

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

BULLETIN NO. 5-2009

TO: ALL LICENSED INSURANCE COMPANIES, HEALTH MAINTENANCE ORGANIZATIONS, HOSPITAL MEDICAL SERVICE CORPORATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND OTHER INTERESTED PARTIES,

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: FEDERAL STIMULUS BILL - GROUP HEALTH COVERAGE CONTINUATION SUBSIDY

DATE: MARCH 25, 2009

On February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act, commonly called the "Stimulus Plan Act." The Stimulus Plan Act provides a subsidy that may reduce by 65% the cost of COBRA and other state group continuation coverage for workers who lose their jobs.

The purposes of this bulletin are (1) to provide information about the subsidy provided by the Stimulus Plan Act to Arkansas citizens who have lost group health coverage due to an involuntary termination of employment and (2) to notify insurance companies and health maintenance organizations ("insurance carriers") of their obligations in connection with the group continuation coverage mandated by Arkansas law, A.C.A. §23-86-114 ("state group continuation coverage") resulting from the Stimulus Plan Act.

THE SUBSIDY PROVIDED BY THE STIMULUS PLAN ACT

What Are Group Coverage Continuation Laws?

Group coverage continuation laws require employers to offer employees who lose group coverage the opportunity to continue their employer-based health insurance. COBRA is the federal law that requires employers with 20+ employees to provide group continuation coverage. The Arkansas state continuation coverage law requires insurance carriers providing group health coverage to employers not subject to COBRA to provide group continuation coverage for a period of up to 120 days after the termination of an employee's coverage under a group health plan.

When an Employee Loses Group Coverage and Elects Continuation, Who Pays the Premium?

The employee who lost group coverage, not the employer, must pay the entire health insurance premium.

What does the Stimulus Plan Provide?

The American Recovery and Reinvestment Act provides a 65% subsidy of the premium former employees pay for either federal COBRA group continuation coverage or state group continuation coverage. Note that the Stimulus Plan Act only applies the subsidy to continuation resulting from involuntary termination of employment. Group continuations resulting from divorce, legal separation or loss of dependency are not subject to the subsidy.

Who is Eligible for Subsidized Coverage under the Stimulus Plan Act?

Individuals who lose group health coverage because of an involuntary termination (“former employees”) between September 1, 2008, and December 31, 2009, are eligible for a 65% federal subsidy of their federal COBRA continuation coverage premiums for up to 9 months. Those former employees who elect state group continuation coverage are eligible for the 65% federal subsidy of their state group continuation coverage premium for up to 120 days.

The law imposes an income threshold as an additional condition on an individual’s entitlement to the premium subsidy. An individual is not entitled to benefit from the subsidy if the individual’s income exceeds \$145,000 (or \$290,000 for joint filers). A reduced subsidy is available for individuals between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers). The mechanism for denying the credit is imposed on the qualified beneficiaries’ tax returns via a recapture tax.

How Do Individuals Obtain the Subsidy?

Federal COBRA Continuation: Employers are required to send forms to former employees so that former employees can elect to continue their group coverage and receive the subsidy. Former employees will have 60 days after receiving the forms to enroll. Further details about enrollment will be provided by the federal Department of Labor. For the most up-to-date information, contact the Department of Labor at 1-866-444-3272 or visit the agency’s website (<http://www.dol.gov/ebsa/COBRA.html>).

State Group Continuation Coverage: Insurance Carriers shall send a copy of this bulletin to each of their employer group health plan policyholders that are subject to the Arkansas law on continuation of coverage. Employers shall send a copy of this bulletin along with the Arkansas State Group Continuation Coverage Election Form to former employees who were not eligible for Federal COBRA continuation, but are eligible for continuation of coverage under the Arkansas law. Former employees that elect continuation of coverage under the Arkansas law may be eligible for the subsidy on their continuation premium. Former employees must contact the insurance company to continue their coverage and receive the subsidy. Insurance Carriers shall begin charging 35% of the state group continuation coverage premium to former employees whose state group continuation coverage was in effect or becomes effective between March 1 and December 31, 2009. Insurance companies should make every effort to allow former employees the opportunity to elect state continuation coverage and to receive the subsidy even if the former employees fail to notify them within the ten day period required by law.

