

California Expands Domestic Partner Health Insurance Coverage to Out of State Providers

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Last year California Governor Jerry Brown signed into law a provision that, if it successfully can be implemented, will close a loophole in the California Insurance Equity Act which exempts out of state employers from having to offer domestic partner health insurance coverage to employees residing in this state.

Originally enacted in 2004, the California Insurance Equality Act (AB 2208) amended the California Insurance Code to require that insurance policies that were “marketed, issued, or delivered” to a California resident treat registered domestic partners equal to lawfully-married, opposite sex spouses. Similarly the Health & Safety Code required domestic partner coverage to be offered by California HMOs. For group health coverage this rule generally went into effect as of January 1, 2006. This rule still applies to all manner of insurance contracts within California, not just those providing group health coverage.

The original Act, however, did not apply to insurance coverage issued “outside of California to an employer whose principle place of business and majority of employees are located outside of California.” Cal. Ins. Code § 10112.5. It also did not specifically apply to HMO contracts formed outside of California.

This meant that California residents employed by certain out-of-state companies could not extend group health coverage to their domestic partners lawfully registered with the California Secretary of State.

Effective January 1, 2012, SB 757 closes that loophole, but only with regard to group health insurance and HMOs issued outside of California to any employers. Other types of insurance coverage are not affected.

The law requires that a domestic partner be registered with the California Secretary of State in order to be covered and also that, if the employer require proof of such registration for coverage, it must also require that opposite-sex couples provide proof of their marriage in order to obtain spousal coverage. Written documentation also is required for proof of the end of a marriage or domestic partnership.

It is not clear how the California Insurance Department or the California Department of Managed Health Care will enforce this rule against insurers and HMOs that are not licensed under California law and whose contract is with an out-of-state employer. The office of

California Senator Ted Lieu, who sponsored the bill, is working with those agencies towards an enforcement mechanism. It is also possible that the “full faith and credit” clause of the U.S. Constitution could be invoked to require other states to conform to California law. If the law can be enforced it will impact the terms of coverage for non-California companies with California employees. It would not likely be preempted by ERISA, however, because it directly governs insurers and HMOs, and only indirectly impacts employer-sponsored group health plans.

http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2201-2250/ab_2208_bill_20040913_chaptered.html

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ins&group=10001-11000&file=10110-10127.18>

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