

BILL NUMBER: S66006

TITLE OF BILL :

An act to amend the insurance law, in relation to establishing a special enrollment period for certain employees and members applying for continuation of health insurance coverage; to amend chapter 236 of the laws of 2009, amending the insurance law relating to extending state continuation benefits from eighteen months to thirty-six months, in relation to the application thereof; and providing for the repeal of certain provisions upon the expiration thereof

PURPOSE :

This bill would help provide continued access to group health insurance by ensuring that all people eligible for federal COBRA or state continuation coverage receive up to 36 months of coverage, regardless of when the group health insurance contract or policy is renewed, modified, altered or amended.

SUMMARY OF PROVISIONS :

Section 1 of the bill would amend Insurance Law ? 3221 to create a special enrollment period for people whose continuation coverage exhausted between July 1, 2009 and November 1, 2009 but prior to the renewal, modification, alteration or amendment of the group contract which would entitle them to extend their continuation coverage.

Section 1 of the bill further states that coverage issued during the special enrollment period shall be prospective not more than 30 days from the date of election and payment of premium.

Section 1 of the bill states that a person who continues coverage through the special enrollment period shall be entitled to a total of 36 months of coverage.

Section 1 of the bill also states that any gap in health insurance coverage between July 1, 2009 and the effective date of the coverage issued through the special enrollment period shall not reduce the 36 months of continuation coverage to which a person may be entitled. It also states that any gap in coverage during that period shall be disregarded for the purpose of determining if a pre-existing condition waiting period is applicable.

Section 2 of the bill would amend Insurance Law ? 4304 to require not-for-profit corporations and health maintenance organizations ("HMOs") offering group remittance contracts to extend a special enrollment period under the same terms and conditions as commercial insurers.

Section 3 of the bill would amend Insurance Law ? 4305 to require not-for-profit corporations and HMOs offering group contracts to extend a special enrollment period under the same terms and conditions as commercial insurers.

Section 4 of the bill would amend ? 4 of chapter 236 of the laws of 2009 to provide that it applies to policies and contracts that are issued, renewed, modified, altered or amended between July 1, 2009 and October 31, 2009, and applies to all policies or contracts on or after

November 1, 2009.

Section 5 of the bill would provide that the bill take effect immediately, provided that sections one, two, and three of the act will expire and be deemed repealed July 1, 2010, and section four of

the act will be deemed to have been in full force and effect on and after July 1, 2009.

EXISTING LAW :

Insurance Law ? 3221 (m) permits individuals covered under commercial group or blanket accident and health insurance policies that are not subject to federal COBRA law to elect state continuation coverage for up to 36 months. It also permits individuals covered under commercial group or blanket accident and health insurance policies that are subject to federal COBRA law to continue coverage under state continuation coverage for an additional 18 months, once the initial 18 months of federal COBRA coverage is exhausted, for a total of 36 months. All such individuals must elect state continuation coverage within 60 days of the event that qualifies them for coverage or within 60 days of receiving notice of the right to elect such coverage. There is no cost to the employer for continuation coverage. The former employee or member pays the full premium, which is capped at 102 percent of the group rate.

Insurance Law ? 4304(k) sets forth provisions similar to those of Insurance Law ? 3221 (m), permitting the election of state continuation coverage for group remittance contracts with a hospital service, health service or medical expense indemnity corporation.

Insurance Law ? 4305(e) sets forth provisions similar to those of Insurance Law 3221 (m), permitting the election of state continuation coverage for group contracts with a hospital service, health service or medical expense indemnity corporation.

Chapter 18 of the Employee Retirement Income Security Act, 29 D.S.C. ? 1161, et seq., provides for continuation coverage and additional standards for group health plans.

Chapter 6A of the Public Health Service Act, 42 D.S.C. ? 300bb-1, et seq., provides for continuation coverage under State and local group health plans.

The American Recovery and Reinvestment Act of 2009 expanded access to federal COBRA and state continuation benefits for laid-off workers by providing a 9-month, 65% subsidy of premiums.

LEGISLATIVE HISTORY :

This is a new bill.

