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Understanding COBRA and Mini-COBRA Premium Assistance

The new American Recovery and Reinvestment Act provides premium assistance to help involuntarily unemployed workers purchase their employer's COBRA or other continuation coverage. Under the Act, eligible unemployed workers will only need to pay 35 percent of premiums to continue the health coverage that they had through their jobs, and the federal government will reimburse employers or health plans for the remaining 65 percent of premium charges for up to nine months. People are eligible for premium assistance if they lost their jobs between September 1, 2008 and December 31, 2009, have annual income that does not exceed \$125,000 for individuals and \$250,000 for families, and have a right to continued health coverage under COBRA or another law. This fact sheet provides an overview of the new law and discusses action some states may need to take in order to ensure that workers losing jobs in small businesses will be able to receive the federal assistance.

What are COBRA and other continuation coverage laws?

COBRA is a federal law that allows people leaving jobs in businesses with 20 or more workers to continue receiving coverage through their former employer's health plan, generally for up to 18 months (longer in some circumstances). The right to continue coverage applies to both workers and their dependents—a worker can elect to continue coverage for just the worker, the entire family, or just certain family members. Normally, people must pay the full cost of premiums (including both the employer and employee share) plus a small administrative fee of up to 2 percent of premiums to get COBRA benefits. The Recovery Act provides up to nine months of premium assistance to people eligible for federal COBRA benefits, so that they will only pay 35 percent of premiums during that time.

People losing state or federal government jobs are generally eligible to continue their coverage under other laws similar to COBRA. They will also be able to receive premium assistance.

Many states have laws known as "state continuation" or "mini-COBRA" laws. These laws help workers in businesses with fewer than 20 workers continue their health coverage if they lose their jobs. Such state continuation laws require small group health plans to provide continued coverage to unemployed workers as long as they pay both the employer and employee share of the premium. In some states, these laws mirror the federal COBRA law. In other states, they provide shorter periods of continued coverage or fewer benefits, and in some states, workers losing jobs in small businesses are not able to continue their health plans at all. The Recovery Act will also provide premium assistance to involuntarily unemployed workers who receive continued coverage under state programs, but only those that are "comparable" to COBRA.

What should states do now?

States should make sure they have a mechanism in place to enable workers leaving small firms to continue their health coverage so that these workers will be able to receive premium assistance. The law says that premium assistance will apply to "a State program that provides comparable continuation coverage [to federal COBRA]." (States are defined to include the District of Columbia and the territories.)

The following states do not currently require continuation coverage (mini-COBRA) for small businesses: Alabama, Alaska, Arizona, Delaware, Idaho, Indiana, Michigan, Montana, Pennsylvania, Virginia, and Washington. (In Arizona and Virginia, insurers have the option of offering either continuation or conversion to an individual policy rather than requiring continuation coverage. In Washington, insurers are required to offer employers the option of having a continuation coverage provision; however, continuation coverage is not mandated in group policies, so employers may offer plans that do not provide continuation coverage.) These states should enact laws providing continuation coverage for at least nine months for people leaving jobs in small businesses, enabling these unemployed workers to qualify for federal subsidies. (We do not have information on programs in the territories.)

* The following states and the District of Columbia have state continuation (mini-COBRA) laws for small businesses, but the laws currently provide only a short period of continued coverage for laid-off workers: Arkansas, District of Columbia, Georgia, Hawaii, Kansas, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, Texas, Utah, and Vermont. (Information from researchers at Georgetown University Health Policy Institute, compiled in 2007.) These states should extend required periods of continuation coverage to at least nine months so that workers losing jobs in

small businesses will be able to get the full nine months of premium subsidies provided by the federal government.

- * All states with continuation coverage (mini-COBRA) laws should amend their laws as needed to give workers laid off from small firms after September 2008 a new opportunity to enroll in the continuation plan now that premium assistance is available. (People eligible for federal COBRA will have a new 60 day opportunity to enroll. This will be important to people who could not afford COBRA before, but who can afford COBRA with premium assistance.)
- * States should also determine if they can build onto this new assistance program to provide deeper help to low-income unemployed workers. Even with the federal subsidy, some of these workers will not be able to afford their share of premiums. States may be able to assist paying the remaining 35 percent of premiums for low-income unemployed workers.

Further, as of this writing, rules and guidance are not yet available that spell out what state programs will count as providing "comparable continuation coverage." States may wish to explore with the federal government, for example, whether a public coverage program to assist low-income unemployed workers not eligible for Medicaid could meet this definition or whether programs to provide coverage when an employer goes completely out of business and discontinues its health plan can count.

Summary of Premium Assistance Provisions of the Recovery Act

Who's eligible for assistance?

People who were eligible for COBRA, state continuation benefits, or continuation of a federal or state employees' health plan due to involuntary job loss between September 1, 2008 and December 31, 2009 and whose income does not exceed \$125,000 for individuals and \$250,000 for families are eligible for premium assistance. The subsidy can cover the worker and/or the worker's spouse, partner, or dependents that had coverage under the health plan.

