SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1158

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DATE	D-PG	OFFICIAL STATUS
04/11/2011	1265	Introduction and first reading Referred to Commerce and Consumer Protection
05/04/2011	1734a	Comm report: To pass as amended and re-refer to Finance

A bill for an act

relating to insurance; enacting the Group Insurance Portability Act (GIPA); conforming state law on continuation employer group health coverage to the federal COBRA law; providing access to a GAP policy as an alternative; amending Minnesota Statutes 2010, sections 62A.146; 62A.148; 62A.17; 62A.20, subdivision 2; 62A.21, subdivision 2a.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 62A.146, is amended to read:

62A.146 CONTINUATION OF BENEFITS TO SURVIVORS.

No policy, contract, or plan of accident and health protection issued by an insurer, nonprofit health service plan corporation, or health maintenance organization, providing coverage of hospital or medical expense on either an expense incurred basis or other than an expense incurred basis which in addition to coverage of the insured, subscriber, or enrollee, also provides coverage to dependents, shall, except upon the written consent of the survivor or survivors of the deceased insured, subscriber, or enrollee, terminate, suspend, or otherwise restrict the participation in or the receipt of benefits otherwise payable under the policy, contract, or plan to the survivor or survivors until the ~~earlier~~ earliest of the following dates:

(a) the date the surviving spouse becomes covered under another group health plan or Medicare; ~~or~~

(b) the date coverage would have terminated under the policy, contract, or plan had the insured, subscriber, or enrollee lived; or

(c) 36 months.

The survivor or survivors, in order to have the coverage and benefits extended, may be required to pay the entire cost of the protection, plus an additional two percent of that

cost, on a monthly basis. The policy, contract, or plan must require the group policyholder or contract holder to, upon request, provide the insured, subscriber, or enrollee with written verification from the insurer of the cost of this coverage promptly at the time of eligibility for this coverage and at any time during the continuation period. In no event shall the amount of premium or fee contributions charged exceed 102 percent of the cost to the plan for such period of coverage for other similarly situated spouses and dependent children who are not the survivors of a deceased insured, without regard to whether such cost is paid by the employer or employee. Failure of the survivor to make premium or fee payments within 90 days after notice of the requirement to pay the premiums or fees shall be a basis for the termination of the coverage without written consent. In event of termination by reason of the survivor's failure to make required premium or fee contributions, written notice of cancellation must be mailed to the survivor's last known address at least 30 days before the cancellation. If the coverage is provided under a group policy, contract, or plan, any required premium or fee contributions for the coverage shall be paid by the survivor to the group policyholder or contract holder for remittance to the insurer, nonprofit health service plan corporation, or health maintenance organization.

EFFECTIVE DATE. This section is effective January 1, 2012, and applies to losses of eligibility for employer group coverage that begin on or after that date.

Sec. 2. Minnesota Statutes 2010, section 62A.148, is amended to read:

62A.148 GROUP INSURANCE; PROVISION OF BENEFITS FOR DISABLED EMPLOYEES.

(a) No employer or insurer of that employer shall terminate, suspend or otherwise restrict the participation in or the receipt of benefits otherwise payable under any program or policy of group insurance to any covered employee who becomes totally disabled while employed by the employer solely on account of absence caused by such total disability, until the earliest of:

(1) 29 months;

(2) enrollment in other group coverage or Medicare; or

(3) the date coverage would otherwise end. This includes coverage of dependents of the employee. If the employee is required to pay all or any part of the premium for the extension of coverage, payment shall be made to the employer, by the employee. The employer may require the employee to pay up to 102 percent of the premium for the first 18 months of coverage and up to 150 percent of the premium for months 19 through 29.

(b) At any time after the end of the first 18 months of continuation coverage under paragraph (a), the totally disabled employee may enroll in conversion coverage required to be offered by the insurer under section 62A.17, subdivision 6, or enroll in the Minnesota Comprehensive Health Association under chapter 62E, with a waiver of the preexisting condition limitation, provided that the election to enroll in the conversion coverage or the Minnesota Comprehensive Health Association must be completed no later than 60 days after the end of the first 18 months or each month thereafter, up to the end of the first 29 months of continuation coverage.

EFFECTIVE DATE. This section is effective January 1, 2012, and applies to losses of eligibility for employer group coverage that begin on or after that date.

