

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1089 Session of
2009

INTRODUCED BY MATZIE, MIRABITO, DeLUCA, PICKETT, D. COSTA,
BARRAR, BELFANTI, BRENNAN, BRIGGS, CALTAGIRONE, DALEY,
FREEMAN, GEORGE, GIBBONS, HALUSKA, HORNAMAN, HOUGHTON,
JOSEPHS, KORTZ, LONGIETTI, MAHONEY, MANN, McGEEHAN, MELIO,
MILNE, MUNDY, M. O'BRIEN, PASHINSKI, QUINN, READSHAW,
SIPTROTH, SOLOBAY, STURLA, SWANGER, J. TAYLOR, VULAKOVICH,
WHITE, McILVAINE SMITH, PETRARCA, EVERETT, FRANKEL,
MANDERINO, MURT, K. SMITH AND WHEATLEY, MARCH 24, 2009

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 1, 2009

AN ACT

1 Providing for group health policies to continue for period of
2 time after termination of employment or membership in health
3 maintenance organizations.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Mini-COBRA
8 Small Employer Group Health Plan and Premium Assistance Act.

9 Section 2. Legislative finds and declarations.

10 The General Assembly finds and declares as follows:

11 (1) A major crisis exists in this Commonwealth because
12 of the continuing escalation of costs for health care
13 insurance, accompanied by an increase in unemployment.
14 Because of these factors, an increasingly large number of
15 Pennsylvania citizens have severely limited access to

1 appropriate and timely health care.

2 (2) According to a recent survey by the Insurance
3 Department, more than 1,000,000 Commonwealth citizens are
4 without insurance and this figure can be expected to grow in
5 the short term.

6 (3) Unemployed individuals who are involuntarily
7 terminated from their jobs have access to COBRA, however,
8 many find that the premium for COBRA is too expensive and are
9 unable to afford the premium.

10 (4) Both the President and Congress have recognized this
11 problem in the American Recovery and Reinvestment Act of 2009
12 (Public Law 111-5, 123 Stat. 115).

13 (5) Division B of the American Recovery and Reinvestment
14 Act of 2009, entitled Tax, Unemployment, Health, State Fiscal
15 Relief, and Other Provisions provides premium assistance for
16 COBRA benefits to assist eligible individuals who timely
17 elect to participate in the premium assistance program.

18 (6) The premium assistance program provides relief in
19 the form of paying 65% of the normal COBRA premiums available
20 under COBRA coverage, including coverage subject to State
21 continuation laws or mini-COBRA laws.

22 (7) It is therefore declared the policy of the
23 Commonwealth to enact a mini-COBRA bill providing
24 Commonwealth citizens the opportunity to take full advantage
25 of the Federal premium assistance program so the cost of
26 health insurance coverage for the unemployed can be minimized
27 when possible, and which will survive beyond the temporary
28 relief provided in the Federal act.

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "ADMINISTRATOR." THE PERSON SPECIFICALLY DESIGNATED BY THE
4 EMPLOYER BY WRITTEN AGREEMENT TO MANAGE THE ADMINISTRATION OF
5 THE GROUP POLICY ISSUED TO THE EMPLOYER OR, IF AN ADMINISTRATOR
6 IS NOT SO DESIGNATED, THE EMPLOYER WILL BE DEEMED THE
7 ADMINISTRATOR FOR PURPOSES OF THIS SECTION.

8 "Covered employee." An individual who is or was provided
9 coverage under a group policy by virtue of the performance of
10 services by the individual for one or more persons maintaining
11 the policy, including as an employee defined in section 401(c)
12 (1) of the Internal Revenue Code of 1986 (Public Law 99-514, 26
13 U.S.C. § 1 et seq.). The term includes employees and members as
14 those terms are used in section 621.2 of the act of May 17, 1921
15 (P.L.682, No.284), known as The Insurance Company Law of 1921.

16 ~~"Election period." The period which:~~
17 ~~(1) begins not later than the date on which coverage~~
18 ~~terminates under the plan by reason of a qualifying event;~~
19 ~~(2) is of at least 60 days' duration; and~~
20 ~~(3) ends not earlier than 60 days after the later of:~~
21 ~~(i) the date described in paragraph (1); or~~
22 ~~(ii) in the case of any eligible dependent who~~
23 ~~receives notice under section 4(4)(iv), the date of the~~
24 ~~notice.~~

25 "ELIGIBLE DEPENDENT."

26 (1) REGARDING A COVERED EMPLOYEE UNDER A GROUP HEALTH
27 PLAN, AN INDIVIDUAL WHO, ON THE DAY BEFORE THE QUALIFYING
28 EVENT FOR THAT EMPLOYEE, IS A BENEFICIARY UNDER THE PLAN AS
29 THE:

30 (I) SPOUSE OF THE COVERED EMPLOYEE; OR

(II) DEPENDENT CHILD OF THE EMPLOYEE.

