

# Group & Individual Marketing News Bulletin



South Carolina

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## Additional COBRA and State Continuation Subsidy Information

This bulletin provides additional information on the COBRA premium subsidy, how this law affects state continuation coverage, and how BlueCross will assist your groups with these changes.

We will mail a letter regarding state continuation to groups that our files show are eligible for state continuation. This letter should go out to those groups in the next week.

### ***Determining COBRA eligibility***

For purposes of determining whether a group is COBRA-eligible, you should count the total number of employees, full- and part-time, for the previous calendar year, not just employees on the group health plan. A COBRA-eligible group will have 20 or more employees for at least 50 percent of the business's typical business days during the previous calendar year. The group's COBRA status does not change for the entire following calendar year. If a group is unsure of its true size, it should consult its accountant, attorney or tax preparer.

COBRA-eligible employees have a "second election period" in which they can choose to elect COBRA if they did not elect it when they were originally eligible. If they are still within an election period, this new time frame allows them to extend that period for 60 days after they receive their second notice.

Model Notices are available at the Department of Labor (DOL) Web site. COBRA-eligible groups should review these forms. <http://www.dol.gov/ebsa/COBRAmode notice.html>

### ***Groups with less than 20 employees (State continuation)***

When a group notifies us that an employee has been terminated and the employee is eligible for the premium subsidy, BlueCross will send a notice to the employee advising the employee of his or her rights. Employees must respond within 60 days if they wish to elect this coverage. If an employee indicates he or she wishes to continue coverage under this program, we will ask the employer to attest that the employee qualifies for a subsidy under the law. We will bill the employee directly for their portion of the premium due, if he or she is eligible for this subsidy.

Employees in state continuation groups are not eligible for the extended election period (or a second election period) mentioned above. These employees can only choose continuation coverage when they are first eligible, and the effective date for their coverage must be the date on which their group coverage ended. Premiums due March 1, 2009, and after may be eligible for subsidy assistance. For example, if the employee was terminated on January 15, 2009, state continuation coverage would begin February 1, 2009, and end July 31, 2009. Premiums beginning March 1, 2009, would be subsidized.

Employers may call 800-868-2500, ext. 44487, for assistance with questions related to state continuation coverage and subsidy assistance.

**Groups with 20 or more employees (COBRA-eligible groups)**

We've listed several notices that groups should send to their employees who have been terminated, or who are terminated between September 1, 2008 and December 31, 2009. These notices are on the Department of Labor Web site, along with a variety of other resources.

Employers who are COBRA-eligible are required to offer this assistance to their former employees. You can help your groups by providing them with the following information.

- **Please note – By April 18, 2009**, groups must send a notice to any employee who was involuntarily terminated between September 1, 2008, and February 16, 2009, and either did not elect COBRA coverage, or who elected it but subsequently discontinued COBRA. This notice includes information about the second or extended election period, along with information on the premium subsidy. Groups can find this notice at: <http://www.dol.gov/ebsa/COBRAextendedelectionperiodnotice.doc>.
- Any former employees who were involuntarily terminated after September 1, 2008, and are already on COBRA should be sent a short version of the General Notice. This notice contains information on the premium subsidy. Groups can find it at: <http://www.dol.gov/ebsa/COBRAGeneralnoticeabbreviatedversion.doc>.
- Groups should use the General Notice for any qualified beneficiaries who are or become eligible for COBRA on or after February 17, 2009 (through December 31, 2009), due to any qualifying event, not just one for which the subsidy is available. This notice includes information on the premium subsidy as well as information required in a COBRA election notice. Groups can find it at: <http://www.dol.gov/ebsa/COBRAGeneralnoticefullversion.doc>.
- **How to add former employees back to the group's coverage**  
If a former employee or dependents elect COBRA with the premium subsidy, groups will need to send in a membership application adding these persons back to coverage. Groups should clearly indicate on the application that the person is eligible for COBRA and for the ARRA subsidy. They can do this by writing "ARRA" or "SUBSIDY" on the application.

Please note that information about this law is changing as the Department of Labor (DOL) and the Internal Revenue Service (IRS) issue their guidance documents. Several changes are mentioned below.

The guidance documents clarified that employees may receive subsidy assistance on any coverage for which an election may be made — i.e., health, including dental and/or vision. The only exception is health coverage provided under a flexible spending arrangement (FSA). Coverage provided under an FSA is not eligible for the premium subsidy, nor may an employee elect only dental or vision coverage without including health coverage.

Employees will have the right to appeal and receive a decision from DOL or the Department of Health and Human Services (HHS) within 15 days if the employer refuses to provide the subsidy. COBRA-eligible employees will appeal through DOL; state continuation employees appeal through HHS.

Both federal agencies have emphasized that only employees who meet all of these conditions are eligible for the premium subsidy:

- Involuntary termination of the covered employee
  - Involuntary termination, while not clearly defined, is generally considered to be a termination as

the result of an employer action. Dependents that lose coverage due to qualifying events other than the termination of the covered employee are not eligible for the premium subsidy (e.g., divorce or dependent aging off group coverage). The death of the covered employee is a qualifying event for COBRA, but is not considered an involuntary termination that would allow the dependents to receive the premium subsidy.

- Employee and/or dependents must be eligible for COBRA or state continuation.
- Both the loss of employment and the loss of coverage occurs between September 1, 2008, and December 31, 2009.

As we all move through the learning process with this new law, we know you will have questions about how this law applies to your groups and their employees. Please review the attached documents. Other sources of information are the DOL and IRS Web sites, listed below for your convenience. You may also continue to contact your BlueCross marketing representative for assistance.

Department of Labor – <http://www.dol.gov/ebsa/cobra.html>

Internal Revenue Service – <http://www.irs.gov/newsroom/article/0,,id=205376,00.html>

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