STATEMENT OF SUPPORT :

Federal COBRA allows workers to continue their group health insurance coverage for 18 months if they voluntarily or involuntarily leave employment or lose coverage due to a reduction in work hours. However, COBRA only applies to employers with 20 or more employees. To address this gap, the State's "mini-COBRA" law requires small employers with fewer than 20 employees to offer a State health

insurance continuation benefit similar to COBRA. Chapter 236 of the laws of 2009 extended the period that workers may receive mini-COBRA coverage from 18 months to 36 months. This is regardless of whether the worker worked for an employer with 20 or more employees and is eligible for federal COBRA or the worker worked for an employer with fewer than 20 employees and is eligible for mini-COBRA.

Chapter 236 of the laws of 2009, which extends the period that a person may continue health insurance coverage from 18 months to 36 months, only applies to health insurance coverage once the policy or contract is issued, renewed, modified, altered or amended. Thus, although the law's effective date was July 1, 2009, many people cannot take advantage of the extension until the coverage is renewed, modified, altered or amended. Furthermore, people who had mini-COBRA coverage and exhausted the initial 18 months before the coverage was renewed, modified, altered or amended are not entitled to an additional 18 months of coverage.

Currently, those who do not have access to group health insurance, including those who exhaust continuation benefits, must purchase coverage on an individual basis. New York's individual health insurance market is standardized, with very comprehensive benefits and prohibitively high premiums. Continuation coverage is available at an average cost of \$400 per month for single coverage. The average cost of individual health insurance coverage currently exceeds \$970 per month and is higher in certain regions. While the Healthy NY program offers a less expensive option, it is not available to everyone due to eligibility requirements.

Current national unemployment rates are at a 24-year high. New York's unemployment rate was 8.9 percent as of September 2009, up from 5.8 percent in September 2008. An increasing number of workers are experiencing extended periods of job loss or being forced to work part-time. All of these factors contribute to a loss of group health insurance coverage. Also, as companies downsize, older workers are often offered early retirement options as an alternative to lay-offs. These individuals may not have retiree health benefits and can be years away from Medicare. This bill extends a more affordable private health insurance option, at no direct cost to the State or employers, and ensures that this option is available to all people.

**BUDGET IMPLICATIONS :**

This bill will have not have a material impact on State finances.

**EFFECTIVE DATE :**

The bill would take effect immediately, provided that sections one, two, and three of the act will expire and be deemed repealed July 1, 2010 and section four of the act will be deemed to have been in full force and effect on and after July 1, 2009.

**S66006 Text**

S T A T E O F N E W Y O R K

---

## S E N A T E - A S S E M B L Y

November 10, 2009

IN SENATE -- Introduced by Sen. BRESLIN -- (at request of the Governor)  
 -- read twice and ordered printed, and when printed to be committed to  
 the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of  
 A. Peoples-Stokes, Morelle) -- (at request of the Governor) -- read  
 once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing a special  
 enrollment period for certain employees and members applying for  
 continuation of health insurance coverage; to amend chapter 236 of the  
 laws of 2009, amending the insurance law relating to extending state  
 continuation benefits from eighteen months to thirty-six months, in  
 relation to the application thereof; and providing for the repeal of  
 certain provisions upon the expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
 BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (m) of section 3221 of the insurance law is  
 2 amended by adding a new paragraph 8 to read as follows:  
 3 (8)(A) AN EMPLOYEE OR MEMBER WHOSE CONTINUATION COVERAGE PURSUANT TO  
 4 THIS SUBSECTION OR CHAPTER 18 OF THE EMPLOYEE RETIREMENT INCOME SECURITY  
 5 ACT, 29 U.S.C. S 1161 ET SEQ. OR CHAPTER 6A OF THE PUBLIC HEALTH SERVICE  
 6 ACT, 42 U.S.C. S 300 BB - 1 ET SEQ., ESTABLISHED BY THE CONSOLIDATED  
 7 OMNIBUS RECONCILIATION ACT OF 1985, AS AMENDED, EXHAUSTED: (I) BETWEEN  
 8 THE FIRST OF JULY, TWO THOUSAND NINE AND THE FIRST OF NOVEMBER, TWO  
 9 THOUSAND NINE; AND (II) PRIOR TO THE GROUP CONTRACT'S RENEWAL, MODIFICA-  
 10 TION, ALTERATION OR AMENDMENT, SHALL BE ENTITLED TO A SPECIAL ENROLLMENT  
 11 PERIOD DURING WHICH THE EMPLOYEE OR MEMBER MAY EXTEND CONTINUATION  
 12 COVERAGE. THE SPECIAL ENROLLMENT PERIOD SHALL RUN FOR SIXTY DAYS  
 13 FOLLOWING RECEIPT OF NOTICE UNDER SUBPARAGRAPH (E) OF THIS PARAGRAPH OR  
 14 IF NOTICE IS NOT RECEIVED SIX MONTHS FROM THE LATER OF THE FIRST OF  
 15 NOVEMBER, TWO THOUSAND NINE OR THE EFFECTIVE DATE OF THIS PARAGRAPH.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
 [ ] is old law to be omitted.