When Will Eligible Individuals First Receive the Subsidy?

The subsidy will be applied to premiums for the first period of coverage beginning on or after February 17, 2009. For most individuals, the first period of subsidy-eligible coverage will begin March 1, 2009. The subsidy is prospective (*i.e.*, the Stimulus Plan Act does not subsidize group continuation coverage prior to the first period of coverage on or after February 17, 2009).

NOTE: Individuals who have already paid premiums for a period of coverage to which the subsidy applies are entitled to a refund or credit from their employer for the subsidy amount.

How will the Subsidy be Applied to Group Continuation Coverage?

COBRA Continuation: Former employees who qualify for the subsidy will only be required to pay 35% of the group coverage continuation premium. The former employer initially pays the remaining 65%, but the government will later reimburse the employer through a reduction in payroll taxes. Former employees will not be required to pay the full group coverage continuation premium and then seek a refund.

State Group Continuation Coverage: Former employees who qualify for the subsidy will only be required to pay 35% of the group coverage continuation premium. The insurance carrier will provide state continuation coverage and the federal government will later reimburse the insurance carrier for the 65% subsidy through a reduction in the insurance carrier's federal payroll taxes. Former employees will not be required to pay the full group coverage continuation premium and then seek a refund.

Will Eligible Individuals Who Previously Terminated or Declined to Elect Group Continuation Coverage Have Another Opportunity to Elect Group Continuation Coverage and Receive the Subsidy?

COBRA Continuation: If the eligible individual's employment was involuntarily terminated on or after September 1, 2008, and he or she initially declined to elect COBRA continuation coverage, or elected COBRA continuation coverage and later stopped paying premiums, the former employer must notify the former employee of an additional opportunity to elect COBRA continuation coverage and receive the subsidy. The former employee will have 60 days to enroll after receiving notification from his or her former employer. He or she must pay the initial premium (35% of the COBRA continuation premium) within 45 days of making the election to commence the COBRA continuation coverage.

State Group Continuation Coverage: If the eligible individual's employment was involuntarily terminated on or after February 17, 2009, and he or she initially declined to elect state group continuation coverage, or elected state group continuation coverage and later stopped paying premiums, the former employer must notify the former employee of an additional opportunity to elect state group continuation coverage and receive the subsidy. The former employee will have 10 days to enroll after receiving notification from his or her former employer. He or she must pay the initial premium (35% of the state group continuation premium) within 10 days of making the election to commence the state group continuation coverage.

Does the Stimulus Plan Act Extend the Length of Available Group Continuation Coverage?

The Stimulus Plan Act does not change the length of time that group continuation coverage must be provided to eligible individuals: COBRA typically provides for up to 18 months of coverage, while the state group continuation law provides for up to 120 days of coverage.

Can an Individual Lose Eligibility for the Group Continuation Subsidy?

COBRA Continuation: A former employee can lose eligibility for the COBRA continuation subsidy in two ways. First, the subsidy for COBRA continuation lasts no longer than 9 months. Second, the former employee becomes ineligible for the subsidy when he or she becomes eligible for new group health coverage or Medicare.

- Former employees must notify their former employer when they become eligible for new group health coverage.
- Former employees who willfully neglect to notify their former employer of their eligibility for a new group health plan must repay 110% of the subsidy to the federal government. No such penalty shall be imposed if the former employee demonstrates “reasonable cause” for the failure.

NOTE: Rules governing eligibility for subsidized COBRA differ from rules governing eligibility for unsubsidized COBRA. Eligibility for unsubsidized COBRA ends only when a beneficiary enrolls in new group coverage or Medicare. However, simply being eligible for new group health coverage disqualifies an individual from receiving the COBRA subsidy.

State Group Continuation Coverage: A former employee can lose eligibility for the state group continuation coverage subsidy in two ways. First, the subsidy for state group continuation coverage and the coverage itself lasts no longer than 120 days from the date he or she lost coverage due to involuntary termination of employment. Second, a former employee becomes ineligible for the subsidy when he or she becomes eligible for new group health coverage or Medicare.

