Healthy New York: Extending Health Insurance Coverage to Young Adults in Divorce Settlement Agreements

By Marguerite E. Royer

It is no secret that millions of Americans do not have health insurance. However, it is less well known that young adults comprise the largest segment of the population that is uninsured.[1] In fact, among the 46.3 million Americans without health coverage, 13.7 million individuals are young adults.[2] Approximately 30% of Americans between the ages of 19 and 29 are uninsured.[3]

Under current law, parents generally can maintain their children as dependents on their medical insurance plan until their children turn 19 years old or graduate from college.[4] The majority of young adults covered under public health insurance programs, such as Medicaid, lose their eligibility when they turn 19 years old.[5]

The new health care legislation passed under the Obama administration will afford millions of currently uninsured young adults health insurance coverage. The federal health care reform legislation extends the amount of time children can remain covered under their parents' medical insurance.[6] In addition, 37 states, including New York, have expanded the conditions under which children can be considered dependents for insurance purposes.[7]

The new legislation stands to impact and alter health insurance provisions in divorce settlement agreements. It is already common practice for parties to stipulate to extend child support beyond the age of majority, such as through college graduation. In light of the new healthcare laws, an increasing number of parents may choose to enter into agreements wherein a party is required to maintain medical insurance on behalf of their children well into their twenties.

Large Number of Uninsured Young Adults

In recent years, there has been a significant increase in the number of uninsured young adults.[8] A primary cause of this phenomenon is the high cost of health insurance premiums.[9] Many young adults, largely in good health, are reluctant and/or cannot afford to spend their valuable dollars on insurance.[10] Instead, they pay out-of-pocket for medical care on an "as needed" basis because it is cheaper than maintaining insurance.[11] Many uninsured young adults fail to obtain medical treatment because of the cost, suffer a worsening of their condition because they did not seek medical care soon enough, and incur a large expense in the event of a serious illness and/or injury.[12]

Additional factors contributing to the large number of uninsured young adults include high unemployment rates[13] and fewer jobs offering full health benefits.[14] As a result of the high costs of medical insurance, many employers are reluctant to hire full-time employees.[15] Consequently, young adults fresh out of high school or college often have part-time, consulting, freelance, or contract jobs, which do not offer health insurance benefits.[16] Young adults fortunate enough to have health insurance provided through their employment may not maintain the insurance because of high employee contributions required toward premiums.[17] The new health care legislation seeks to reverse this trend and provide young adults with greater access to medical insurance.

Federal Law

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act ("Affordable Care Act"). The Affordable Care Act, together with the Health Care and Education Reconciliation Act of 2010 signed into law on March 30, 2010, represent comprehensive health care reform.

Significantly, the Affordable Care Act allows children to remain on their parents' medical insurance plan until age 26.[18] The Affordable Care Act extends to young adults, regardless of their living situation, financial circumstances, marital status, or educational status.[19] Whether a child is classified as a dependent on his/her parents' income tax return or resides with his/her parents is irrelevant to the extension of health benefits to a child under 26 years old.[20] However, the Affordable Care Act is only applicable to health insurance plans that offer dependent coverage (most, but not all, do so).[21]

The Affordable Care Act actually appears to be affordable. The legislation requires medical insurance for young adults to be available at the same price as for other dependents, and thus treats similarly situated individuals in the same manner.[22] It is estimated that young adult coverage will increase the cost of family health insurance premiums by a mere .7%.[23]

There are favorable tax benefits attendant with the Affordable Care Act. For example, employee and employer contributions toward premiums are excluded from income.[24] Moreover, an employer's contribution toward health coverage for an employee's child is excluded from the employee's income through the end of the taxable year when the child attains age 26.[25]

For policies beginning on or after September 23, 2010, insurance providers are required to give young adults at least 30 days to enroll as dependents on their parent's health insurance plan.[26] Young adults are required to receive written notice of the enrollment period.[27]

The federal law provides the floor, not the ceiling, with respect to health insurance coverage. Many states, including New York, provide more extensive health care reform than under federal law.

New York Law

On June 29, 2009, Governor Paterson signed into law Chapter 240 of the Laws of 2009.[28] The legislation allows children to remain or obtain coverage under their parents' health insurance through age 29,[29] and thus is commonly referred to as the "Age 29" law.

In order to be entitled to benefits under the "Age 29" law, the young adult must: (1) be 29 years old or under; (2) be unmarried; (3) not be insured by or eligible for health insurance through his/her own employer; and (4) live, work or reside in New York or in the health insurance company's service area.[30] As under federal law, whether a young adult is claimed as a dependent on his/her parents' income tax return or lives with his/her parents does not impact eligibility for coverage.[31]

The "Age 29" law extends medical insurance coverage to young adults either through a "young adult option" or a "make available" option."[32]

Under the "young adult option," insurers will notify employees of this benefit and employees or their dependents may elect the benefit and pay the premium.[33] Either the young adult or his/her parents will be responsible to pay the premium.[34]

In contrast, under the "make available option," insurers that issue a health insurance policy that covers dependents must make medical insurance available for eligible young adults through age 29 if requested by the policy holder.[35] The "make available option," unlike the "young adult option," is extended to individual health insurance policies in addition to group health insurance policies.[36]

