

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 442 Session of  
2009

INTRODUCED BY D. WHITE, PILEGGI, O'PAKE, BAKER, GORDNER,  
ALLOWAY, RAFFERTY, BRUBAKER, ERICKSON, LOGAN, KASUNIC, WAUGH,  
BROWNE, ORIE, WONDERLING, BOSCOLA, EARLL, SCARNATI, CORMAN,  
STACK, PIPPY, VANCE AND WASHINGTON, FEBRUARY 24, 2009

AS AMENDED ON THIRD CONSIDERATION, MARCH 31, 2009

## AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," in health and accident insurance,  
12 providing for group health policies to continue for period of  
13 time after termination of employment or membership in health  
14 maintenance organizations.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 Section 1. The act of May 17, 1921 (P.L.682, No.284), known  
18 as The Insurance Company Law of 1921, is amended by adding a  
19 section to read:

20 Section 635.4. Mini-COBRA Small Employer Group Health

21 Policies.--(a) A group policy IN EFFECT OR delivered or issued ←

22 for delivery in this Commonwealth ON OR after the effective date ←

23 of this section by an insurer which insures employes or members ←

and their eligible dependents for hospital, surgical or major medical insurance shall provide that covered employees or eligible dependents whose coverage under the group policy would otherwise terminate because of a qualifying event shall be entitled to continue their hospital, surgical or major medical coverage under that group policy subject to the following terms and conditions:

(1) Continuation shall only be available to a covered employee or eligible dependent who has been continuously insured under theA group policy, and OR for similar benefits under any group policy which it replaced, during the entire three-month period ending with such termination. If employment is reinstated during the continuation period, then coverage under the group policy must be reinstated for the covered employee and any eligible dependents who were covered under continuation.

(2) Continuation shall not be available for any person covered under the group policy who:

(i) is covered or is eligible for coverage under Medicare;

(ii) fails to verify that he is ineligible for employer-based group health insurance as an eligible dependent; or

(iii) is or could be covered by any other insured or uninsured arrangement which provides hospital, surgical or major medical coverage for individuals in a group and under which the person was not covered immediately prior to such termination, excluding the medical assistance program established under the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."CODE," THE CHILDREN'S HEALTH CARE PROGRAM ESTABLISHED UNDER ARTICLE XXIII OR THE ADULT BASIC COVERAGE INSURANCE PROGRAM ESTABLISHED UNDER CHAPTER 13 OF THE ACT OF JUNE 26, 2001 (P.L.755, NO.77), KNOWN AS THE "TOBACCO SETTLEMENT

ACT," AND ANY SUCCESSORS THERETO.

~~(3) Continuation need not include dental, vision care or  
prescription drug benefits or any other benefits provided under  
the group policy in addition to its hospital, surgical or major  
medical benefits, but continuation~~

~~(3) CONTINUATION must include any benefits mandated under  
this or any other act if those benefits are provided under the  
group policy.~~

~~(4) (i) The group policy shall provide, at the time of  
commencement of coverage under the plan, written notice to each  
covered employee and adult eligible dependent of the employee, if  
any, NOTICE TO THE POLICYHOLDER of the rights provided under  
this section. UNLESS ALREADY PROVIDED IN THE GROUP POLICY, AN  
INSURER WHO HAS ISSUED A GROUP POLICY IN EFFECT AS OF THE  
EFFECTIVE DATE OF THIS SECTION SHALL PROVIDE SUCH NOTICE TO THE  
POLICYHOLDER WITHIN 45 DAYS OF THE EFFECTIVE DATE.~~

~~(ii) The employer of a covered employee under a planGROUP  
POLICY must notify the administrator or its designee, THE  
COVERED EMPLOYEE AND THE INSURER of a qualifying event within  
thirty days of the date of the qualifying event.QUALIFYING  
EVENT. NOTICE TO THE COVERED EMPLOYEE SHALL INCLUDE NOTICE OF THE  
RIGHTS SET FORTH IN THIS SECTION.~~

