



ACTION NEEDED TO HELP UNEMPLOYED TEXANS ACCESS HEALTH INSURANCE ASSISTANCE IN THE RECOVERY ACT

Only half of Texans get health insurance coverage through an employer—one of the lowest rates in the nation. Access to employer-sponsored health insurance will decline as the recession deepens and companies cut jobs. The American Recovery and Reinvestment Act of 2009 (federal economic recovery act) includes a temporary COBRA and state continuation premium reduction to help recently unemployed workers and their families maintain private health insurance coverage while they seek new jobs. However, the Texas Legislature must make modest change to our state insurance laws to help Texans losing job-based coverage maximize federal premium assistance. These changes, which require no state general revenue dollars, will help more Texans keep private health insurance and prevent some Texans from joining the growing ranks of the uninsured.

- **The recovery act includes federal funds to cover 65 percent of COBRA and state continuation premiums to help recently unemployed workers afford coverage while looking for new jobs.**
- **As many as 470,000 Texans will maintain coverage with this help.**
- **Many Texans cannot maximize this assistance unless the Legislature makes modest changes to state insurance laws.**
- **The Texas Legislature must increase the period of state continuation coverage and give Texans laid off before the premium reduction announcement a second chance to enroll.**

Health Insurance Continuation Coverage

Businesses with 20 or more full-time employees offer COBRA continuation coverage, which allows employees and their dependents to remain on a former employer’s health insurance plan by paying the full premium cost (both the employee’s and the employer’s shares) plus a two percent fee to cover administrative expenses. Many unemployed people cannot afford to pay 102 percent of health insurance premiums after a job loss, but for those who can, COBRA offers an option to maintain continuous health insurance coverage. The worker must accept COBRA coverage in writing within 60 days of receiving notice of eligibility, and coverage is available for 18 months. Premium payments are due monthly, but COBRA allows a 45-day grace period for the initial payment and a 30-day grace period in subsequent months. Federal law establishes COBRA coverage, which is administered by the U.S. Department of Labor.

As with most states, Texas insurance law provides a “state continuation” provision similar to COBRA coverage. In Texas, employees have the right to state continuation coverage through a former employer for only six months. Fully-insured group health insurance plans, regulated by the Texas Department of Insurance, provide state continuation. Employees of small businesses with fewer than 20 full-time employees lack access to COBRA and in Texas can only continue coverage through six-month state continuation.¹

By law, insurance companies must notify people losing group coverage of their right to state continuation. Workers must elect coverage in writing within 31 days of notice of eligibility with the initial premium payment due upon that election. Unlike COBRA, state continuation does not allow a grace period for premiums.

Assistance in the Economic Recovery Package

Continuation Premium Reduction

The American Recovery and Reinvestment Act of 2009 contains continuation coverage premium assistance for recently unemployed workers and their families. Eligible individuals will receive a 65 percent premium reduction for up to nine months for COBRA or state continuation coverage.

To be eligible for the premium reduction, a person must:

- be involuntarily terminated between September 1, 2008 and December 31, 2009, or the dependent of someone who was; and
- be eligible for and elect COBRA or state continuation coverage.

People are ineligible or will lose eligibility for this reduction if they:

- complete their maximum coverage period in COBRA (18 months) or state continuation (currently six months in Texas);
- earn more than \$145,000 a year for individuals or \$290,000 for families; or
- have access to other group coverage (such as through a spouse's employer) or Medicare, regardless of whether enrolled in that coverage.

Funding for the 65 percent premium reduction comes entirely from federal funding and requires no state General Revenue.

The federal Joint Committee on Taxation estimates this subsidy will help 7 million Americans maintain access to health insurance coverage during the recession. This assistance will help as many as

470,000 Texans maintain coverage. Without it, many people losing jobs simply could not afford COBRA or state continuation coverage.

How It Works

The premium reduction for COBRA and state continuation is available for coverage starting on or after March 1, 2009. Enrollees need only pay 35 percent of the premium due while eligible. The health plan administrator claims the remaining 65 percent as a credit against payroll taxes remitted to the IRS. If the premium reduction credit exceeds payroll taxes due, the federal Treasury will directly reimburse the difference.

The premium reduction lasts for nine months (or until the person loses eligibility by reaching the end of their continuation period or becoming eligible for other group coverage or Medicare). Covered individuals must notify their health plan if they become eligible for other group coverage or Medicare.

Health plan administrators must send notice of the premium reduction and how to establish eligibility to all workers who lose their jobs and group health coverage from September 1, 2008 to December 31, 2009. Notices due to people laid off before the recovery package passed must be sent by April 18, 2009. The Department of Labor posted model notice language at www.dol.gov/ebsa/COBRAmode notice.html.

Though premium reductions are technically available starting March 1, federal and state governments are still issuing guidance needed by employers and health plans. The recovery act includes a 60-day grace period for health plans before they must accept reduced premium payments. Individual workers who pay 100 percent of continuation premiums in March and/or April 2009 will be reimbursed the amount of the 65 percent reduction either through a refund or as a credit toward future premiums.