LBD12143-02-9

S. 6

2

A. 6

1 (B) COVERAGE ISSUED DURING THE SPECIAL ENROLLMENT PERIOD SET FORTH IN  
 2 SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE PROSPECTIVE AND SHALL TAKE  
 3 EFFECT NO LATER THAN THIRTY DAYS AFTER THE EMPLOYEE OR MEMBER ELECTS THE  
 4 EXTENSION AND PAYS THE FIRST PREMIUM.  
 5 (C) AN EMPLOYEE OR MEMBER WHO EXTENDS CONTINUATION COVERAGE DURING THE  
 6 SPECIAL ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS PARA-  
 7 GRAPH SHALL BE ENTITLED TO CONTINUATION COVERAGE FOR UP TO A TOTAL OF  
 8 THIRTY-SIX MONTHS, INCLUSIVE OF ANY COVERAGE PERIOD EXHAUSTED UNDER THIS  
 9 SUBSECTION OR CHAPTER 18 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT,  
 10 29 U.S.C. S 1161 ET SEQ. OR CHAPTER 6A OF THE PUBLIC HEALTH SERVICE ACT,  
 11 42 U.S.C. S 300 BB - 1 ET SEQ., ESTABLISHED BY THE CONSOLIDATED OMNIBUS  
 12 RECONCILIATION ACT OF 1985, AS AMENDED.  
 13 (D) ANY GAP IN COVERAGE BETWEEN THE FIRST OF JULY, TWO THOUSAND NINE

14 THROUGH THE EFFECTIVE DATE OF THE COVERAGE ISSUED DURING THE SPECIAL  
 15 ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL  
 16 NOT REDUCE THE THIRTY-SIX MONTH PERIOD OF CONTINUATION COVERAGE TO WHICH  
 17 AN EMPLOYEE OR MEMBER IS ENTITLED UNDER THIS SUBSECTION, AND SHALL BE  
 18 DISREGARDED FOR PURPOSES OF DETERMINING THE SIXTY-THREE DAY PERIOD TO  
 19 WHICH SECTION THREE THOUSAND TWO HUNDRED THIRTY-TWO OF THIS ARTICLE  
 20 REFERS.

21 (E) WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS PARAGRAPH, AN  
 22 INSURER SHALL MAKE REASONABLE EFFORTS TO PROVIDE WRITTEN NOTIFICATION OF  
 23 THE SPECIAL ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS  
 24 PARAGRAPH TO ALL GROUP POLICYHOLDERS AND FORMER EMPLOYEES OR MEMBERS  
 25 ENTITLED TO THE SPECIAL ENROLLMENT PERIOD.

26 S 2. Paragraph 5 of subsection (k) of section 4304 of the insurance  
 27 law, as added by chapter 236 of the laws of 2009, is renumbered para-  
 28 graph 6 and a new paragraph 7 is added to read as follows:

29 (7)(A) AN EMPLOYEE OR MEMBER WHOSE CONTINUATION COVERAGE PURSUANT TO  
 30 THIS SUBSECTION OR CHAPTER 18 OF THE EMPLOYEE RETIREMENT INCOME SECURITY  
 31 ACT, 29 U.S.C. S 1161 ET SEQ. OR CHAPTER 6A OF THE PUBLIC HEALTH SERVICE  
 32 ACT, 42 U.S.C. S 300 BB - 1 ET SEQ., ESTABLISHED BY THE CONSOLIDATED  
 33 OMNIBUS RECONCILIATION ACT OF 1985, AS AMENDED, EXHAUSTED: (I) BETWEEN  
 34 THE FIRST OF JULY, TWO THOUSAND NINE AND THE FIRST OF NOVEMBER, TWO  
 35 THOUSAND NINE; AND (II) PRIOR TO THE GROUP CONTRACT'S RENEWAL, MODIFICA-  
 36 TION, ALTERATION OR AMENDMENT, SHALL BE ENTITLED TO A SPECIAL ENROLLMENT  
 37 PERIOD DURING WHICH THE EMPLOYEE OR MEMBER MAY EXTEND CONTINUATION  
 38 COVERAGE. THE SPECIAL ENROLLMENT PERIOD SHALL RUN FOR SIXTY DAYS FOLLOW-  
 39 ING RECEIPT OF NOTICE UNDER SUBPARAGRAPH (E) OF THIS PARAGRAPH OR IF  
 40 NOTICE IS NOT RECEIVED SIX MONTHS FROM THE LATER OF THE FIRST OF NOVEM-  
 41 BER, TWO THOUSAND NINE OR THE EFFECTIVE DATE OF THIS PARAGRAPH.