It is important for matrimonial practitioners to keep in mind that there are enrollment periods and deadlines under the "Age 29" law. For example, there are four instances when an eligible individual can obtain coverage under the "young adult option."[37] First, if a child is covered under his/her parent's health insurance plan, the child may enroll within 60 days of the date when the coverage would otherwise end due to reaching the maximum age of health insurance coverage.[38] Second, a young adult may enroll within 60 days of newly satisfying the eligibility requirements.[39] Third, eligible young adults can enroll during the annual 30 day open enrollment period.[40] Fourth, there is a 12 month open enrollment period following the first renewal of the health insurance policy on or after September 1, 2009.[41]

In addition to extending coverage to more New Yorkers, reforms have been instituted with respect to the cost of health care. In June 2010, the Governor's Program Bill Number 278 was signed into law. The new legislation provides tighter state regulation of health insurance premiums by reinstating the New York State Insurance Department's power to review and approve health insurance premium increases before they come into effect.[42] The recent reforms enacted in New York give hope for more widespread health coverage at affordable rates.

Addressing the Health Insurance Needs of Young Adults in Divorce Settlement Agreements

Pursuant to Family Court Act §413 and Domestic Relations Law §240, in New York, parents are chargeable with the support of their children until they attain the age of 21 years old or are sooner emancipated. In the absence of an express agreement between the parties, courts lack the authority to direct a parent to pay support for a child beyond age 21.[43] However, express agreements to extend child support beyond age 21 are enforceable by the courts.[44]

In addition to the payment of basic child support, on behalf of their children, parents have a statutory obligation to maintain health insurance benefits, which are broadly defined as "any medical, dental, optical and prescription drugs and health care services or other health care benefits that may be provided for a dependent through an employer or organizations which are self insured, or through other available health or health care coverage plans."[45]

In cases where children have health insurance, generally the court directs that the health insurance must be maintained.[46] If the children do not have medical insurance and one parent has available health insurance benefits, the court shall direct that parent to provide such benefits on behalf of the children.[47] When the children do not have health insurance and both parents have available health insurance benefits, the court shall direct either or both parents to maintain health insurance benefits on behalf of the children.[48] In making this determination, courts examine factors such as the cost and the comprehensiveness of the coverage.[49] In the event that neither parent has health insurance benefits available to him/her, the court shall direct the custodial parent to apply for health insurance through New York State.[50]

Pursuant to Domestic Relations Law §240(1)(d) and Family Court Act §416(f), the cost of providing health insurance benefits is supposed to be prorated between the parties unless the court determines such allocation would be unjust or inappropriate. If the custodial parent is ordered to maintain health insurance benefits on behalf of the children, the non-custodial parent's pro rata share of the cost of the health benefits is added to the basic child support obligation.[51] If the non-custodial parent is directed to maintain health insurance benefits on behalf of the children, the custodial parent's pro rata share of the cost of health insurance benefits is deducted from the non-custodial parent's basic child support obligation.[52]

It is already common practice for parents to extend their support obligations in written agreements through the latter of their child's college graduation or the child's attainment of the age of 22 or 23 years old. Matrimonial practitioners drafting stipulations of settlement, separation agreements, and/or postnuptial agreements should be cognizant of the new health care legislation and its impact on young adults. In light of the recent health care reforms and the staggering statistics regarding uninsured young adults, parents may increasingly decide to enter into agreements that extend the duration they are required to maintain health insurance benefits on behalf of their children until age 26 or 29.

Making provisions in divorce settlement agreements for the maintenance of medical insurance for children beyond age 21 would help reduce the number of uninsured young adults. It is better to stipulate to extend health benefits to young adults than leaving it to the parents' discretion after divorce. Without an express agreement, most likely the burden of paying medical insurance premiums would fall on the custodial parent or the young adult. Entering into a divorce settlement agreement with respect to health benefits beyond the age of 21 is advantageous to the custodial parent rather than leaving it to chance after the divorce, as there is a stronger bargaining chip to resolve the issue of health benefits together with the other issues ancillary to the divorce. It is also advantageous to the non-custodial parents who want to provide health benefits on behalf of their young adult children because the cost of the premiums can be contractually shared with the other parent. At minimum, since the young adult may have the right to apply for his/her own coverage, divorce settlement agreements should provide that parents must cooperate in procuring medical insurance for their young adult children even after they turn 21 years old.

Even though courts cannot order an unwilling parent to provide medical insurance for a child over 21 years old, there are tax benefits under the Affordable Care Act that may be an incentive to enter into an agreement in which health benefits are extended beyond the age of majority. As aforesaid, the value of an employer's contribution toward health coverage for an employee's child is excluded from the employee's income through the end of the taxable year in which the child turns 26.

A cautionary note for attorneys contemplating making provisions in divorce settlement agreements that extend the duration of medical coverage to young adults is that, as the health care reforms are so recent and complex, it can be difficult to determine what health insurance coverage is available and to whom it is available. There are specific enrollment periods that must be adhered to in order to obtain coverage. For information about specific health insurance and dependent coverage that is available, attorneys should contact their client's and the opposing party's Office Manager, Human Resources Department, or Insurance Company.

Health care reform will make medical insurance available to a broader spectrum of New Yorkers at more affordable rates. Matrimonial practitioners can have a hand in making medical insurance more readily available to young adults through health care provisions set forth in divorce settlement agreements.

Endnotes

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