- Former employees must notify their former employer when they become eligible for new group health coverage.
- Former employees who willfully neglect to notify their former employer of their eligibility for a new group health plan must repay 110% of the subsidy to the federal government. No such penalty shall be imposed if the former employee demonstrates “reasonable cause” for the failure.

OBLIGATIONS OF INSURANCE CARRIERS WITH RESPECT TO STATE GROUP CONTINUATION COVERAGE

Insurance Carriers shall send a copy of this bulletin to each of its group health plan policyholders subject to the state continuation of coverage law.

Insurance Carriers shall provide state group continuation coverage to former employees of group health plan policyholders who elect such coverage and whose right to state group continuation coverage has not expired (e.g. a reason for expiration is that more than 120 days have passed since the termination of the former employee’s group health plan coverage).

Insurance Carriers shall begin charging 35% of the state group continuation coverage premium to former employees whose state group continuation coverage was in effect or becomes effective between March 1 and December 31, 2009.

UPDATES

This bulletin focuses on the subsidies and changes to COBRA continuation and state group continuation coverage resulting from the Stimulus Plan Act. Additional information will be forthcoming as a result of the adoption of guidelines and regulations by the three federal agencies (Department of Labor, Department of Health and Human Services and Internal Revenue Service) that are charged with implementing the provisions of the Stimulus Plan Act. For the latest updates, please refer to the Arkansas Insurance Department website, <http://insurance.arkansas.gov>, or call the Arkansas Insurance Department Consumer Services Division at (501) 371-2640 or (800) 852-5494.

(signed by Jay Bradford)

(signed March 25, 2009)

JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS

DATE

**SUBMIT THIS FORM TO: [Insert Insurer Name ,
Address & telephone number]**

Arkansas State Group Continuation Coverage Election Form

Employee's Name: _____ ID #: _____

Dependent Name(s): _____ Former Employer: _____

_____ Insurer _____

_____ Group #: _____

The State of Arkansas Continuation Law (A.C.A. §23-86-114) allows a former employee or former dependent to extend their group health insurance coverage for up to one hundred twenty (120) days. In order to be eligible for this option, the former employee or dependent must have been continuously covered under the group health insurance policy for at least three (3) consecutive months prior to employment termination or change in dependency status and must make the election by notifying the insurer no later than 10 days after employment termination or change in dependency status. The group health insurance premium must be paid in full by the former employee or dependent to the employer (policyholder) as specified below. ***In the event extension of coverage is due to involuntary termination of employment on or after February 17, 2009 and prior to December 31, 2009, the insurance premium due from the former employee will be 35% of the group health insurance premium.*** Failure to pay this premium will result in cancellation of coverage for the employee and/or any dependents.

- I, _____, wish to continue my group health insurance coverage under the State of Arkansas Continuation Law beginning __/__/__.

- I am requesting continuation of my group health insurance coverage because of involuntary termination of employment.

The premium amount of \$ _____ must be paid on the first of each month to my former employer beginning __/__/__ or my coverage will be terminated. ***If continuation is due to my involuntary termination of employment on or after February 17, 2009 and prior to December 31, 2009, the insurance premium due from the former employee will be 35% of the above stated premium amount.*** This continuation of coverage shall terminate on the earliest of:

- One hundred twenty (120) days after the extended coverage begins;
- The date the former employee or dependent fails to make any premium payments to the former employer or the date the former employer fails to pay the premium to the insurer;
- The date on which the former employee or dependent becomes eligible for Medicare;
- The date on which the former employee or dependent is covered for similar benefits under another group or individual policy;
- The date on which the former employee or dependent is eligible for similar benefits under another group plan whether insured or uninsured;
- The date on which similar benefits are provided for, or available to, the former employee or dependent under any state or federal law; or
- The date on which the group policy terminates.

- I have read the statements above and do not wish to continue group health insurance coverage under the State of Arkansas Continuation Law (A.C.A. §23-86-114), for myself and/or any eligible dependents.

Signature of Employee

Date of Signature

Signature of Group Administrator

Date of Signature