~~(iii) Each covered employee or eligible dependent is  
responsible for notifyingSHALL NOTIFY the administrator or its  
designee of the occurrence of any qualifying event within sixty  
days after the date of the qualifying event and each eligible  
dependent who is determined, under Title II or XVI of the Social  
Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.), to have  
been disabled at any time during the first sixty days of  
continuation coverage under this section is responsible for~~

~~notifying the plan administrator or its designee of such  
determination within sixty days after the date of the  
determination and for notifying the plan administrator or its  
designee within thirty days after the date of any final  
determination under Title II or XVI of the Social Security Act  
that the eligible dependent is no longer disabled.~~

~~(iv) In the case of a qualifying event described in  
subsection (e)(5)(i), (ii), (iv) or (vi), the administrator or  
its designee shall notify any eligible dependent with respect to  
such event, of such dependent's rights under this section.~~

~~(v) In the case of a qualifying event described in  
subsection (e)(iii) or (v) where the covered employee notifies  
the administrator or its designee under subparagraph (iii), the  
administrator or its designee shall notify any eligible  
dependent with respect to such event of such dependent's rights  
under this section.~~

~~(vi) For purposes of subparagraph (iv) and (v), any  
notification shall be made within fourteen days of the date on  
which the administrator or its designee is notified under  
subparagraph (ii) or (iii), whichever is applicable, and any  
such notification to an eligible dependent who is the parent or  
guardian of one or more eligible dependents shall be treated as  
notification to all other eligible dependents residing with such  
parent or guardian at the time such notification is made.~~

~~(vii) ITS ELECTION OF CONTINUATION COVERAGE UNDER THIS SECTION  
WITHIN THIRTY DAYS OF NOTICE UNDER SUBPARAGRAPH (II). THE  
COVERAGE SHALL BE EFFECTIVE AS OF THE DATE OF THE QUALIFYING  
EVENT AND SHALL BE THE SAME AS THE COVERAGE IN EFFECT AT THE  
TIME OF THE QUALIFYING EVENT OR ANY REPLACEMENT COVERAGE.~~

~~(IV) AN ADMINISTRATOR OR ITS DESIGNEE NOTIFIED UNDER~~



SUBPARAGRAPH (III) OF AN ELECTION OF CONTINUATION COVERAGE SHALL  
NOTIFY THE INSURER WITHIN FOURTEEN DAYS OF THE COVERED EMPLOYEE'S  
OR ELIGIBLE DEPENDENT'S ELECTION.

(V) Except as otherwise specified in an election, any  
election of continuation coverage by an eligible dependent shall  
be deemed to include an election of continuation coverage on  
behalf of any other eligible dependent who would lose coverage  
under the plan by reason of the qualifying event. ~~If there is a  
choice among types of coverage under the plan, each eligible  
dependent is entitled to make a separate selection among such  
types of coverage.~~

(5) (i) The covered employee or eligible dependent  
requesting the continuation of coverage must pay to the ~~group~~  
~~policyholder~~ ADMINISTRATOR OR ITS DESIGNEE, on a monthly basis,  
the amount of contribution required TO BE PAID BY THE COVERED  
EMPLOYEE OR ELIGIBLE DEPENDENT to continue the coverage.

(ii) The premium contribution may not be more than one  
hundred five percent of the group rate of the insurance being  
continued on the due date of each payment; ~~but, if any benefits  
are omitted as provided by paragraph (3), the premium  
contribution shall be reduced accordingly.~~

(iii) Nothing in this section shall require the employer to  
contribute to the deductible of the employee holding an HSA A  
HEALTH SAVINGS ACCOUNT as defined in the Internal Revenue Code  
of 1986 (Public Law 99-514, 26 U.S.C. § 223(d)) OR OTHER MEDICAL  
SPENDING ACCOUNT as a component of the group policy after the  
termination date as long as scheduled payments have been made.

