



Helpful Information About State Continuation Coverage (“Mini-COBRA” Programs) and the American Recovery and Reinvestment Act of 2009 (ARRA)

The American Recovery and Reinvestment Act of 2009 (ARRA) provides premium assistance for certain individuals receiving COBRA continuation coverage. The term “COBRA coverage” generally refers to health coverage under the federal law continuation of coverage provisions added to ERISA, the Internal Revenue Code and the Public Health Service Act by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium assistance applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to 9 months.

COBRA Continuation Coverage under Comparable State Mini-COBRA Programs: Under the ARRA, COBRA Continuation Coverage is defined as continuation coverage provided pursuant to ERISA (generally for private sector employers with 20 or more employees), the Public Health Service Act (for non-federal governmental employers with 20 or more employees), Title 5 of the US Code (for federal employees) or under a State program that provides comparable continuation coverage (generally covering private employers with fewer than 20 employees). These State programs generally are referred to as State mini-COBRA programs. In order to be comparable, a State program must provide a right to continue coverage under an employer’s group health plan that is substantially similar to what was provided when the individual was employed and at a monthly cost that is based on a specified percentage of the group health plan’s cost of providing such coverage.

This document includes answers to Frequently Asked Questions (FAQs) about the interaction of the ARRA and State “Mini-COBRA” programs. Thus, the FAQs below are directed towards the State regulators of such programs, the employers and health insurers that administer these programs, and the individuals eligible for these programs.

For general information about COBRA coverage and changes to COBRA under the ARRA, please visit the Department of Labor’s website at: www.dol.gov/COBRA. There you can find more information about who is considered to be an “assistance eligible individual,” the special COBRA election opportunity under ARRA, model notices and more.

Q1. Are beneficiaries of comparable State "mini-COBRA" programs eligible for the premium assistance provided by the ARRA?

Beneficiaries of comparable State mini-COBRA programs who meet the definition of an assistance eligible individual may be eligible for the premium assistance. An "assistance eligible individual" is the employee or a member of his/her family who:

- is eligible for COBRA continuation coverage at any time from September 1, 2008 through December 31, 2009;
- elects COBRA coverage; and
- is eligible for COBRA as a result of the employee's involuntary termination that occurred in the period from September 1, 2008 through December 31, 2009.

Individuals who meet this definition may receive premium assistance for periods of health care coverage beginning on or after February 17, 2009 and up to 9 months.

Q2. What types of State continuation coverage programs are covered under ARRA?

In order to be considered a comparable state continuation coverage program, a State must provide individuals the general right to continue coverage substantially similar to that previously provided under the employer's group health plan at a cost that is based on a specified percentage of the employer group health plan's cost of providing such coverage. In other words, the coverage program must be a continuation of group coverage under the same insurance policy at some specified limited percentage of group rates. In some cases, individuals are offered "conversion" coverage, which is an individual market product. Individuals who have such coverage are not eligible for premium assistance. In addition, state public health programs such as Medicaid or CHIP are not continuation coverage.

Q3. How would I find out if my State offers a continuation coverage program?

Contact your State department of insurance to learn more about whether such coverage is provided in your State. You can find a link to your State at:
http://www.naic.org/state_web_map.htm.

Q4. Are beneficiaries in comparable State continuation coverage programs eligible for the additional election period provided under ARRA?

No, beneficiaries in State continuation coverage programs are not eligible for the extended election period provided under the ARRA for those who experienced an involuntary termination from September 1, 2008 through February 16, 2009. However, a State may choose to provide an additional election period in its continuation coverage program for individuals involuntarily terminated from September 1, 2008 through February 16, 2009. If the State did take such action, those individuals who had experience an involuntary loss of employment in that time period and meet the definition of an assistance eligible individual could request premium assistance. Contact your State department of insurance for more information.

Q5. Does the ARRA change any State program requirements or time periods for the election of continuation coverage?

No. The ARRA does not change any state continuation coverage program requirements. However, the new law does provide the opportunity for qualified beneficiaries of the comparable state programs to receive premium assistance for up to 9 months. It also allows assistance eligible individuals to switch to other coverage offered to active employees if permitted by the employer, provided that the new coverage is no more expensive than the prior coverage.

Accordingly, if State law provides only a 10-day period for election of continuation coverage under a State program, that period is not changed by the ARRA. Similarly, if a State law only provides for a 6-month maximum length of continuation coverage under a State program, that maximum limit is also not changed by the ARRA.

Q6. Who would get the payroll tax credit for the 65 percent portion of the premium under the State programs?

The health insurance issuer providing the coverage to the group health plan would get the payroll tax credit once the individual beneficiary pays the 35 percent portion of the premium for the time period in question. The employer or group health plan cannot receive the tax credit under the State programs. For more information on the tax credit, go to www.irs.gov.

Q7. Are spouses and dependents considered qualified beneficiaries under a State program and therefore eligible for the premium assistance?

ARRA specifically references the definition of a qualified beneficiary under Section 607(3) of the Employee Retirement Income Security Act (ERISA). Under ERISA, a qualified beneficiary can only be a spouse or a dependent child of a covered employee, and both must generally have been covered under the employer's plan on the day before the qualifying event. (A special rule applies for children born to or adopted by a covered employee during a period of COBRA continuation coverage.) Accordingly, only a covered employee, his/her spouse, and his/her child(ren) can apply for a premium reduction.

Q8. Who has to notify the employees of the opportunity to elect the premium reduction?

Under the State programs, the issuer of the group health plan must provide qualified beneficiaries an election notice that contains information on how to request treatment as an assistant eligible individual. This election notice must be provided within timeframes specified under State law.

Q9. What can I do if my former employer's group health plan tells me that I do not qualify for the COBRA premium reduction?

If your health plan finds that you are not eligible for the premium reduction, you can ask for an expedited review of that decision from the Secretary of the Department of Labor or the Secretary of the Department of Health and Human Services. The Secretary is required to make a

determination regarding your appeal within 15 business days after receiving your request for review. The Department of Labor will handle appeals related to private sector employer plans that are subject to ERISA's COBRA provisions. The Center for Medicare and Medicaid Services (CMS) will handle appeals for Federal, State, and local governmental employees, as well as appeals related to state mini-COBRA plans. CMS expects to begin processing appeals no later than May 1, 2009, and will provide further information about where to submit appeals in the near future.

If you have other questions about State mini-COBRA programs, or other aspects of the new COBRA provisions, please send them to: NewCobraRights@cms.hhs.gov. We are monitoring these questions carefully and will provide answers to frequently asked questions on an ongoing basis. So, please check this site frequently for more information about the appeals process, as well as other needed updates.