



**STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004**

David A. Paterson
Governor

James J. Wrynn
Superintendent

**Circular Letter No. 23 (2009)
September 30, 2009**

TO: All Insurers Authorized to Write Accident and Health Insurance in New York, Article 43 Corporations, Article 45 Corporations, Article 47 Corporations and Health Maintenance Organizations (collectively, “insurers”)

RE: Thirty-Six Month State Continuation Benefit Required by Chapter 236 of the Laws of 2009

STATUTORY AND REGULATORY REFERENCES: New York Insurance Law Sections 3221, 4304 and 4305

The purpose of this circular letter is to provide guidance and clarification to insurers regarding Chapter 236 of the Laws of 2009, which extends the period of continuation coverage under a group or group remittance contract to 36 months.

I. Background

Under the federal Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”), which applies only to an employer with 20 or more employees (“large employer”), an employee may continue his or her current employer-sponsored group health insurance coverage upon loss of eligibility for group coverage. Under federal COBRA, the employee’s dependent who loses eligibility for group coverage also may continue coverage. New York State continuation coverage, known as “mini-COBRA,” which applies to employers with fewer than 20 employees and all other groups not subject to federal COBRA. Mini-COBRA provides rights similar to federal COBRA to a member of such a group and the member’s dependents.

On July 29, 2009, Governor David A. Paterson signed into law Chapter 236 of the Laws of 2009, which permits a person who is an employee or member of a group to continue group health insurance coverage for up to 36 months, regardless of the reason that the person lost eligibility for coverage. Specifically, Chapter 236 extends the continuation period for persons receiving mini-COBRA coverage, and provides a state continuation benefit that “wraps-around” and extends the continuation period for an employee or dependent receiving federal COBRA coverage by permitting the employee or dependent to receive mini-COBRA coverage upon termination of federal COBRA coverage.

Prior to Chapter 236’s enactment, the length of time that a person could continue group health insurance coverage under mini-COBRA depended upon the reason that the person became ineligible for coverage. For example, a person who became ineligible due to a voluntary or involuntary termination of employment or group membership was entitled to continue group health insurance coverage for up to 18

months. However, a person who was determined to be disabled under Title II or Title XVI of the federal Social Security Act was entitled to continue group coverage for up to 29 months. A qualifying dependent was entitled to continue group coverage for up to 36 months.

Under federal COBRA, if an employee loses eligibility for coverage due to voluntary or involuntary termination of employment or a reduction in work hours, the employee generally may continue employer-sponsored group health insurance for up to 18 months from the date that coverage would otherwise terminate. Further, an employee determined to be disabled under Title II or Title XVI of the Social Security Act may retain group coverage for up to 29 months. An employee's dependent may continue group coverage for up to 36 months.

II. Chapter 236 of the Laws of 2009

A. Extension of Mini-COBRA

Under Chapter 236, an employee who works for an employer with fewer than 20 employees or a member of any other group not subject to federal COBRA may continue group health insurance coverage for up to 36 months under mini-COBRA, regardless of the reason that the person became ineligible for coverage. For example, an employee laid off due to economic conditions now has the option of retaining employer-sponsored group health insurance for an additional 18 months, while a person who is determined to be disabled under Title II or Title XVI of the Social Security Act may now continue coverage for an additional seven months. The period during which a dependent may continue group coverage, however, remains unchanged.

The reasons for early termination of mini-COBRA coverage remain unchanged. Similarly, the rules regarding premiums for mini-COBRA also remain unchanged, and a person electing mini-COBRA will be responsible for up to 102% of the premiums for the entire 36-month period. Further, Chapter 236 does not affect the mini-COBRA subsidy provided under the federal American Recovery and Reinvestment Act of 2009 ("ARRA"). See Circular Letter No. 10 (2009) (discussing ARRA).