Sec. 3. Minnesota Statutes 2010, section 62A.17, is amended to read:

62A.17 TERMINATION OF OR LAYOFF FROM EMPLOYMENT; CONTINUATION AND CONVERSION RIGHTS.

Subdivision 1. **Continuation of coverage.** Every group insurance policy, group subscriber contract, and health care plan included within the provisions of section 62A.16, except policies, contracts, or health care plans covering employees of an agency of the federal government, shall contain a provision which permits every covered employee who is voluntarily or involuntarily terminated or laid off from employment, if the policy, contract, or health care plan remains in force for active employees of the employer, to elect to continue the coverage for the employee and dependents.

An employee shall be considered to be laid off from employment if there is a reduction in hours to the point where the employee is no longer eligible under the policy, contract, or health care plan. Termination shall not include discharge for gross misconduct.

Upon request by the terminated or laid off employee, a health carrier must provide the instructions necessary to enable the employee to: (1) elect continuation of coverage under this subdivision; or (2) elect a GAP policy under subdivision 7.

Subd. 2. **Responsibility of employee.** Every covered employee electing to continue coverage shall pay the former employer, on a monthly basis, the cost of the continued coverage, plus an administrative fee of no more than two percent of the cost of the coverage. The policy, contract, or plan must require the group policyholder or contract holder to, upon request, provide the employee with written verification from the insurer of the cost of this coverage promptly at the time of eligibility for this coverage and at any time during the continuation period. If the policy, contract, or health care plan is administered by a trust, every covered employee electing to continue coverage shall pay

the trust the cost of continued coverage according to the eligibility rules established by the trust. In no event shall the amount of premium charged exceed 102 percent of the cost to the plan for such period of coverage for similarly situated employees with respect to whom neither termination nor layoff has occurred, without regard to whether such cost is paid by the employer or employee. The employee shall be eligible to continue the coverage until the employee becomes covered under another group health plan or Medicare, ~~or~~ for a period of 18 months after the termination of or lay off from employment, or until the former employee's coverage would otherwise terminate if the former employee were still employed by the employer, whichever is shorter. If the employee becomes covered under another group policy, contract, or health plan and the new group policy, contract, or health plan contains any preexisting condition limitations, the employee may, subject to the 18-month maximum continuation limit, continue coverage with the former employer until the preexisting condition limitations have been satisfied. The new policy, contract, or health plan is primary except as to the preexisting condition. In the case of a newborn child who is a dependent of the employee, the new policy, contract, or health plan is primary upon the date of birth of the child, regardless of which policy, contract, or health plan coverage is deemed primary for the mother of the child.

Subd. 4. **Responsibility of employer.** After timely receipt of the monthly payment for continuation coverage from a covered employee, if the employer, or the trustee, if the policy, contract, or health care plan is administered by a trust, fails to make the payment to the insurer, nonprofit health service plan corporation, or health maintenance organization, with the result that the employee's coverage is terminated, the employer or trust shall become liable for the employee's coverage to the same extent as the insurer, nonprofit health service plan corporation, or health maintenance organization would be if the coverage were still in effect.

In the case of a policy, contract or plan administered by a trust, the employer must notify the trustee within 30 days of the termination or layoff of a covered employee of the name and last known address of the employee.

If the employer or trust fails to notify a covered employee, the employer or trust shall continue to remain liable for the employee's coverage to the same extent as the insurer would be if the coverage were still in effect.

Subd. 5. **Notice of options.** Upon the termination of or lay off from employment of an eligible employee, the employer shall inform the employee within 14 days after termination or lay off of:

(1) the right to elect to continue the coverage and the right to instead elect GAP coverage under subdivision 7;

(2) the amount the employee must pay monthly to the employer to retain the coverage;

(3) the manner in which and the office of the employer to which the payment to the employer must be made; ~~and~~

(4) the time by which the payments to the employer must be made to retain coverage; and

(5) that if the employee selects a GAP policy, the employee must make payment of the amount required by the GAP insurer directly to the GAP insurer by the time required by the GAP insurer.

If the policy, contract, or health care plan is administered by a trust, the employer is relieved of the obligation imposed by clauses (1) to (4). The trust shall inform the employee of the information required by clauses (1) to (4).

