

FREQUENTLY ASKED QUESTIONS (FAQ's) ON WISCONSIN CONTINUATION

The American Recovery and Reinvestment Act of 2009 (ARRA) provides premium assistance for certain individuals receiving COBRA continuation coverage. The term "COBRA coverage" generally refers to health coverage under the federal law continuation of coverage provisions added to ERISA, the Internal Revenue Code and the Public Health Service Act by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium assistance applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to 9 months.

COBRA Continuation Coverage under Comparable State Mini-COBRA Programs:

Under the ARRA, COBRA Continuation Coverage is defined as continuation coverage provided pursuant to ERISA (generally for private sector employers with 20 or more employees), the Public Health Service Act (for non-federal governmental employers with 20 or more employees), Title 5 of the US Code (for federal employees) or under a State program that provides comparable continuation coverage (generally covering private employers with fewer than 20 employees). These State programs generally are referred to as State mini-COBRA programs.

In order to be comparable, a State program must provide a right to continue coverage under an employer's group health plan that is substantially similar to what was provided when the individual was employed and at a monthly cost that is based on a specified percentage of the group health plan's cost of providing such coverage. Wisconsin's state continuation coverage is substantially similar to COBRA.

This document includes answers to Frequently Asked Questions (FAQs) about the interaction of the ARRA and Wisconsin's state continuation program.

For general information about COBRA coverage and changes to COBRA under the ARRA, please visit the Department of Labor's website at: www.dol.gov/COBRA. There you can find more information about who is considered to be an "assistance eligible individual," the special COBRA election opportunity under ARRA, model notices and more.

If you have other questions about State mini-COBRA programs, or other aspects of the new COBRA provisions, please send them to: NewCobraRights@cms.hhs.gov. Please check this site frequently for more information about the appeals process, as well as other needed updates.

We have attached answers to many of your questions that have come up since ARRA went into effect. WPS will continue to provide additional information, guidance and support as more details are forthcoming from the Department of Labor (DOL), the Internal Revenue Service (IRS) and Center for Medicare and Medicaid Services (CMS).

Q1. Are beneficiaries of a state continuation program eligible for the premium assistance provided by the ARRA?

Beneficiaries of Wisconsin's state continuation program who meet the definition of an assistance eligible individual may be eligible for the premium assistance. An assistance eligible individual (AEI) is the employee or a member of his/her family who is eligible for state continuation as a result of the employee's involuntary termination that occurred in the period from September 1, 2008 through December 31, 2009. For beneficiaries of Wisconsin's state continuation program, AEI's are defined as those individual's that were either covered as of March 1, 2009 by Wisconsin's state continuation program or those individuals who were involuntarily terminated after February 17, 2009. Additionally, on Friday, May 15, 2009, the Governor signed 2009 Wisconsin Act 11 which became effective on May 19, 2009. In part, the new law gives former employees of Wisconsin small employers a second chance to elect Wisconsin's continuation coverage and take advantage of the federal COBRA subsidy. Affected employers must provide notice of the second chance by May 29, 2009. These individual's were given a 60-day (versus the current 30-day) election period in which to elect this coverage.

Individuals who meet this definition may receive premium assistance for periods of health care coverage beginning on or after February 17, 2009 and up to 9 months. For a copy of Wisconsin Act 11 please go to - <http://www.legis.state.wi.us/2009/data/acts/09Act11.pdf>

Q2. Are beneficiaries of Wisconsin's state continuation program eligible for the additional election period provided under ARRA?

Yes. On Friday, May 15, 2009, the Governor signed 2009 Wisconsin Act 11 which became effective on May 19, 2009. In part, the new law gives former employees of Wisconsin small employers a second chance to elect Wisconsin's continuation coverage and take advantage of the federal COBRA subsidy. Affected employers must provide notice of the second chance by May 29, 2009. These individual's were given a 60-day (versus the current 30-day) election period in which to elect this coverage.

Individuals who meet this definition may receive premium assistance for periods of health care coverage beginning on or after February 17, 2009 and up to 9 months.

Q3. What types of State continuation coverage programs are covered under ARRA?

In order to be considered a comparable state continuation coverage program, a State must provide individuals the general right to continue coverage substantially similar to that previously provided under the employer's group health plan at a cost that is based on a specified percentage of the employer group health plan's cost of providing such coverage. In other words, the coverage program must be a continuation of group coverage under the same insurance policy at some specified limited percentage of group rates. In some cases, individuals are offered "conversion" coverage, which is an individual market product. Individuals who have such coverage are not eligible for premium assistance. In addition, state public health programs such as Medicaid or CHIP are not continuation coverage.

Q4. Does the ARRA change any Wisconsin state continuation requirements or time periods for the election of continuation coverage?

