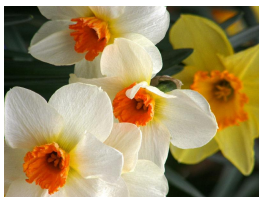


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Federal laws cited

[American Recovery and Reinvestment Act of 2009 \(ARRA\)](#)

[CHIPRA Pub. L. 111-3](#)

[Michelle's Law Pub. L. 110-381](#)

[GINA Pub. L. 110-233](#)

[Federal Mental Health Parity Act Pub. L. 110-343](#)

Consumer Health Law News

Spring 2009

Dear Clare,

These days there is no shortage of news about health law. However, most of the information is geared toward health care providers, insurers and employers. *Consumer Health Law News* covers select health law developments as they impact patients and their families. I hope you enjoy this inaugural issue.

Regards,

Clare McGorrian

Latest News

COBRA Help for Laid-Off Workers

Under the [American Recovery and Reinvestment Act of 2009](#), employees with annual adjusted gross income below \$125,000 (\$250,000 for joint filers) who lose their jobs involuntarily between September 1, 2008 and December 31, 2009 may receive a nine-month subsidy of 65 percent of their COBRA premium.

A COBRA election opportunity must be offered to laid-off employees (and eligible dependents) who became eligible on or after September 11, 2008, but who did not elect (or who elected and later terminated) COBRA coverage. Employers must provide "second chance" notices and election forms by April 18, 2009. This special election period ends 60 days after the employer notifies the individual.

Further information is available from the [Department of Labor](#) and the [Internal Revenue Service](#). To learn more about the interaction between the federal COBRA subsidy and Massachusetts' Medical Security Plan for unemployment assistance recipients, [click here](#).

New Special Enrollment Rights

The Health Insurance Portability and Accountability Act (HIPAA) provides special enrollment rights upon the loss of eligibility for prior health coverage and upon the addition of a new dependent. Pursuant to the [Children's Health Insurance Program Reauthorization Act of 2009](#) (CHIPRA), Public Law 111-3, group health plans must also permit eligible employees and dependents to enroll outside of open enrollment where: (1) Medicaid or CHIP coverage is terminated due to loss of eligibility and (2) the employee or dependent becomes eligible for premium assistance toward the group plan through Medicaid or CHIP. To qualify, the eligible employee or dependent must request enrollment within 60 days after the special enrollment event. These protections became effective April 1, 2009. For a summary of CHIPRA's major provisions, see [Kaiser Family Foundation fact sheet](#).

Federal Health Law Update 2008

Federal Mental Health Parity Expanded

The [Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008](#), Public Law 110-



Mass. laws cited

[Chapter 214 Acts of 2008](#)

[Chapter 217 Acts of 2008](#)

[Chapter 251 Acts of 2008](#)

[Chapter 256 Acts of 2008](#)

343 (Division C, Title V, Subtitle B), substantially expands mental health parity requirements for health plans. The law applies to group plans offered by employers with more than 50 employees for plan years after October 3, 2009 (later for union plans). Plans that include mental health and/or substance use disorder benefits must cover such benefits on a non-discriminatory basis as compared to medical/surgical benefits.

New Health Insurance Rights for Students on Medical Leave

[Michelle's Law](#), Public Law 110-381, requires group health plans to continue coverage for a child who would otherwise lose eligibility due to a medical leave from college or graduate school. Michelle's Law is effective for plan years that begin on or after October 9, 2009. Plans may not terminate coverage for one year after a "medically necessary" leave of absence begins unless coverage ends under the plan for all dependents.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act of 2008 ([GINA](#)), Public Law 110-233, prohibits discrimination on the basis of genetic information in health insurance and employment. "Genetic information" is information about an individual's or family member's genetic tests, and information about the manifestation of a disease or disorder in a family member. GINA applies to group and individual health plans. See [proposed regulations](#).

Other federal news

[ADA Amendments Act Clarifies "Disability"](#)

[Expanded FMLA Leave for Military Families](#)

[Final Regulations on Maternity Stays](#)

Massachusetts Health Law Update 2008



Mental Health Parity Coverage Expanded

Since 2000, Massachusetts has required insurance policies subject to state law to cover nine *biologically-based* mental disorders on a par with physical illnesses. See [chapter 80 of the Acts of 2000](#). Pursuant to [chapter 256 of the Acts of 2008](#), insurers doing business in Massachusetts must now provide parity coverage for four additional conditions - eating disorders, post-traumatic stress disorder, substance and/or alcohol abuse, and autism. The new requirements take effect July 1, 2009.

Coverage Standards Set for Individual Mandate

As of January 1, 2009, adult residents of Massachusetts must have health insurance that provides minimum creditable coverage (MCC). Plans that satisfy MCC must cover defined "core services" and "medical benefits," and limit cost-sharing, such as co-payments and deductibles. Health insurers must disclose on the face of a policy whether it offers MCC. See [Connector regulations](#).

Greater Coverage of Low-Protein Food Products

As of October 28, 2008, Massachusetts insurers must cover \$5,000 (up from \$2,500) for nonprescription enteral formulas - food products modified to be low protein for individuals with inherited diseases of amino and/or organic acids.

Rights of Nursing Home Residents on Medicaid

Effective November 3, 2008, a Medicaid beneficiary faced with involuntary discharge or transfer from a nursing facility who requests a hearing under section 48 of Mass. Gen. Laws ch. 118E shall not be discharged or transferred unless a referee decides that s/he has been provided sufficient preparation and orientation to ensure safe and

orderly transfer or discharge to another safe and appropriate place.

Eligibility of Adult Children for Parent's Coverage

As of January 1, 2008, insurers in Massachusetts had to make dependent coverage available to persons "under 26 years of age or for 2 years after the end of the calendar year in which such persons last qualified as dependents [of the subscriber] under 26 U.S.C. 106, whichever occurs first." Insurers must consider a child a dependent under the parent's health policy (up to a maximum age of 26), as long as he receives half of his support from the parent. The child need not be claimed on the parent's tax return to be eligible for coverage. See [Div. of Insurance](#) Bulletin 2008-1.

Feature: Health Insurance and Same-Sex Spouses

Massachusetts: MassHealth

Massachusetts has recognized the right of same-sex couples to marry since 2004. As of October 29, 2008, no person who is recognized as a spouse under Massachusetts law shall be denied MassHealth benefits for which they are otherwise eligible, due to unavailability of federal funds based on the Defense of Marriage Act (DOMA) or other federal non-recognition of spouses of the same sex.



Other States: Private Health Insurance

Connecticut

Last year Connecticut's highest court recognized the constitutional right of same-sex couples to marry. The Connecticut Insurance Department has issued [guidance](#) to insurance companies, prohibiting policies that do not treat lawfully married same-sex partners on the same terms as opposite-sex spouses.

New York

New York has yet to recognize a right to marry for same-sex partners. In a court decision last year, however, a judge determined that the same-sex union of a New Yorker lawfully married elsewhere should be recognized for purposes of her partner's group health insurance eligibility. The New York Insurance Department has since issued formal [guidance](#) directing that same-sex spouses to marriages legally performed outside New York must be treated as spouses for purposes of New York insurance law.

Follow-up Links

[Department of Labor](#)

[Commonwealth Connector](#)

[Mass. Division of Insurance](#)

Contact the Law Office of Clare D. McGorrian

Please call or email me if you have been denied health insurance for which you believe you are eligible *or* if your health plan refuses to cover medical treatment that your doctor recommends.

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