B. State "Wrap-Around" Benefit for Employees of a Large Employer

Chapter 236 permits an employee of a large employer to continue employer-sponsored group health insurance coverage for a total period of up to 36 months. Therefore, since federal COBRA coverage periods remain unchanged, Chapter 236 allows an employee who exhausts federal COBRA coverage to opt for mini-COBRA coverage, thereby extending group coverage for up to an additional 18 months, for a total period of 36 months. For example, if an employee loses eligibility for coverage due to voluntary or involuntary termination of employment or a reduction in work hours, then the employee generally may continue employer-sponsored group health insurance under federal COBRA for up to 18 months from the date coverage would otherwise terminate. Thus, pursuant to Chapter 236, when the employee's federal COBRA coverage terminates at 18 months, the employee may receive mini-COBRA coverage for up to an additional 18 months, for a total period of up to 36 months. With regard to an employee determined to be disabled under Title II or Title XVI of the Social Security Act, the disabled employee may receive up to seven months of mini-COBRA coverage after the member's federal COBRA coverage terminates at 29 months, for a total period of up to 36 months.

Although federal COBRA premiums remain unchanged, if an employee determined to be disabled under Title II or Title XVI of the Social Security Act elects mini-COBRA coverage after federal COBRA coverage terminates at 29 months, then the employee may pay a lower premium to continue coverage for the remaining seven months. Specifically, federal COBRA provides that a disabled employee is responsible for up to 102% of the premium for months one through 18 of federal COBRA coverage and up to 150% of the federal COBRA premium for months 19 through 29 of coverage. However, if the disabled employee elects mini-COBRA coverage after month 29, then the employee would be responsible for only up to 102% of the mini-COBRA premium for months 30 through 36.

Further, Chapter 236 does not affect the federal COBRA subsidy provided by ARRA. See Circular Letter No. 10 (2009) (discussing ARRA).

C. Applicability

Chapter 236 applies to group and group remittance health insurance contracts or policies subject to federal COBRA or mini-COBRA, including Healthy NY group contracts. Chapter 236 does not apply to individual policies or contracts or policies or contracts that provide dental-only, vision-only, prescription drug-only, accident-only or specified disease benefits. Moreover, a self-funded employee welfare benefit plan that is exempt from the Insurance Law and regulations under the federal Employee Retirement Income Security Act (“ERISA”) does not need to offer the benefits.

D. Notices

Chapter 236 did not amend continuation coverage notice requirements. Therefore, as a general matter, a group policy or contract holder or its benefits administrator must continue to provide group members with notice of their rights to continue their group health insurance coverage upon a qualifying event, and must provide instructions on how to elect federal COBRA or mini-COBRA.

Insurers should continue to work closely with group policy or contract holders and their benefits administrators to ensure that the group policy or contract holders or their benefits administrators properly amend the aforementioned notices to address the rights afforded to group members by Chapter 236.

E. Effective Date

Chapter 236 applies to policies or contracts issued, renewed, modified, altered or amended on or after July 1, 2009. For most coverage, the new benefits afforded by Chapter 236 will be effective on the policy or contract’s annual renewal date. However, if a group member’s policy or contract has not been renewed, modified, altered or amended on or after July 1, 2009 and the group member’s continuation coverage period expires, then the group member would not be eligible for mini-COBRA coverage because Chapter 236 would not yet apply to the member’s policy or contract. However, nothing prohibits an insurer from offering groups extended continuation prior to the date the policy or contract would otherwise be renewed, modified, altered or amended. If an insurer elects to make the benefits available to group members prior to the date required by the law, then the insurer must do so in a fair and nondiscriminatory manner, consistent with the terms of its contracts and the requirements of the Insurance Law.

F. Policy Form and Rate Submissions

An insurer should submit revised policy forms or policy form amendments to the Insurance Department’s Health Bureau for review and approval as soon as possible so that those currently receiving mini-COBRA or federal COBRA coverage may receive the benefits afforded by recently enacted Chapter 236.

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,

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