The employee shall have 60 days within which to elect coverage. The 60-day period shall begin to run on the date plan coverage would otherwise terminate or on the date upon which notice of the right to coverage is received, whichever is later.

Notice must be in writing and sent by first class mail to the employee's last known address which the employee has provided the employer or trust.

A notice in substantially the following form shall be sufficient: "As a terminated or laid off employee, the law authorizes you to maintain your group medical insurance for a period of up to 18 months. To do so you must notify your former employer within 60 days of your receipt of this notice that you intend to retain this coverage and must make a monthly payment of $..... to ..... at ..... by the ..... of each month."

Subd. 5a.MS 2008 [Expired, 2009 c 33 s 1]

Subd. 5b. **Notices required by the American Recovery and Reinvestment Act of 2009 (ARRA).** (a) An employer that maintains a group health plan that is not described in Internal Revenue Code, section 6432(b)(1) or (2), as added by section 3001(a)(12)(A) of the American Recovery and Reinvestment Act of 2009 (ARRA), must notify the health carrier of the termination of, or the layoff from, employment of a covered employee, and the name and last known address of the employee, within the later of ten days after the termination or layoff event, or June 8, 2009.

(b) The health carrier for a group health plan that is not described in Internal Revenue Code, section 6432(b)(1) or (2), as added by section 3001(a)(12)(A) of the ARRA, must provide the notice of extended election rights which is required by subdivision 5a, paragraph (a), as well as any other notice that is required by the ARRA regarding the availability of premium reduction rights, to the individual within 30 days after the employer notifies the health carrier as required by paragraph (a).

(c) The notice responsibilities set forth in this subdivision end when the premium reduction provisions under ARRA expire.

Subd. 6. **Conversion to individual policy.** A group insurance policy that provides posttermination or layoff coverage as required by this section shall also include a provision allowing a covered employee, surviving spouse, or dependent at the expiration of the posttermination or layoff coverage provided by subdivision 2, or at the expiration of a GAP policy under subdivision 7, to obtain from the insurer offering the group policy or group subscriber contract, at the employee's, spouse's, or dependent's option and expense, without further evidence of insurability and without interruption of coverage, an individual policy of insurance or an individual subscriber contract providing at least the minimum benefits of a qualified plan as prescribed by section 62E.06 and the option of a number three qualified plan, a number two qualified plan, and a number one qualified plan as provided by section 62E.06, subdivisions 1 to 3, provided application is made to the insurer within ~~30~~ 60 days following notice of the expiration of the continued or GAP coverage and upon payment of the appropriate premium. The required conversion contract must treat pregnancy the same as any other covered illness under the conversion contract. A health maintenance contract issued by a health maintenance organization that provides posttermination or layoff coverage as required by this section shall also include a provision allowing a former employee, surviving spouse, or dependent at the expiration of the posttermination or layoff coverage provided in subdivision 2 or 7 to obtain from the health maintenance organization, at the former employee's, spouse's, or dependent's option and expense, without further evidence of insurability and without interruption of coverage, an individual health maintenance contract. Effective January 1, 1985, enrollees who have become nonresidents of the health maintenance organization's service area shall be given the option, to be arranged by the health maintenance organization, of a number three qualified plan, a number two qualified plan, or a number one qualified plan as provided by section 62E.06, subdivisions 1 to 3. This option shall be made available at the enrollee's expense, without further evidence of insurability and without interruption of coverage.

A policy providing reduced benefits at a reduced premium rate may be accepted by the employee, the spouse, or a dependent in lieu of the optional coverage otherwise required by this subdivision.

The individual policy or contract shall be renewable at the option of the individual as long as the individual is not covered under another qualified plan as defined in section 62E.02, subdivision 4. Any revisions in the table of rate for the individual policy shall apply to the covered person's original age at entry and shall apply equally to all similar policies issued by the insurer.

Subd. 7. **Direct access to a GAP policy.** (a) In addition to other coverage required to be available under this section, a health plan that provides group health coverage to an employer must contain a provision which provides to every covered employee eligible for continuation health coverage under subdivision 1, the right to instead obtain from the health carrier a direct GAP policy under this subdivision without first enrolling in and completing continuation coverage. The health carrier, on behalf of the employer, shall provide the former employee with written notice of the former employee's rights under subdivisions 1 to 5. Coverage under this subdivision must be offered to any terminated or laid-off employee to whom continuation coverage must be offered under federal law or Minnesota law.