THE TERM SHALL INCLUDE A CHILD WHO IS BORN TO OR PLACED FOR ADOPTION WITH THE COVERED EMPLOYEE DURING THE PERIOD OF CONTINUATION COVERAGE UNDER THIS SECTION.

(2) IN THE CASE OF A QUALIFYING EVENT AS DEFINED IN THIS SECTION, THE TERM "ELIGIBLE DEPENDENT" INCLUDES A COVERED EMPLOYEE.

(3) IN THE CASE OF A QUALIFYING EVENT AS DEFINED IN THIS SECTION, THE TERM "ELIGIBLE DEPENDENT" 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 AS THE:

(I) SPOUSE OF THE COVERED EMPLOYEE;

(II) DEPENDENT CHILD OF THE COVERED EMPLOYEE; OR

(III) SURVIVING SPOUSE OF THE COVERED EMPLOYEE.

"Group policy." 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:

(1) An accident only policy.

(2) A credit only policy.

(3) A long-term or disability income policy.

(4) A specified disease policy.

(5) A Medicare supplement policy.

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

(7) A fixed indemnity policy.

(8) A dental only policy.

(9) A vision only policy.

1 (10) A workers' compensation policy.

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

4 (12) Any other similar policies providing for limited
5 benefits.

6 "Insurer." A company or health insurance entity licensed in
7 this Commonwealth to issue any health, sickness or accident
8 policy or subscriber contract or certificate or plan that
9 provides medical or health care coverage by a health care
10 facility or licensed health care provider that is offered or
11 governed under this act or any of the following:

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

14 ~~(2) The act of May 18, 1976 (P.L.123, No.54), known as~~ ←
15 ~~the Individual Accident and Sickness Insurance Minimum~~
16 ~~Standards Act.~~

17 ~~(3)~~ (2) 40 Pa.C.S. Ch. 61 (relating to hospital plan ←
18 corporations) or 63 (relating to professional health services
19 plan corporations).

20 ~~(4)~~ (3) Article XXIV of the act of May 17, 1921 ←
21 (P.L.682, No.284), known as The Insurance Company Law of
22 1921.

23 "Qualifying event." With respect to any covered employee,
24 any of the following events which, but for the continuation of
25 coverage required under this act, would result in the loss of
26 coverage of an eligible dependent:

27 (1) The death of a covered employee.

28 (2) The termination, other than by reason of the
29 employee's gross misconduct, or reduction of hours of the
30 covered employee's employment.

1 (3) The divorce or legal separation of the covered
2 employee from an eligible dependent.

3 (4) The covered employee becoming entitled to benefits
4 under Title XVIII of the Social Security Act (49 Stat. 620,
5 42 U.S.C. § 301 et seq.).

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

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

15 Section 4. Certain group policies.

16 A group policy delivered or issued for delivery in this
17 Commonwealth ON OR after the effective date of this act by an
18 insurer which insures employees or members and their eligible
19 dependents for hospital, surgical or major medical insurance
20 shall provide that covered employees or eligible dependents
21 whose coverage under the group policy would otherwise terminate
22 because of a qualifying event shall be entitled to continue
23 their hospital, surgical or major medical coverage under that
24 group policy subject to the following terms and conditions:

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



1 under the group policy must be reinstated for the covered
2 employee and any eligible dependents who were covered under
3 continuation.

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

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

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

11 (iii) is or could be covered by any other insured or
12 uninsured arrangement which provides hospital, surgical
13 or major medical coverage for individuals in a group and
14 under which the person was not covered immediately prior
15 to the termination, excluding the medical assistance
16 program established under the act of June 13, 1967

17 (P.L.31, No.21), known as the Public Welfare Code, OR
18 OTHER GOVERNMENT HEALTH BENEFIT PROGRAM. ←

19 (3) Continuation need not include dental, vision care or
20 prescription drug benefits or any other benefits provided
21 under the group policy in addition to its hospital, surgical
22 or major medical benefits, but continuation must include any
23 benefits mandated under this or any other act if those
24 benefits are provided under the group policy.

25 (4) (i) The group policy shall provide, ~~at the time of~~ ←
26 ~~commencement of coverage under the plan, written~~ notice
27 to each covered employee ~~and adult eligible dependent of~~ ←
28 ~~the employee, if any,~~ of the rights provided under this
29 act.

30 (ii) The employer of a covered employee under a plan ←

1 GROUP POLICY must notify the administrator or its
2 designee, THE COVERED EMPLOYEE AND THE INSURER of a
3 qualifying event within 30 days of the date of the
4 qualifying event.

