Health Bureau

[1]A group remittance policy is issued on an individual basis pursuant to Insurance Law § 4304, but an insured submits premiums to a remitting agent and not directly to the insurer.

[2]"Through the age of 29" means until a young adult's 30th birthday.

[3]There are now two subparagraphs (C) set forth in Insurance Law § 3216(a)(4).