



Revised Guidance Effective April 20, 2010

Federal Stimulus – COBRA Premium Assistance Information for Small Employers and Insurers Providing Coverage under State Continuation Coverage Law.

On April 15, 2010, President Obama signed into law an extension of the COBRA premium assistance that helps with the cost of health benefits for Americans who lost their jobs. This extension provides a COBRA premium subsidy for eligible individuals who are involuntarily terminated from employment through May 31, 2010. The COBRA subsidy, originally provided by the American Recovery and Reinvestment Act of 2009 (ARRA), has now been extended for the third time by the Continuing Extension Act of 2010. (CEA) The CEA extends the eligibility period for two months from March 31, 2010 to May 31, 2010. The COBRA premium subsidy period remains at 15 months. The CEA also provides retroactive eligibility for individuals who lost their jobs after the prior subsidy expired on March 31, 2010.

On February 25, 2010, Ohio Governor Ted Strickland signed House Bill 300 extending Ohio continuation (mini-COBRA) coverage from 12 months to 15 months in order to allow Ohioans who lose their jobs to take full advantage of the federal subsidies available to help pay for the cost of mini-COBRA. HB 300 included provisions to amend sections 3923.38 and 1751.53 of the Ohio Revised Code on a temporary basis. The extension of mini-COBRA coverage to 15 months is temporary and is available only for employees who are eligible for federal premium subsidies for mini-COBRA coverage. When those federal subsidies are no longer available to newly terminated employees, the temporary law will end, and group policies issued, delivered or renewed thereafter will return to offering 12 months of continuation coverage. For further information on the temporary extension of state continuation coverage see <http://www.insurance.ohio.gov/Legal/Bulletins/Documents/2010-01.pdf>.

The federal stimulus bill provides COBRA premium assistance to former employees covered under federal COBRA law and to former employees covered under state continuation coverage law. State continuation coverage is sometimes referred to as “mini-COBRA.” If an employer has fewer than 20 employees¹, those employees receive continuation coverage under the state continuation law rather than the federal law. The provisions of the federal stimulus bill are not identical for both groups. This fact sheet discusses the federal stimulus bill as it applies to state continuation coverage.

¹The state mini-COBRA law also applies to non-ERISA private and public employer self-insurance plans.

How long does the subsidy last under state continuation law?

In order to be eligible for the subsidy, the former employee must be eligible for state continuation coverage. Eligibility for state continuation coverage is set by the terms of the employer's group policy or plan. Group policies issued, delivered or renewed on or after February 25, 2010, are now required to offer 15 months of continuation coverage to individuals who are eligible for the federal premium subsidy and 12 months to individuals who are not. Depending upon the timing of the employer's group policy renewal, Ohioans may now be eligible to receive the entire 15 months of federal premium subsidy. Under federal law, the subsidy ends when a person is no longer eligible for state continuation coverage or when the individual becomes eligible for other group insurance, or Medicare (whichever comes first).

Do small employers in Ohio (those with fewer than 20 employees) have to notify employees at the time they are involuntarily terminated of the federal premium subsidy?

Ohio Revised Code §3923.38 requires small employers and non-ERISA public and private employer self-insurance plans to notify the employee of the right to continuation at the time the employee is notified of the termination of employment. The Department of Labor has provided a model Continuation Coverage Election Notice to be used to notify employees who terminated on or after Feb. 17, 2009, of their state continuation election opportunity as well as of the availability of the federal premium subsidy. The Department of Insurance has used the model notice provided by the Department of Labor and modified it to comply with Ohio law. The notice can be found on the Ohio Department of Insurance web site and can be obtained through this link:

<http://www.insurance.ohio.gov/Consumer/Documents/COBRAalternativenotice%20OH%20for%20newly%20terminated%20employees.doc>.

Will small employers, those with less than 20 employees, have to pay the 65% of the state continuation coverage premium not paid by the former employee?

No. Small employers will not be obligated to pay any portion of the premium. The former employee will pay 35% of the premium and the insurance company will claim the credit from the IRS for the 65% of the premium not paid by the former employee.

Who is eligible for coverage under the state continuation law?

In order to be eligible under the newly revised state continuation law, an employee must have been:

- (1) continuously insured under a group policy during the 3 month period preceding the termination of employment;
- (2) involuntarily terminated for reasons other than gross misconduct;

(3) not covered or eligible for coverage under Medicare; or under other group coverage.

An employee should check the terms of the employer's group insurance coverage to determine what continuation benefits the employee is entitled to.

If an employee elects state continuation coverage and the employer then renews the policy on or after February 25, 2010 is the employee entitled to the benefits in the new policy?

Yes. Any changes made to the terms of the coverage that apply to similarly situated active employees and their families will also apply to qualified beneficiaries receiving state continuation coverage. The employer's renewed policy should include 15 months of continuation coverage. A former employee who has already elected state continuation coverage is entitled to the additional months of coverage under the renewed policy minus the number of months already used. For example, a former employee who had used 8 months of state continuation eligibility at the time the employer's policy renewed would be entitled to an additional 7 months of eligibility under the renewed policy.

When did the federal premium assistance law become effective?

The ARRA law became effective on February 17, 2009, the DDAA extension became effective on December 19, 2009, the Temporary Extension Act of 2010 became effective on March 2, 2010 and the Continuing Extension Act of 2010 became effective on April 15, 2010.

Is the insurer required to accept the employee's 35% premium payment as payment in full?

Yes. The insurer is required to accept the 35% payment as payment in full for continuation of the group coverage for the former employee. The insurer will claim the unpaid 65% of the premium as a credit against payroll tax owed on IRS Form 941.

What other information is the insurer likely to request from the small employer?

Small employers may be asked to provide the insurance company with information to verify the former employees' eligibility under the statute. Such documentation may include:

- Attestation of involuntary termination, including the date of the involuntary termination for each covered employee whose involuntary termination is the basis for eligibility for the subsidy;
- Proof of each former employee's eligibility for state continuation coverage and election of state continuation coverage; and
- Request for treatment as an assistance eligible individual.

What if there is a disagreement as to whether a former employee is eligible for group

continuation coverage?

Former employees may contact the Department of Insurance if they believe the insurance company is not complying with state group continuation coverage rules. To contact the Department of Insurance call 1-800-686-1526. In order to formally appeal a denial of premium assistance contact the CMS-sponsored premium assistance continuation coverage help desk toll-free at (866)400-6689 or via e-mail at continuationcoverage@maximus.com.

What other agencies will provide information about the COBRA subsidy?

Information about the COBRA subsidy will also be available through the Department of Labor and the Department of Health and Human Services, which, along with the IRS, share responsibility for the COBRA requirements.

Visit the Department of Labor Web site at <http://www.dol.gov/ebsa/cobra.html> for information related to COBRA eligibility and the subsidy. Benefits Advisors are also available to assist you at 1-866-444-3272.

Visit the IRS [COBRA Health Insurance Continuation Premium Subsidy](#).

Visit the IRS to find Information Related to Tax Provisions in the American Recovery and Reinvestment Act of 2009 at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

Visit CMS for additional information on appealing a denial of premium assistance at <http://www.cms.hhs.gov/COBRAContinuationofCov/>

Contact the Ohio Department of Insurance (<http://www.insurance.ohio.gov/>) for questions regarding the state continuation law at 1-800-686-1526.