5 (iii) Each covered employee or eligible dependent is
6 ~~responsible for notifying~~ SHALL NOTIFY the administrator
7 or its designee ~~of the occurrence of any qualifying event~~
8 OF THE COVERED EMPLOYEE'S OR ELIGIBLE DEPENDENT'S
9 ELECTION OF CONTINUATION COVERAGE UNDER THIS ACT within
10 60 days after the date of ~~the qualifying event and each~~
11 ~~eligible dependent who is determined, under Title II or~~
12 ~~XVI of the Social Security Act (49 Stat. 620, 42 U.S.C. §~~
13 ~~301 et seq.), to have been disabled at any time during~~
14 ~~the first 60 days of continuation coverage under this act~~
15 ~~is responsible for notifying the plan administrator or~~
16 ~~its designee of the determination within 60 days after~~
17 ~~the date of the determination and for notifying the plan~~
18 ~~administrator or its designee within 30 days after the~~
19 ~~date of any final determination under Title II or XVI of~~
20 ~~the Social Security Act that the eligible dependent is no~~
21 ~~longer disabled.~~

22 ~~(iv) In the case of a "qualifying event" defined in~~
23 ~~section 3(1), (2), (4) or (6), the administrator or its~~
24 ~~designee shall notify any eligible dependent regarding~~
25 ~~the event of the dependent's rights under this act.~~

26 ~~(v) In the case of a "qualifying event" defined in~~
27 ~~section 3(3) or (5) where the covered employee notifies~~
28 ~~the administrator or its designee under subparagraph~~
29 ~~(iii), the administrator or its designee shall notify any~~
30 ~~eligible dependent regarding the event of the dependent's~~

rights under this act.

~~(vi) For purposes of subparagraphs (iv) and (v), any notification shall be made within 14 days of the date on which the administrator or its designee is notified under subparagraphs (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 the parent or guardian at the time the notification is made.~~

~~(vii)~~ NOTICE UNDER SUBPARAGRAPH (II). THE COVERAGE SHALL BE EFFECTIVE AS OF THE DATE OF THE QUALIFYING EVENT.

(IV) THE ADMINISTRATOR OR ITS DESIGNEE NOTIFIED UNDER SUBPARAGRAPH (II) SHALL NOTIFY THE INSURER WITHIN 14 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 the types of coverage.

(5) (i) The covered employee or eligible dependent requesting the continuation of coverage must pay to the group policyholder, on a monthly basis, the amount of contribution required to continue the coverage FOR THE

COVERED EMPLOYEE OR ELIGIBLE DEPENDENT.

(ii) The premium contribution may not be more than 102% 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 act shall require the employer to contribute to the deductible of the employee holding a health savings account as defined in the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 223(d)) as a component of the group policy after the termination date as long as scheduled payments have been made.

(6) 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) 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) 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; or

(iii) the date on which the group policy is terminated. A COVERED EMPLOYEE OR ELIGIBLE DEPENDENT SHALL PROVIDE WRITTEN NOTICE TO THE ADMINISTRATOR OR ITS DESIGNEE WITHIN 14 DAYS IF UNDER PARAGRAPH (2) THE COVERAGE IS NOT AVAILABLE.

Section 5. Conversion policy.

A covered employee shall be entitled to obtain a conversion



1 policy as stated in section 621.2 of the act of May 17, 1921
2 (P.L.682, No.284), known as The Insurance Company Law of 1921.
3 The right to a converted policy pursuant to this act for a
4 covered employee or eligible dependent entitled to continuation
5 of coverage under this act shall commence upon termination of
6 the continued coverage provided for under this act.

7 Section 6. Prohibition.

8 Coverage as required by this act may not be conditioned upon,
9 or discriminated on, the basis of lack of evidence or
10 insurability.

11 Section 7. Election period and premium assistance.

12 In the case of a qualifying event consisting of the
13 involuntary termination of the covered employee's employment
14 occurring on or after September 1, 2008, and before January 1,
15 2010, or other date as specified by amendment or modification of
16 section 3001 of the American Recovery and Reinvestment Act of
17 2009 (Public Law 111-5, 123 Stat. 115) or successor legislation,
18 a covered employee or eligible dependent shall be entitled to an
19 election period and premium assistance ~~and other benefits~~ as
20 provided for by the American Recovery and Reinvestment Act of
21 2009, under the procedures and requirements set forth in that
22 act.

23 Section 8. Applicability.

24 (a) Criteria.--This act shall only apply to those persons
25 who satisfy both of the following criteria:

- 26 (1) Persons who are not subject to the continuation and
27 conversion provisions set forth in Title 1, Subtitle B, Part
28 6 of the Employee Retirement Income Security Act of 1974
29 (Public Law 93-406, 88 Stat. 829) or Title XXII of the Public
30 Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).



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

5 (b) Assistance eligible individuals.--This act shall apply
6 to assistance eligible individuals as defined in section 3001(a)
7 (3) of the American Recovery and Reinvestment Act of 2009
8 (Public Law 111-5, 123 Stat. 115).

9 Section 9. Regulations.

10 The Insurance Department may promulgate regulations as
11 necessary for the implementation and administration of this act.

12 Section 10. Effect of expiration of certain premium benefits.

13 This act shall remain in effect after the expiration of
14 premium assistance for COBRA benefits provided for in the
15 American Recovery and Reinvestment Act of 2009 (Public Law
16 111-5, 123 Stat. 115).

17 Section 20. Effective date.

18 This act shall take effect immediately.