~~(6)~~ (6) (I) Continuation of coverage under the group policy  
for any covered employee or eligible dependent shall terminate  
upon failure to satisfy paragraph (2) or, if earlier, at the

first to occur of the following:

~~(i)~~(A) the date nine months after the date the covered  
employee's or eligible dependent's coverage under the group would  
have terminated because of a qualifying event;

~~(ii)~~(B) if the employee or member fails to make timely  
payment of a required premium contribution, the end of the  
period for which contributions were made;

~~(iii)~~(C) the date on which the group policy is terminated.

(II) A COVERED EMPLOYE OR ELIGIBLE DEPENDENT SHALL PROVIDE  
WRITTEN NOTICE TO THE ADMINISTRATOR OR ITS DESIGNEE WITHIN  
FOURTEEN DAYS IF, PURSUANT TO PARAGRAPH (2), COVERAGE SHOULD NOT  
OCCUR.

(b) A covered employee shall be entitled to obtain a  
conversion policy as stated in section 621.2. The right to a  
converted policy pursuant to this act for a covered employee or  
eligible dependent entitled to continuation of coverage under  
this act shall commence upon termination of the continued  
coverage provided for under this act.

(c) Coverage as required by this section may not be  
conditioned upon, or discriminated on, the basis of lack of  
evidence ~~or~~OF insurability.

(d) IN THE CASE OF A QUALIFYING EVENT CONSISTING OF THE  
INVOLUNTARY TERMINATION OF THE COVERED EMPLOYE'S EMPLOYMENT  
OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND  
BEFORE JANUARY 1, 2010, OR SUCH OTHER DATE AS SPECIFIED BY ANY  
AMENDMENT TO OR SUCCESSOR OF SECTION 3001 OF DIVISION B, TITLE  
III OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009  
(PUBLIC LAW 111-5, 123 STAT. 115), A COVERED EMPLOYE OR ELIGIBLE  
DEPENDENT SHALL BE ENTITLED TO PREMIUM ASSISTANCE AS PROVIDED IN  
SECTION 3001 OF DIVISION B, TITLE III OF THE AMERICAN RECOVERY

AND REINVESTMENT ACT OF 2009, PURSUANT TO THE PROCEDURES AND REQUIREMENTS SET FORTH THEREIN.

(E) This section shall only apply to those persons who satisfy both of the following criteria:

(1) Persons who are not subject to the continuation and conversion provisions set forth in Title 1, Subtitle B, Part 6 of the Employee Retirement Income Security Act of 1974 (Public Law 93-406, ~~88 Stat. 82929~~ U.S.C. § 1161 ET SEQ.) or Title XXII of the Public Health Service Act (~~58 Stat. 682, 42 U.S.C. § 201 et seq.~~ PUBLIC LAW 99-272, 42 U.S.C. § 300BB-1 ET SEQ.).

(2) Persons, and the eligible dependents of such persons, who are employed by an employer that normally employed between two and nineteen employees on a typical business day during the preceding year.

~~(e)~~ (F) THE DEPARTMENT MAY PROMULGATE REGULATIONS AS NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS SECTION.

(G) For purposes of this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

(1) "ADMINISTRATOR" MEANS THE PERSON SPECIFICALLY DESIGNATED BY AN EMPLOYER BY WRITTEN AGREEMENT TO MANAGE THE ADMINISTRATION OF A GROUP POLICY ISSUED TO AN EMPLOYER OR, IF AN ADMINISTRATOR IS NOT SO DESIGNATED, THE EMPLOYER.

(2) "Covered employee" means an individual who is or was provided coverage under a group policy by virtue of the performance of services by the individual for one or more persons maintaining the policy, including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § ~~1 et seq.~~ 401(C)(1)). Such term

includes employees and members as those terms are used in section 621.2.

