



**STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NY 12257**

**David A. Paterson
Governor**

**Eric R. Dinallo
Superintendent**

Circular Letter No. 10 (2009)

April 8, 2009

TO: All insurers authorized to write accident and health insurance in New York, Article 43 corporations, and health maintenance organizations (collectively, “insurers”)

RE: Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance premium assistance pursuant to the federal American Recovery and Reinvestment Act of 2009 (ARRA), and the special election period for state continuation coverage required by Chapter 7 of the New York State Laws of 2009

STATUTORY REFERENCE: Sections 3221, 4304, and 4305 of the New York Insurance Law

The purpose of this circular letter is to provide guidance and clarification to insurers with regard to COBRA premium assistance under the federal American Recovery and Reinvestment Act of 2009, and the special election period for state continuation coverage under chapter 7 of the New York State laws of 2009.

Requirements Pursuant to ARRA

The federal American Recovery and Reinvestment Act of 2009, which President Barack H. Obama signed into law on February 17, 2009, provides COBRA health insurance premium assistance for eligible individuals whose employment is involuntarily terminated between September 1, 2008 and December 31, 2009. Under the law, the federal government will subsidize 65 percent of the cost of COBRA premiums for up to 9 months. To be eligible for premium assistance, an individual must: (1) have had his or her employment involuntarily terminated between September 1, 2008 and December 31, 2009; (2) be eligible for COBRA; and (3) elect for COBRA during those periods. The law extends premium assistance to individuals eligible for federal COBRA benefits as well as to individuals eligible for state continuation benefits (also called “mini-COBRA”) who work for employers with fewer than twenty employees.

ARRA also creates a special election period for those individuals whose employment was involuntarily terminated between September 1, 2008 and February 17, 2009 and who did not elect federal COBRA benefits. Thus, such individuals now have a second opportunity to elect federal COBRA coverage. Further, the period beginning on the date that the individual’s employment was involuntarily terminated and ending when the federal COBRA coverage starts is disregarded for the purpose of determining whether a condition is pre-existing.

This circular letter provides a partial description of ARRA and the obligations of insurers, and is not meant to fully describe insurer responsibilities under federal law. The United States (U.S.) Departments of Labor, Health and Human Services, and Treasury are responsible for implementation of ARRA. For complete information about ARRA, please visit the U.S. Department of Labor's website at www.dol.gov/ebsa/COBRA.html.

Requirements Relating to State Continuation Coverage

1. Special Election Period

New York's mini-COBRA law requires employers that employ fewer than 20 individuals that are not subject to the federal COBRA law to offer state continuation coverage. ARRA extends COBRA premium assistance to state continuation plans, but does not extend a special election period to those covered under state continuation laws. Chapter 7 of the laws of 2009, which Governor David A. Paterson signed into law on March 20, 2009, amends Insurance Law §§ 3221, 4304, and 4305 to make corresponding changes to New York's mini-COBRA law by creating a special election period for state continuation coverage, similar to the special election period created by ARRA for federal COBRA plans.

Specifically, chapter 7 of the laws of 2009 creates a special election period for individuals whose employment was involuntarily terminated between September 1, 2008 and February 17, 2009, but who did not elect state continuation coverage when initially eligible. Chapter 7 provides a second opportunity to elect state continuation coverage, now with federal premium assistance. Additionally, to mirror ARRA, chapter 7 disregards the period beginning on the date that the individual's employment was involuntarily terminated and ending when the state continuation coverage starts for the purpose of determining whether a condition is pre-existing.

2. Notices

For state continuation coverage, the U.S. Department of Labor has interpreted ARRA as placing the obligation on insurers to provide notice regarding ARRA premium assistance. Chapter 7 of 2009 tracks ARRA's statutory language regarding notice obligations relating to the special enrollment period. Consequently, the New York State Insurance Department ("Department") interprets chapter 7 of 2009 (when read in conjunction with U.S. Department of Labor guidance) to require insurers to provide eligible individuals with notice of the special election period. Individuals must elect coverage and premium assistance within 60 days of the date the insurer provides notice.

In order for insurers to fulfill their obligations under ARRA and chapter 7 of the laws of 2009, insurers should work closely with group administrators to ensure that notice of the right to state continuation coverage and the availability of federal premium assistance is properly given. The Department expects all notices regarding ARRA premium assistance to be issued on or before April 18, 2009.

The U.S. Department of Labor has posted model notices, including an alternative notice for insurers to send to individuals eligible for state continuation coverage under chapter 7 of the laws of 2009, on its website at <http://www.dol.gov/ebsa/COBRAmode notice.html>. The Department, too, has created a New York State-specific notice that satisfies an insurer's obligations under ARRA and chapter 7. That notice is available at [this link](#). Insurers are not required to utilize the New York State-specific model notice, but in order to fulfill their obligations under ARRA and chapter 7 relating to premium assistance, insurers should provide a notice in at least substantially similar form.

3. Premium Assistance and Tax Credit

Pursuant to U.S. Department of Labor guidance, health plans administering state continuation plans shall accept 35 percent payment of an assistance eligible individual's premium as payment-in-full. Health plans may claim reimbursement for the remaining 65 percent through a federal payroll tax credit pursuant to federal Internal Revenue Service (IRS) guidelines. Health plans should work in conjunction with group administrators to implement a system to identify assistance eligible individuals. For further information and guidance, please visit the IRS's website at <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>.

Please direct any questions regarding this circular letter to Heather M. Manikas, Senior Insurance

Attorney, at hmanikas@ins.state.ny.us or (518) 473-6107.

Very truly yours,

Eugene Bienskie
Asst. Deputy Superintendent & Chief
Health Bureau