



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

The American Recovery and Reinvestment Act of 2009 (ARRA) provides premium assistance for certain individuals receiving COBRA continuation coverage. The term “COBRA continuation coverage” generally refers to health coverage under the Federal 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. As amended on December 19, 2009 by the Department of Defense Appropriations Act, 2010 (2010 DOD Act), ARRA now provides premium assistance that applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to 15 months.

COBRA Continuation Coverage under Comparable State Mini-COBRA Programs

Under ARRA, COBRA Continuation Coverage is defined as continuation coverage provided pursuant to ERISA and the Internal Revenue Code (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 U.S. 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 addresses frequently raised questions about the interaction of ARRA and State “Mini-COBRA” programs. Thus, the information below is directed toward State regulators of those programs, the employers and health insurers that administer those programs, and the individuals eligible for those programs.

Our fact sheet, “Helpful Information for Beneficiaries Receiving COBRA Premium Assistance under the American Recovery and Reinvestment Act (ARRA), As Amended,” provides some information on the 2010 DOD Act extensions, while number 5 of this document addresses how the retroactivity provisions may apply to beneficiaries covered by State programs. You can find the fact sheet at the following websites: CMS website (<http://www.cms.hhs.gov/COBRAContinuationofCov/>) or CMS-sponsored website (<http://www.continuationcoverage.net/>).

For general information about COBRA coverage and changes to COBRA under the ARRA, please visit the Department of Labor's website at: <http://www.dol.gov/ebsa/COBRA> . There you can find information about who is considered to be an "assistance eligible individual," model notices and more.

1. Are beneficiaries of comparable State "mini-COBRA" programs eligible for the premium assistance provided by 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 under all of the following conditions :

- The individual is eligible for continuation coverage related to a qualifying event occurring at any time from September 1, 2008 through February 28, 2010;
- The individual elects continuation coverage; and
- The qualifying event that made him or her eligible for continuation coverage was the covered employee's involuntary termination of employment.

Individuals who meet this definition may receive premium assistance for periods of health care coverage beginning on or after February 17, 2009 for up to 15 months.

2. 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.

3. 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.

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

No. ARRA does not change any State continuation coverage program requirements. However, the law does provide the opportunity for qualified beneficiaries of the comparable State

programs to receive premium assistance for up to 15 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 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 ARRA.

5. Are beneficiaries in comparable State continuation coverage programs eligible for the retroactive election coverage period provided under ARRA, as amended by the Department of Defense Appropriations Act, 2010 (2010 DOD Act)?

Yes. The 2010 DOD Act extends retroactivity to all assistance eligible individuals covered under “COBRA continuation coverage,” a term which, pursuant to section 3001(10)(B) of ARRA, includes continuation coverage provided “under a State program that provides comparable continuation coverage.” Accordingly, so long as the State program requires comparable continuation coverage, beneficiaries are eligible for retroactive election coverage. This means if the beneficiary was covered under State continuation coverage prior to December 19, 2009 and ceased coverage because his or her premium assistance expired, he or she could resume the coverage by paying 35 percent of the premium for the prior months by no later than 60 days after December 19, 2009, or, if later, 30 days after receiving notice regarding the right to resume premium assistance coverage from the issuer or employer. Those beneficiaries who continued the coverage by paying 100 percent of the premium will be entitled to a credit for, or reimbursement of, 65 percent of the premium for the months paid. ARRA, as amended, however, does not supersede other provisions of State law, including the length of continuation coverage (i.e., if the State provides for 6 months of continuation coverage, the 2010 DOD Act does not extend that coverage to 15 months).

6. 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. Employers or group health plans cannot receive the tax credit under the State programs. For more information on the tax credit, go to (www.irs.gov/newsroom/article/0,,id=204505,00.html).

7. 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) qualify for a premium reduction.

8. 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 assistance eligible individual. This election notice must be provided within time frames specified under State law.

9. What steps can a former employee take if the group health plan tells decides that the former employee does not qualify for the COBRA premium reduction?

If a health plan finds that a former employee is not eligible for the premium reduction, the former employee 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 the appeal within 15 business days after receiving the request for review. The Department of Labor handles appeals related to private sector employer plans that are subject to ERISA's COBRA provisions. The Centers for Medicare and Medicaid Services (CMS) handles appeals for Federal, State, and local governmental employees, as well as appeals related to State mini-COBRA plans. A former employee may obtain a CMS appeals form, Request for Review if You Have Been Denied Premium Assistance, at the following CMS-sponsored website: <http://www.continuationcoverage.net/>.

Completed forms may be sent to:

MAXIMUS Federal Services, Inc.
COBRA--Continuation Coverage
Assistance Appeals Project
800 Cross Keys Office Park
First Floor - Suite 822
Fairport, New York 14450

Alternatively, a former employee can fax the form, toll-free, to (866) 941-0170. To confirm receipt when faxing, please call the toll-free number (866) 400-6689.

For other questions about State mini-COBRA programs, other aspects of the new COBRA provisions, or assistance in completing the form, please contact the CMS-sponsored premium assistance continuation coverage help desk via e-mail at continuationcoverage@maximus.com or call toll-free at (866) 400-6689. Staff members are available to help from 8 a.m. until 8 p.m. ET.