~~(2) "Election period" means the period which:~~  
~~(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event;~~  
~~(ii) is of at least sixty days' duration; and~~  
~~(iii) ends not earlier than sixty days after the later of:~~  
~~(A) the date described in subparagraph (i); or~~  
~~(B) in the case of any eligible dependent who receives notice under subsection (a) (4) (iv), the date of such notice.~~

(3) "ELIGIBLE DEPENDENT" MEANS:  
(I) WITH RESPECT TO A COVERED EMPLOYEE UNDER A GROUP HEALTH PLAN, ANY OTHER INDIVIDUAL WHO ON THE DAY BEFORE THE QUALIFYING EVENT FOR THAT EMPLOYEE IS A BENEFICIARY UNDER THE PLAN:  
(A) AS THE SPOUSE OF THE COVERED EMPLOYEE; OR  
(B) AS THE DEPENDENT CHILD OF THE EMPLOYEE.  
(II) IN THE CASE OF A QUALIFYING EVENT DESCRIBED IN PARAGRAPH (6) (II), THE TERM INCLUDES A COVERED EMPLOYEE.  
(III) IN THE CASE OF A QUALIFYING EVENT DESCRIBED IN PARAGRAPH (6) (VI), THE TERM INCLUDES A COVERED EMPLOYEE WHO HAD RETIRED ON OR BEFORE THE DATE OF SUBSTANTIAL ELIMINATION OF COVERAGE AND ANY OTHER INDIVIDUAL WHO, ON THE DAY BEFORE SUCH QUALIFYING EVENT, IS A BENEFICIARY UNDER THE PLAN:

(A) AS THE SPOUSE OF THE COVERED EMPLOYEE;  
(B) AS THE DEPENDENT CHILD OF THE EMPLOYEE; OR  
(C) AS THE SURVIVING SPOUSE OF THE COVERED EMPLOYEE.  
THE TERM SHALL ALSO INCLUDE A CHILD WHO IS BORN TO OR PLACED FOR ADOPTION WITH A COVERED EMPLOYEE DURING THE PERIOD OF CONTINUATION COVERAGE UNDER THIS SECTION.

~~(3) (4) "Group policy" means any group health insurance~~



policy, subscriber contract, certificate or plan which provides health or sickness and accident coverage which is offered by an insurer. The term shall not include any of the following:

(i) An accident only policy.

(ii) A credit only policy.

(iii) A long-term care or disability income policy.

(iv) A specified disease policy.

(v) A Medicare supplement policy.

(vi) A Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement policy.

(vii) A fixed indemnity policy.

(viii) A dental only policy.

(ix) A vision only policy.

(x) A workers' compensation policy.

(xi) An automobile medical payment policy under 75 Pa.C.S. (relating to vehicles).

(xii) Any other similar policies providing for limited benefits.

~~(4)~~(5) "Insurer" means a company or health insurance entity licensed in this Commonwealth to issue any health, sickness or accident policy or subscriber contract or certificate or plan that provides medical or health care coverage by a health care facility or licensed health care provider that is offered or governed under ARTICLE XXIV OR OTHER PROVISION OF this act or any of the following:

(i) The act of December 29, 1972 (P.L.1701, No.364), known as the "Health Maintenance Organization Act."

~~(ii) The act of May 18, 1976 (P.L.123, No.54), known as the "Individual Accident and Sickness Insurance Minimum Standards Act."~~

~~(iii)~~(II) 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or 63 (relating to professional health services plan corporations).

~~(5)~~(6) "Qualifying event" means, with respect to any covered employe, any of the following events which, but for the continuation of coverage required under this section, would result in the loss of coverage of an eligible dependent:

(i) The death of a covered employe.

(ii) The termination, other than by reason of such employe's gross misconduct, or reduction of hours of the covered employe's employment.

(iii) The divorce or legal separation of the covered employe from an eligible dependent.

(iv) The covered employe becoming entitled to benefits under Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C. § ~~301~~1395 et seq.).

(v) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(vi) A proceeding in a case under 11 U.S.C. (relating to bankruptcy), with respect to the employer from whose employment the covered employe retired at any time. In the case of an event described in this subparagraph, a loss of coverage includes a substantial elimination of coverage with respect to an eligible dependent within one year before or after the date of commencement of the proceeding.

~~(f) The department may promulgate regulations as necessary for the implementation and administration of this section.~~

Section 2. This act shall take effect in ~~120~~30 days.