

New York Enacts Ian's Law to Regulate Insurers and HMOs Seeking to Discontinue a Health Insurance Policy Form

By John W. Fried

On August 19, 2010, Governor David A. Paterson announced that he has signed "Ian's Law" into law, which enhances protections for policyholders when a health insurer or health maintenance organization (HMO) discontinues a class of policies or contracts. The legislation is named to honor Ian Pearl, whom we represented successfully when his insurer discontinued the state insurance department approved form of the small group health insurance policy that had covered Ian since 1981.

Ian suffers from Spinal Muscular Atrophy ("SMA"), a progressive neuromuscular disease that produces muscle wasting and chronic respiratory failure. As a result of SMA, Ian, who is 38 years old, has been confined to a wheelchair since 1978 and has been ventilator-dependent since 1991. The form of the health insurance policy that Ian's insurer discontinued provided Ian with nursing care benefits that enabled him to live at home with his parents.

Under preexisting law, a health insurer could discontinue a class of group health insurance policies or HMO contracts without obtaining the permission of the state insurance department, so long as the insurer timely sent cancellation notices to all affected policyholders and discontinued uniformly all policies or contracts within the class. There was no regulatory oversight of such policy or contract discontinuances to determine whether they were a pretext to discontinue the coverage of any individual policyholder who was incurring a significant number of high-cost claims.

Ian's Law, which becomes effective on January 1, 2011, will amend the New York State Insurance Law, sections 3221(p) and 4305(j), to require insurers and HMOs to certify to the Superintendent of Insurance, among other things, that any policy or contract discontinuation was not intended or initiated as a pretext to drop from coverage an individual high-cost policyholder. If the Superintendent determines otherwise, he or she may order that the policy or contract discontinuation be cancelled or, if discontinuation already has happened, that the policy or contract be reinstated. Further, if the Superintendent determines that the new policy or contract being offered to replace the discontinued coverage does not provide benefits for an individual's previously covered chronic and serious medical condition, then the Superintendent must require the insurer or HMO to include that same or substantially similar coverage in the new policy or contract.

Click [here](#) for a complete text of Ian's law.

We are proud to have helped Ian through this insurance battle, and now Ian's Law may help other policyholders who, in addition to battling possible life-threatening medical conditions, also have to fight their insurers and HMOs simply to receive the benefits for which they paid.

[Editor's Note: Editor's Note: John W. Fried is a Partner at the New York office of Fried & Epstein LLP, which regularly represents policyholders in insurance coverage disputes. He is a frequent speaker and author on the subject of insurance coverage law and practice. Information concerning Fried & Epstein's Insurance Coverage Practice Group may be obtained by visiting the firm's website at www.fried-epstein.com. Responses to this article are welcome. Copyright 2010 John W. Fried.]