42 (B) COVERAGE ISSUED DURING THE SPECIAL ENROLLMENT PERIOD SET FORTH IN  
 43 SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE PROSPECTIVE, AND SHALL TAKE  
 44 EFFECT NO LATER THAN THIRTY DAYS AFTER THE EMPLOYEE OR MEMBER ELECTS THE  
 45 EXTENSION AND PAYS THE FIRST PREMIUM.

46 (C) AN EMPLOYEE OR MEMBER WHO EXTENDS CONTINUATION COVERAGE DURING THE  
 47 SPECIAL ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS PARA-  
 48 GRAPH SHALL BE ENTITLED TO CONTINUATION COVERAGE FOR UP TO A TOTAL OF  
 49 THIRTY-SIX MONTHS, INCLUSIVE OF ANY COVERAGE PERIOD EXHAUSTED UNDER THIS  
 50 SUBSECTION OR CHAPTER 18 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT,  
 51 29 U.S.C. S 1161 ET SEQ. OR CHAPTER 6A OF THE PUBLIC HEALTH SERVICE ACT,  
 52 42 U.S.C. S 300 BB - 1 ET SEQ., ESTABLISHED BY THE CONSOLIDATED OMNIBUS  
 53 RECONCILIATION ACT OF 1985, AS AMENDED.

54 (D) ANY GAP IN COVERAGE BETWEEN THE FIRST OF JULY, TWO THOUSAND NINE  
 55 THROUGH THE EFFECTIVE DATE OF THE COVERAGE ISSUED DURING THE SPECIAL  
 56 ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL

S. 6

3

A. 6

1 NOT REDUCE THE THIRTY-SIX MONTH TOTAL PERIOD OF CONTINUATION COVERAGE TO  
 2 WHICH AN EMPLOYEE OR MEMBER IS ENTITLED UNDER THIS SUBSECTION, AND SHALL  
 3 BE DISREGARDED FOR PURPOSES OF DETERMINING THE SIXTY-THREE DAY PERIOD TO  
 4 WHICH SECTION FOUR THOUSAND THREE HUNDRED EIGHTEEN OF THIS ARTICLE  
 5 REFERS.

6 (E) WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS PARAGRAPH, A  
 7 CORPORATION SHALL MAKE REASONABLE EFFORTS TO PROVIDE WRITTEN NOTIFICA-  
 8 TION OF THE SPECIAL ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF  
 9 THIS PARAGRAPH TO ALL GROUP REMITTING AGENTS AND FORMER EMPLOYEES OR  
 10 MEMBERS ENTITLED TO THE SPECIAL ENROLLMENT PERIOD.

11 S 3. Subsection (e) of section 4305 of the insurance law is amended by  
 12 adding a new paragraph 9 to read as follows:

13 (9)(A) AN EMPLOYEE OR MEMBER WHOSE CONTINUATION COVERAGE PURSUANT TO  
 14 THIS SUBSECTION OR CHAPTER 18 OF THE EMPLOYEE RETIREMENT INCOME SECURITY

