

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 AND PETRARCA, MARCH 24, 2009

REFERRED TO COMMITTEE ON INSURANCE, MARCH 24, 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
16 appropriate and timely health care.

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

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

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

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

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

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

28 Section 3. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

10 "Election period." The period which:

- 11 (1) begins not later than the date on which coverage
12 terminates under the plan by reason of a qualifying event;
13 (2) is of at least 60 days' duration; and
14 (3) ends not earlier than 60 days after the later of:
15 (i) the date described in paragraph (1); or
16 (ii) in the case of any eligible dependent who
17 receives notice under section 4(4)(iv), the date of the
18 notice.

19 "Group policy." Any group health insurance policy,
20 subscriber contract, certificate or plan which provides health
21 or sickness and accident coverage which is offered by an
22 insurer. The term shall not include any of the following:

- 23 (1) An accident only policy.
24 (2) A credit only policy.
25 (3) A long-term or disability income policy.
26 (4) A specified disease policy.
27 (5) A Medicare supplement policy.
28 (6) A Civilian Health and Medical Program of the
29 Uniformed Services (CHAMPUS) supplement policy.
30 (7) A fixed indemnity policy.

- 1 (8) A dental only policy.
- 2 (9) A vision only policy.
- 3 (10) A workers' compensation policy.
- 4 (11) An automobile medical payment policy under 75
- 5 Pa.C.S. (relating to vehicles).
- 6 (12) Any other similar policies providing for limited
- 7 benefits.

8 "Insurer." A company or health insurance entity licensed in

9 this Commonwealth to issue any health, sickness or accident

10 policy or subscriber contract or certificate or plan that

11 provides medical or health care coverage by a health care

12 facility or licensed health care provider that is offered or

13 governed under this act or any of the following:

14 (1) The act of December 29, 1972 (P.L.1701, No.364),

15 known as the Health Maintenance Organization Act.

16 (2) The act of May 18, 1976 (P.L.123, No.54), known as

17 the Individual Accident and Sickness Insurance Minimum

18 Standards Act.

19 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan

20 corporations) or 63 (relating to professional health services

21 plan corporations).

22 (4) Article XXIV of the act of May 17, 1921 (P.L.682,

23 No.284), known as The Insurance Company Law of 1921.

24 "Qualifying event." With respect to any covered employee,

25 any of the following events which, but for the continuation of

26 coverage required under this act, would result in the loss of

27 coverage of an eligible dependent:

28 (1) The death of a covered employee.

29 (2) The termination, other than by reason of the

30 employee's gross misconduct, or reduction of hours of the

covered employee's employment.

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

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

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

(6) A proceeding in a case under 11 U.S.C. (relating to bankruptcy), with respect to the employer from whose employment the covered employee retired at any time. In the case of an event described in this definition, 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.

Section 4. Certain group policies.

A group policy delivered or issued for delivery in this Commonwealth after the effective date of this act by an insurer which insures employees 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 the group policy, and for similar benefits under any group policy which it replaced, during the entire three-month period ending with the termination. If employment

1 is reinstated during the continuation period, then coverage
2 under the group policy must be reinstated for the covered
3 employee and any eligible dependents who were covered under
4 continuation.

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

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

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

12 (iii) is or could be covered by any other insured or
13 uninsured arrangement which provides hospital, surgical
14 or major medical coverage for individuals in a group and
15 under which the person was not covered immediately prior
16 to the termination, excluding the medical assistance
17 program established under the act of June 13, 1967
18 (P.L.31, No.21), known as the Public Welfare Code.

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 must notify the administrator or its designee of a
2 qualifying event within 30 days of the date of the
3 qualifying event.

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

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

23 (v) In the case of a "qualifying event" defined in
24 section 3(3) or (5) where the covered employee notifies
25 the administrator or its designee under subparagraph
26 (iii), the administrator or its designee shall notify any
27 eligible dependent regarding the event of the dependent's
28 rights under this act.

29 (vi) For purposes of subparagraphs (iv) and (v), any
30 notification shall be made within 14 days of the date on

1 which the administrator or its designee is notified under
2 subparagraphs (ii) or (iii), whichever is applicable, and
3 any such notification to an eligible dependent who is the
4 parent or guardian of one or more eligible dependents
5 shall be treated as notification to all other eligible
6 dependents residing with the parent or guardian at the
7 time the notification is made.

8 (vii) Except as otherwise specified in an election,
9 any election of continuation coverage by an eligible
10 dependent shall be deemed to include an election of
11 continuation coverage on behalf of any other eligible
12 dependent who would lose coverage under the plan by
13 reason of the qualifying event. If there is a choice
14 among types of coverage under the plan, each eligible
15 dependent is entitled to make a separate selection among
16 the types of coverage.

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

21 (ii) The premium contribution may not be more than
22 102% of the group rate of the insurance being continued
23 on the due date of each payment; but, if any benefits are
24 omitted as provided by paragraph (3), the premium
25 contribution shall be reduced accordingly.

26 (iii) Nothing in this act shall require the employer
27 to contribute to the deductible of the employee holding a
28 health savings account as defined in the Internal Revenue
29 Code of 1986 (Public Law 99-514, 26 U.S.C. § 223(d)) as a
30 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.

Section 5. Conversion policy.

A covered employee shall be entitled to obtain a conversion policy as stated in section 621.2 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921. 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.

Section 6. Prohibition.

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

Section 7. Election period and premium assistance.

In the case of a qualifying event consisting of the involuntary termination of the covered employee's employment occurring on or after September 1, 2008, and before January 1,

1 2010, or other date as specified by amendment or modification of
2 section 3001 of the American Recovery and Reinvestment Act of
3 2009 (Public Law 111-5, 123 Stat. 115) or successor legislation,
4 a covered employee or eligible dependent shall be entitled to an
5 election period and premium assistance and other benefits as
6 provided for by the American Recovery and Reinvestment Act of
7 2009, under the procedures and requirements set forth in that
8 act.

9 Section 8. Applicability.

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

12 (1) Persons who are not subject to the continuation and
13 conversion provisions set forth in Title 1, Subtitle B, Part
14 6 of the Employee Retirement Income Security Act of 1974
15 (Public Law 93-406, 88 Stat. 829) or Title XXII of the Public
16 Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).

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

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

25 Section 9. Regulations.

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

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

29 This act shall remain in effect after the expiration of
30 premium assistance for COBRA benefits provided for in the

1 American Recovery and Reinvestment Act of 2009 (Public Law
2 111-5, 123 Stat. 115).
3 Section 20. Effective date.
4 This act shall take effect immediately.