New Election Period for COBRA

The recovery package gives workers laid off between September 1, 2008 and February 16, 2009 (the day before the recovery package took effect) a second chance to elect

COBRA now that the 65 percent premium reduction is available. This applies to unemployed individuals who turned down COBRA when it was first offered, as well as people who initially enrolled in COBRA but were later unable to continue paying premiums. This new election period starts on February 17, 2009 and ends 60 days after receipt of notice. People who choose this option will be treated as if they had continuous creditable coverage and thus will not be subject to new pre-existing condition waiting periods. **The new enrollment period applies only to COBRA. States must pass conforming laws in order to make the same opportunity available through state continuation.**

How It Works

Workers electing COBRA during the new enrollment period will be able to enroll in coverage starting on March 1, 2009 with the 65 percent premium reduction. Health plans must send notice of the right to the new COBRA enrollment period to workers laid from September 1, 2008 through February 16, 2009 by mid-April. After receiving the notice, individuals will have 60 days to elect coverage.

This new enrollment period does not extend the length of COBRA coverage past the 18-month coverage period available when COBRA was initially offered to a worker. The coverage period is determined by counting back to when the worker could have initially elected COBRA following his or her involuntary termination. For example, a worker laid off on October 31, 2008 could have initially elected COBRA starting on November 1, 2008, and could have been covered for 18 months, or until April 30, 2010. If that individual instead elects COBRA during this new election period, COBRA coverage will start on March 1, 2009 and end on April 30, 2010, resulting in 14 possible months of coverage. The unemployed individual in this example would have access to the premium reduction for the nine months from March through November 2009, and would have to pay the full premium to maintain coverage after that.

Steps Needed to Help Texans Get Reduced Continuation Premiums

Without action by the Texas Legislature, many Texans who lose jobs because of the recession will be unable to fully take advantage of the federal continuation premium reduction available to them and will lose insurance coverage. Workers in smaller firms with fewer than 20 employees will lack access to the same help available to those in larger, COBRA-eligible firms without changes in Texas law.

The Texas Legislature must act this session to:

- Increase state continuation to at least nine months for individuals who are not COBRA-eligible, and
- Give Texans eligible only for state continuation a second chance to elect coverage now that premium reduction is available.

Longer State Continuation

The 6-month period of state continuation in Texas is too short to let people recently unemployed maximize the full nine months of premium reduction available. Even before the recovery bill, a longer state continuation period would have benefited many employees of small businesses ineligible for COBRA. With the recovery assistance, this change is needed to ensure Texans can stay on state continuation long enough to get nine months of reduced-premium coverage. Half of states with state continuation provisions allow coverage of 18 months or longer. Two bills introduced this session, SB 1771 by Senator Duncan (R-Lubbock) and HB 2453 by Representative Eiland (D-Galveston), would increase the period of state continuation to 18 months.

Increasing the state continuation period for people not COBRA-eligible to 18 months aligns the period of state continuation with COBRA. This allows employees of small businesses the same opportunity to maintain 18 months of private group coverage through continuation as employees in larger businesses do through COBRA.

Even more Texans could be helped sooner if changes to state law took effect immediately upon passage instead of

September 1, 2009. To do that, a bill would need to pass with at least two-thirds support in the Texas House and Senate.

New Enrollment Period for State Continuation

The Texas Legislature should also create a new state continuation enrollment period for recently unemployed Texans who did not elect or lapsed state continuation coverage before they learned of the 65 percent premium reduction. This would give Texans laid off from small businesses from September 2008 through around mid-February 2009 an opportunity to take advantage of the premium reduction that they otherwise would lack. The federal recovery bill creates a new enrollment period for COBRA, but not state continuation. Without a parallel conforming change in state law, more Texans will go uninsured who could have bought continuation coverage in the private market with the help of federal premium assistance. Like in the recovery act, the second chance for unemployed Texans should ensure people electing continuation are treated as if they had continuous coverage and avoid new pre-existing condition waiting periods.

Increased Flexibility to State Continuation

Other smaller changes to state continuation could help people keep this valuable coverage. To align with COBRA and to allow some flexibility to people who lost their jobs, the state continuation election window should be increased from 31 to 60 days and enrollees should have a 30-day grace period for late premium payments. Granting a little more flexibility to people out of work could help some

more Texans maintain coverage. These changes would result in just one set of election and payment timelines for both COBRA and state continuation coverages, making programs easier to administer for insurers and employers. Both SB 1771 and HB 2453 make these changes.

For More Information

Details on how COBRA and state continuation premium reductions will be administered are still emerging. You can learn more about COBRA and state continuation premium reduction through the recovery act in the following places.

- COBRA premium reduction guidance, FAQs, and model notices from the Department of Labor are available at www.dol.gov/ebsa/cobra.html.
- State continuation premium reduction information from the Centers for Medicare and Medicaid Services is available at www.cms.hhs.gov/COBRAContinuationofCov/.
- Information on the tax-related provisions of the premium reduction from the Internal Revenue Service is available at www.irs.gov/newsroom/article/0,,id=204505,00.html.
- Health plan administrators must send required notices about the premium reduction and new enrollment period to policyholders, which will contain the name, address, and phone number of the health plan administrator who can provide information on COBRA or state continuation.

To learn more, sign up for e-mails, or make a donation, go to www.cppp.org.

The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans.

¹ For businesses that are COBRA-eligible, access to 6-month state continuation is available following the 18-month COBRA continuation period.