15 ACT, 29 U.S.C. S 1161 ET SEQ. OR CHAPTER 6A OF THE PUBLIC HEALTH SERVICE  
 16 ACT, 42 U.S.C. S 300 BB - 1 ET SEQ., ESTABLISHED BY THE CONSOLIDATED  
 17 OMNIBUS RECONCILIATION ACT OF 1985, AS AMENDED, EXHAUSTED: (I) BETWEEN  
 18 THE FIRST OF JULY, TWO THOUSAND NINE AND THE FIRST OF NOVEMBER, TWO  
 19 THOUSAND NINE; AND (II) PRIOR TO THE GROUP CONTRACT'S RENEWAL, MODIFICA-  
 20 TION, ALTERATION OR AMENDMENT, SHALL BE ENTITLED TO A SPECIAL ENROLLMENT  
 21 PERIOD DURING WHICH THE EMPLOYEE OR MEMBER MAY EXTEND CONTINUATION  
 22 COVERAGE. THE SPECIAL ENROLLMENT PERIOD SHALL RUN FOR SIXTY DAYS  
 23 FOLLOWING RECEIPT OF NOTICE UNDER SUBPARAGRAPH (E) OF THIS PARAGRAPH OR  
 24 IF NOTICE IS NOT RECEIVED SIX MONTHS FROM THE LATER OF THE FIRST OF  
 25 NOVEMBER, TWO THOUSAND NINE OR THE EFFECTIVE DATE OF THIS PARAGRAPH.

26 (B) COVERAGE ISSUED DURING THE SPECIAL ENROLLMENT PERIOD SET FORTH IN  
 27 SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL BE PROSPECTIVE, AND SHALL TAKE  
 28 EFFECT NO LATER THAN THIRTY DAYS AFTER THE EMPLOYEE OR MEMBER ELECTS THE  
 29 EXTENSION AND PAYS THE FIRST PREMIUM.

30 (C) AN EMPLOYEE OR MEMBER WHO EXTENDS CONTINUATION COVERAGE DURING THE  
 31 SPECIAL ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS PARA-  
 32 GRAPH SHALL BE ENTITLED TO CONTINUATION COVERAGE FOR UP TO A TOTAL OF  
 33 THIRTY-SIX MONTHS, INCLUSIVE OF ANY COVERAGE PERIOD EXHAUSTED UNDER THIS  
 34 SUBSECTION OR CHAPTER 18 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT,  
 35 29 U.S.C. S 1161 ET SEQ. OR CHAPTER 6A OF THE PUBLIC HEALTH SERVICE ACT,  
 36 42 U.S.C. S 300 BB - 1 ET SEQ., ESTABLISHED BY THE CONSOLIDATED OMNIBUS  
 37 RECONCILIATION ACT OF 1985, AS AMENDED.

38 (D) ANY GAP IN COVERAGE BETWEEN THE FIRST OF JULY, TWO THOUSAND NINE  
 39 AND THE EFFECTIVE DATE OF THE COVERAGE ISSUED DURING THE SPECIAL ENROLL-  
 40 MENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF THIS PARAGRAPH SHALL NOT  
 41 REDUCE THE THIRTY-SIX MONTH PERIOD OF CONTINUATION COVERAGE TO WHICH AN  
 42 EMPLOYEE OR MEMBER IS ENTITLED UNDER THIS SUBSECTION, AND SHALL BE  
 43 DISREGARDED FOR PURPOSES OF DETERMINING THE SIXTY-THREE DAY PERIOD TO  
 44 WHICH SECTION FOUR THOUSAND THREE HUNDRED EIGHTEEN OF THIS ARTICLE  
 45 REFERS.

46 (E) WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS PARAGRAPH, THE  
 47 CORPORATION SHALL MAKE REASONABLE EFFORTS TO PROVIDE WRITTEN NOTIFICA-  
 48 TION OF THE SPECIAL ENROLLMENT PERIOD SET FORTH IN SUBPARAGRAPH (A) OF  
 49 THIS PARAGRAPH TO ALL GROUP CONTRACT HOLDERS AND FORMER EMPLOYEES OR  
 50 MEMBERS ENTITLED TO THE SPECIAL ENROLLMENT PERIOD.

51 S 4. Section 4 of chapter 236 of the laws of 2009, amending the insur-  
 52 ance law relating to extending state continuation benefits from eighteen  
 53 months to thirty-six months, is amended to read as follows:

54 S 4. This act shall take effect on July 1, 2009 and shall apply to  
 55 policies and contracts issued, renewed, modified, altered or amended [on

S. 6

4

A. 6

1 or after such date] BETWEEN JULY 1, 2009 AND OCTOBER 31, 2009, AND SHALL  
 2 APPLY TO ALL POLICIES AND CONTRACTS ON AND AFTER NOVEMBER 1, 2009.

3 S 5. This act shall take effect immediately; provided, that:

4 (a) sections one, two and three of this act shall expire and be deemed  
 5 repealed July 1, 2010; and

6 (b) section four of this act shall be deemed to have been in full  
 7 force and effect on and after July 1, 2009.