

PENNSYLVANIA MINI-COBRA FAQ's

For Small Employer Group Health Policies (effective July 10, 2009)

On June 10, 2009 Governor Ed Rendell signed an act to help address the growing need to extend health care options for those newly unemployed. Employees laid off by small employers are now eligible for state Mini-COBRA continuation coverage. Before this new law, only employees working for companies employing more than 20 people were eligible for federal COBRA continuation coverage to extend health coverage under their employer's insurance plan. The following FAQ's were recently published by the Pennsylvania Department of Insurance to provide guidance to recently unemployed individuals and Pennsylvania employers.

Mini-COBRA Defined

- *What is "Mini-COBRA"?*

Mini-COBRA, or Act 2 of 2009, is a new law in Pennsylvania that gives employees of small businesses (2-19 employees) who receive health insurance from their employers the right to purchase continuation health insurance after they leave employment. It allows eligible employees and dependents to purchase health insurance for nine months after their employment ends.

- *Why is it called "Mini-COBRA"? Is it different from federal COBRA?*

Mini-COBRA is modeled after the federal COBRA law, but with some important differences. The federal COBRA law allows employees at larger businesses (20 or more employees) to purchase continuation health coverage after they leave employment for 18 months (or, in some cases, 36 months) after their employment ends. Pennsylvania's Mini-COBRA applies to employees of smaller businesses (2-19 employees) and it is for a shorter length of time (nine months).

- *What is the effective date of the Mini-COBRA act?*

The act goes into effect July 10, 2009.

Eligibility

- *Who is eligible for Mini-COBRA continuation coverage?*

Covered employees and their eligible dependents who lose group health insurance coverage through a small employer as a result of a "qualifying event" are eligible for Mini-COBRA continuation coverage. The covered employees and eligible dependents must have been continuously insured under the group policy or for similar benefits under any group policy which it replaced, for three consecutive months ending with the employee's termination.

- Also, continuation coverage is not available for anyone who is covered or is eligible for coverage under

Medicare; who fails to verify that he is ineligible for employer-based group health insurance as an eligible dependent; or is or could be covered by any other insured or uninsured group health coverage arrangement and under which the person was not covered immediately prior to such termination (this last condition excludes Medical Assistance, CHIP and adultBasic).

- *What is a "qualifying event"?*

A qualifying event is an event that would result in the loss of coverage for the covered employee or eligible dependent, including:

- death of the covered employee,

- o termination of employment (either voluntary or involuntary, but not for the employee's gross misconduct),
 - o reduction in hours,
 - o divorce or legal separation,
 - o eligibility for Medicare,
 - o dependent child ceasing to be dependent,
 - o bankruptcy of the employer.
- *When will an employee be eligible for Mini-COBRA?*

An employees whose group coverage terminates on or after July 10, 2009 will be eligible for Mini-COBRA.

- *Does Mini-COBRA apply to someone whose employment is ended (i.e., the qualifying event occurs) before the effective date of the act, July 10, but whose employer is providing group coverage (keeping him on the employer's policy) until after the effective date of the Act?*

The trigger for Mini-COBRA benefits is the date the employee's insurance coverage terminates. If that date is after the effective date of the act, the employee and eligible dependents will be entitled to Mini-COBRA benefits. This is the case even if the qualifying event is before the effective date of the act.

- *Can Mini-COBRA coverage be denied to me if I have a serious illness?*

No, an employee or dependent who is eligible for Mini-COBRA coverage may not be discriminated against on the basis of any evidence of lack of insurability.

- *If I am on Mini-COBRA and then become eligible for Medicare or a new employer's health insurance coverage, must I give up the Mini-COBRA coverage?*

Yes. You are no longer eligible for Mini-COBRA if you are eligible for Medicare or another group plan.

- *Does a Mini-COBRA participant have open enrollment rights if the nine months of continuation health insurance overlaps an open enrollment period?*

A Mini-COBRA recipient is only entitled to receive continuation coverage for nine months, parallel to the coverage received under the group policy.

Notice Requirements

- *How will employers find out about this new law?*

The law requires insurance companies to notify policyholders (employers) of the new law within 45 days of the effective date, or by August 24, 2009. After that, the Mini-COBRA requirement will be included in new policies and renewals.

- *Is there any requirement that the insurance company or employer notify the employees of this change in their health insurance coverage?*

Prior to the "qualifying event" notice (see the eligibility section), there is no requirement that employers notify employees of their rights under this new law. However, the terms of the employer's contract with the insurance company may contain specifics dealing with notice of policy changes.

- *If an employee is terminated, how will he find out about his rights under the Mini-COBRA law?*

When health coverage ends due to a “qualifying event”, the employer must provide notice to the covered employee.

- *What is the timeframe for an employer to send this notice of a qualifying event to an employee?*

Under the Mini-COBRA law, an employer must give notice of a “qualifying event” – to the plan administrator (if different than the employer), the covered employee, and the insurance company – within 30 days of the “qualifying event”.

- *Is a “Model Language Notice” going to be released for employers to use in communicating options to employees?*

Yes. The Pennsylvania Insurance Department and Department of Labor & Industry are working to have model notices available as soon as possible.

- *Will Pennsylvania’s Mini-COBRA law require a special “proof of mailing” like the federal COBRA program?*

The Mini-COBRA law does not specify how notices must be provided, but it is prudent to maintain proof of mailing in the event of any dispute about the timing or receipt of the notice.

Premium Assistance

- *Will employees eligible for Mini-COBRA continuation benefits be eligible for premium assistance under the federal stimulus law, known as ARRA (the American Recovery and Reinvestment Act of 2009)?*

Yes. The federal stimulus law provides that employees eligible for continuation coverage under comparable state Mini-COBRA laws may be eligible for premium assistance under the federal stimulus law. Act 2 of 2009 was written to be a comparable law so that Pennsylvanians working for small employers will be eligible for this premium assistance, as long as eligibility requirements are met. To be eligible, you must have been involuntarily terminated on or after the effective date of the act (July 10, 2009) and before January 1, 2010.