(b) The individual direct GAP policies available to a former employee, including dependent coverage at the option of the former employee, must consist of at least the following options:

(1) annual deductible of $1,000 per individual, 80 percent coverage above the deductible, subject to an annual $10,000 limit on out-of-pocket costs;

(2) a $15,000 annual deductible plan and 100 percent coverage thereafter; and

(3) qualified high-deductible health plan and health savings account with an annual deductible of $5,950 per individual and $11,900 per family, with 100 percent coverage above those deductibles.

The deductibles allowed under this paragraph are adjusted annually to match the federal law regarding qualified high-deductible health plans and health savings accounts.

(c) The insurer must not consider the insurer's loss experience under policies issued under this subdivision in determining the premium or any other feature of the employer's group coverage.

(d) A former employee is not eligible for GAP coverage under this subdivision if the former employee has enrolled in continuation coverage under subdivisions 1 to 5. An election to receive coverage under this subdivision must be made no later than the deadline for electing continuation coverage under subdivisions 1 to 5.

(e) GAP coverage must be offered up to the maximum duration required under the federal COBRA law for continuation coverage of the former employee or other eligible individual.

(f) The conversion plan option must be offered to GAP plan enrollees at the conclusion of eligibility for GAP coverage.

(g) GAP coverage under this subdivision must be available on a guaranteed-issue basis, following the HIPPA preexisting condition limitation for employer-provided group insurance.

(h) Health plan companies shall pay the same service fees equal to those fees being paid under the employer's group insurance plan to the licensed health insurance producer that enrolls the individual in a GAP plan, to be paid for the period in which the individual continues GAP coverage.

EFFECTIVE DATE. This section is effective January 1, 2012, and applies to losses of eligibility for employer group coverage that begin on or after that date.

Sec. 4. Minnesota Statutes 2010, section 62A.20, subdivision 2, is amended to read:

Subd. 2. **Continuation privilege.** The coverage described in subdivision 1 may be continued until the earlier of the following dates:

(1) the date coverage would otherwise terminate under the policy;

(2) 36 months after continuation by the spouse or dependent was elected; or

(3) the spouse or dependent children become covered under another group health plan or Medicare.

If coverage is provided under a group policy, any required premium contributions for the coverage shall be paid by the insured on a monthly basis to the group policyholder for remittance to the insurer. In no event shall the amount of premium charged exceed 102 percent of the cost to the plan for such period of coverage for other similarly situated spouse and dependent children to whom subdivision 1 is not applicable, without regard to whether such cost is paid by the employer or employee.

EFFECTIVE DATE. This section is effective January 1, 2012, and applies to losses of eligibility for employer group coverage that begin on or after that date.

Sec. 5. Minnesota Statutes 2010, section 62A.21, subdivision 2a, is amended to read:

Subd. 2a. **Continuation privilege.** Every policy described in subdivision 1 shall contain a provision which permits continuation of coverage under the policy for the insured's former spouse and dependent children upon entry of a valid decree of dissolution of marriage. The coverage shall be continued until the earlier of the following dates:

(a) 36 months;

(b) the date the insured's former spouse becomes covered under any other group health plan; or

~~(b)~~ (c) the date coverage would otherwise terminate under the policy.

If the coverage is provided under a group policy, any required premium contributions for the coverage shall be paid by the insured on a monthly basis to the group policyholder for remittance to the insurer. The policy must require the group policyholder to, upon

request, provide the insured with written verification from the insurer of the cost of this coverage promptly at the time of eligibility for this coverage and at any time during the continuation period. In no event shall the amount of premium charged exceed 102 percent of the cost to the plan for such period of coverage for other similarly situated spouses and dependent children with respect to whom the marital relationship has not dissolved, without regard to whether such cost is paid by the employer or employee.

Upon request by the insured's former spouse or dependent child, a health carrier must provide the instructions necessary to enable the child or former spouse to elect continuation of coverage.

EFFECTIVE DATE. This section is effective January 1, 2012, and applies to losses of eligibility for employer group coverage that begin on or after that date.