How will people with high-incomes be kept from getting the premium assistance? Does the employer or health plan have to determine income eligibility?

No, the employer or health plan does not need to determine income eligibility. If a person with adjusted gross income above the limits receives premium assistance, he or she will gradually repay it when filing his or her tax returns. Alternatively, the person can waive premium assistance so that he or she will not have to repay.

How will people get premium assistance?

People will pay 35 percent of the cost of their premiums to their former employer's health plan. The employer or health plan will be reimbursed for the remaining 65 percent by deducting this amount from the payroll taxes it would otherwise pay the federal government. If it is owed more than it can deduct, the employer or health plan will receive a refund or credit from the federal government. The employer or health plan must attest that each person receiving premium assistance was involuntarily terminated from a job.

Can people use the assistance for a cheaper health plan than they had when they were working?

If their employer offers more than one health plan to employees, the employer can allow people receiving the premium assistance to switch to the lower-cost plan. However, the lower-cost plan must be a full health plan—it cannot be one that covers only dental, vision, counseling services, referral services, or care only at the employer's on-site medical facilities, nor can it be just a flexible spending account. People have 90 days to switch plans after getting notice of this option.

When does the assistance begin?

The law says that for any period of coverage after the date of enactment (February 17, 2009), COBRA coverage for an eligible individual is considered paid if the "individual pays (or a person other than such individual's employer pays on behalf of such individual), 35 percent of the amount of such premium...." However, it may take a while for the federal agencies implementing the law to notify employers and health plans of the new requirements and issue guidance and regulations. The U.S. Department of Labor (DOL) will provide updates on its Web page, www.dol.gov/ebsa, and consumers will eventually get notices from their health plans or employers. Consumers unsure about the amount of premiums they should pay meanwhile should contact DOL.

What if someone pays full premiums after this law is enacted when they are entitled to the premium assistance?

For the first or second period that COBRA premiums are due after the law is enacted, if a person pays full premiums, he or she is entitled to reimbursement of the excess amount from the employer or health plan or to a credit towards future premiums.

What about people who lost jobs after September but before the law was enacted?

People who lost jobs after September but who did not elect COBRA before will have a new 60-day period to elect COBRA after they get notice about available help. Their former employer or former group plan administrator has 60 days after the law is enacted to provide them with such notice. The Department of Labor has 30 days to develop model notices for this purpose—so altogether, it might take until mid-May for individuals who have already lost jobs to receive notice of their eligibility for help, and then they will have another 60 days to elect COBRA.

Will people be subject to a new pre-existing condition exclusion period if they did not elect COBRA until premium assistance was available?

No. The law does not count the period before assistance was available as part of a "break in coverage" that would subject a person to pre-existing condition exclusions.

How long does the assistance last?

The person will get help paying their premium until the earliest of the following:

1. They are eligible for another group health plan through an employer, and can be covered under that plan. (They MUST notify the first plan at this time. If they fail to notify their health plan when they are eligible for other coverage and no longer entitled to premium assistance, they may be required to pay back the excess premium assistance plus a 10 percent penalty.)
2. They have received the subsidy for nine months.
3. Their COBRA period ends.

Will receipt of premium assistance reduce other income-based government benefits?

No. Programs such as food stamps, energy assistance, etc. that provide support to people with low incomes are not allowed to count the COBRA premium assistance as income.

How will people find out about premium assistance?

Currently, when people leave jobs with 20 or more workers, their employer or health plan provides a notice about their COBRA rights. These notices will be modified to include information about COBRA premium assistance. The U.S. Department of Labor, U.S. Department of Health and Human Services, and the U.S. Treasury Department will also develop notices for other employers to give to their employees about premium assistance for state continuation plans and continuation plans for government workers. The notices will explain how to apply and whom to contact.

People who left jobs after September 1, 2008 and who did not elect COBRA before the Recovery Act was passed will also receive notices from their former group health plan or health plan administrator informing them of the availability of COBRA premium assistance.

Additionally, the Departments of Labor, Health and Human Services, and Treasury will conduct outreach and post information on their Web sites.

What if people are denied assistance—can they appeal?

If a person requests premium assistance for COBRA and is denied, they can ask the Department of Labor to review the decision. If a person requests premium assistance for state-continuation benefits or continuation under a plan for government workers and is denied, they can ask the Department of Health and Human Services to review the decision. The appropriate Department, in consultation with the Department of the Treasury, will make a determination within 15 days.

What data will be collected and shared with Congress about this program?

The Departments charged with administering the program will provide an interim and final report to Congress on the number of people receiving assistance, expenditures for the program, and the final report will include average monthly and annual payments made for individuals receiving the COBRA subsidy.

Where can I get more information?

The Employee Benefits Services Administration (EBSA) of the U.S. Department of Labor will post updates on its Web page as it promulgates guidance, regulations, and model notices. You can subscribe to the page to receive updates on www.dol.gov/ebsa. The entire Recovery Act is posted on http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_record&docid=cr12fe09-146 (see Division B, Title III for COBRA premium assistance).