- *How can an employee apply for premium assistance?*

The notice an employer provides to an employee alerting him to the qualifying event and his right to Mini-COBRA continuation benefits will have a section on applying for premium assistance.

- *Will employees of small businesses terminated before July 10, but whose group coverage extends beyond July 10, be eligible for premium assistance under the federal stimulus law?*

No. The trigger for premium assistance is the date of the employee’s involuntary termination, even if group coverage is terminated at a later point. Note that because the premium assistance involves federal money, the final determination of eligibility for premium assistance rests with the federal Centers for Medicare and Medicaid Services.

- *How does the premium assistance work for an employee or dependent?*

If an employee or eligible dependent qualifies for premium assistance, he will be required to pay 35% of the premium amount for Mini-COBRA continuation coverage. He will not have to pay the remaining 65% portion; that portion is covered by the federal stimulus program.

- *Under the premium assistance program, will a small employer have to front any of the premium?*

No. A small business subject to the Mini-COBRA law that has a former employee eligible for premium assistance will not have to fund any of the premium assistance amount. The insurance company that provides health insurance for the employer will handle the financial arrangements, and will get a tax credit from the federal government for the 65% portion of the premium amount that the employee who is receiving premium assistance does not have to pay.

- *Should I apply for premium assistance if I think I'm going to get another job soon?*

If you expect to earn, over the course of the calendar year, more than \$125,000 (\$250,000 for a married couple filing a joint tax return), any premium assistance would be recaptured by an increase in your tax liability. To avoid that tax consequence, you may delay electing, or permanently waive, premium assistance if you think you might earn this amount.

- *If I am on Mini-COBRA and then become eligible for Medicare or a new employer's health insurance coverage, will I still be able to get premium assistance?*

No. You are no longer eligible for Mini-COBRA if you are eligible for Medicare or another group plan, and, if you are getting premium assistance for your Mini-COBRA, you must notify the insurance company to avoid being subject to a penalty of 110 percent (110%) of the amount of any premium assistance.

- *If I apply for premium assistance and am denied, may I appeal?*

Yes, you may appeal a denial of premium assistance to the federal Centers for Medicare and Medicaid Services (CMS). A form for that purpose can be accessed at www.ContinuationCoverage.net.

- *Will premium assistance be available if I am terminated on or after January 1, 2010?*

Currently, the federal stimulus law only extends the premium assistance law through December 31, 2009. However, Pennsylvania's Mini-COBRA law was written so that if the federal stimulus law is amended, premium assistance for eligible Pennsylvanians under the Mini-COBRA law will be available as long as the federal government allows.

- *After the premium assistance program ends, will I still be able to get Mini-COBRA benefits if my employment is terminated?*

Yes, the Mini-COBRA law was written so that Mini-COBRA will continue on even after the federal stimulus premium assistance program ends.

Timing for Electing Mini-COBRA Continuation Coverage

- *Once the employer gives an employee notice of his right to Mini-COBRA continuation coverage, how soon must the employee respond?*

The employee or employee's dependent must give notice to the administrator (who may be the employer) of his or her election within 30 days of receiving notice of the qualifying event.

- *What is the timeframe for the administrator to give notice to the insurance company of the employee's or eligible dependent's election of continuation coverage under Mini-COBRA?*

Once the administrator receives notice from the employee that he is electing Mini-COBRA, the administrator must in turn give notice to the insurance company of the employee's or dependent's election within 14 days of the election.

- *When does the continuation coverage begin? Is there a break in coverage between the end of the group coverage and the start of Mini-COBRA coverage?*

The continuation coverage will begin as of the date the prior group coverage ended. There will be no break in coverage.

Benefits and Payment for Mini-COBRA Continuation Coverage

- *Will the Mini-COBRA continuation coverage provide the same benefits as the group policy the employee had before coverage terminated?*

Yes, the continuation coverage must include any benefits provided under the group policy.

- *If the employee has a health savings account or other medical spending account, does the employer have to contribute to the deductible after employment is terminated?*

No, so long as scheduled payments have been made, there is no ongoing requirement to contribute to the deductible while the employee or eligible dependents are receiving Mini-COBRA continuation coverage.

- *What is the timeframe for employees to pay for this Mini-COBRA coverage?*

Employees must pay for the coverage on a monthly basis.

- *What is the grace period for ongoing premium payments?*

The grace period for premium payments under Mini-COBRA is not specified in the act, but would be the same as under the group coverage being continued.

- *Is the nine months of continuation health insurance under Mini-COBRA the same for all qualifying events (loss of dependent status, death of employee, etc.)?*

Yes, Mini-COBRA continuation health coverage extends for nine months, regardless of the nature of the qualifying event. However, if a recipient of Mini-COBRA benefits becomes eligible for Medicare or other employer-based coverage, or fails to pay premiums on a timely basis, or the group policy is terminated, then Mini-COBRA coverage will end.

- *After my nine months of Mini-COBRA coverage ends, am I still entitled to get conversion coverage or HIPAA conversion coverage?*

Yes, whatever rights you have for conversion coverage or HIPAA conversion coverage will be triggered by the end of Mini-COBRA coverage.

Additional Questions

The Pennsylvania Insurance Department is ready to respond to your questions on Mini-COBRA. Please feel free to contact us at:

Toll-free, Automated Consumer Hotline: 1-877-881-6388

Harrisburg Regional Office: (717) 787-2317

Philadelphia Regional Office: (215) 560-2630

Pittsburgh Regional Office: (412) 565-5020