No. The ARRA does not change any state continuation coverage program requirements. However, the new law does provide the opportunity for qualified beneficiaries of the comparable state programs to receive premium assistance for up to 9 months. It also allows assistance eligible

individuals to switch to other coverage offered to active employees if permitted by the employer, provided that the new coverage is no more expensive than the prior coverage. Accordingly, if State law provides only a 10-day period for election of continuation coverage under a State program, that period is not changed by the ARRA. Similarly, if a State law only provides for a 6-month maximum length of continuation coverage under a State program, that maximum limit is also not changed by the ARRA.

Q5. Who would get the payroll tax credit for the 65 percent portion of the premium under the State programs?

WPS will take the payroll tax credit once the individual beneficiary pays the 35 percent portion of the premium to their employer for the time period in question. The employer or group health plan cannot receive the tax credit under the State programs. For more information on the tax credit, go to www.irs.gov. WPS will be administering the subsidy for small employer groups covered under our plans if those employers have 20 or less than 20 employees and are not subject to COBRA.

Q6. What does “involuntarily terminated” mean?

Persons who are involuntarily terminated from employment are eligible for the subsidy. For more information on the definition of “involuntarily terminated” please reference IRS Notice 2009-27 at – <http://www.irs.gov/pub/irs-drop/n-09-27.pdf>

Q7. Who has to notify the employees of the opportunity to elect the premium reduction?

Employers must provide notice of the availability of the subsidy to any terminated insured that is or would be an assistance eligible individual who had a qualifying event at any time from September 1, 2008 to December 31, 2009. Insurers are required to provide this notice if the employer fails to so provide.

Due to recent legislative changes, employers must provide notice to any terminated insured who is or would be an assistance eligible individual who had a qualifying event at any time from September 1, 2008 to May 29, 2009 that permits a second continuation election period, and either did not elect continuation coverage or who elected it but subsequently discontinued the coverage. Insurers are required to provide this notice if the employer fails to so provide.

For a copy of the model notices please visit the OCI’s website at – <http://oci.wi.gov/bulletin/0509arra.htm>

Q8. Will WPS make any determinations about “involuntary termination”?

No. This is a determination that only the employer can make. WPS will not engage the subsidy for any Wisconsin state continuation AEI unless the former employer has certified, in a form acceptable to WPS, that the individual has been involuntarily terminated and therefore eligible for the subsidy.

Q9. How will WPS know who is eligible for the subsidy?

Eligibility is in all cases determined by the employer. We will require the employer to let us know which of its terminated members is subsidy-eligible. This will mainly be through designating that person as “involuntarily terminated.” WPS will not attempt to determine this

status on our own. If a person is not designated as such by the employer, WPS will not apply the subsidy or send out notifications.

Q10. What can I do if my former employer's group health plan tells me that I do not qualify for the COBRA premium reduction?

If your health plan finds that you are not eligible for the premium reduction, you can ask for an expedited review of that decision within 15 business days after receiving your request for review. The Center for Medicare and Medicaid Services (CMS) will handle appeals for Federal, State, and local governmental employees, as well as appeals related to state mini-COBRA plans, specifically, Wisconsin state continuation beneficiaries. The application to request CMS review of your denial of premium assistance is now available on CMS' website at - <http://www.continuationcoverage.net/>

Q11. How will WPS know if the beneficiary becomes eligible for other coverage?

The beneficiary must notify their former employer and WPS in writing if they become eligible for coverage under another group health plan or Medicare and is subject to significant penalties of 110% of the subsidy amount for failing to do so. WPS is not responsible for this action.

Q12. Does WPS have to determine the income of the subsidy recipient?

The subsidy is only available to other wise eligible persons who meet certain income thresholds. Employees with modified adjusted gross income (MAGI) that exceeds \$250,000 (for joint returns) or \$125,000 (for all other filers) will not be eligible for the full premium subsidy. However, that is not a concern of WPS, the eligible person is responsible for determine the taxable effect of the subsidy. If a person's MAGI make him ineligible for the subsidy, the subsidy must be added to his tax liability. This would occur in the next year after the subsidy has been received.

Q13. For those employers for whom WPS will file for the subsidy credit, what will WPS need from employers in order to file for the credit?

WPS will be responsible for filing for the subsidy credit for non-COBRA small employers under Wisconsin state continuation laws. The IRS has published questions and answers that detail what supporting documentation WPS will need to obtain from a non-COBRA employer in order to confirm that a particular individual was eligible for the credit. WPS will need the following information:

- Attestation of the involuntary termination of the employee, including the date of termination;
- Social Security numbers of the covered employees;
- Information on the receipt, including dates and amounts of each AEI's amount of premium billed, for those AEI's already covered under Wisconsin's state continuation program;
- Addresses and billing information for AEI's;
- Attestation that you are an employer not subject to COBRA and that as an employer you are not subject to the COBRA notification provisions under ARRA;
- Other documentation necessary to verify eligibility as needed.

Q14. For non-COBRA small employers who are covered by Wisconsin's state continuation program will WPS accept the reduced premium that includes the subsidy amount?

The employer will be responsible for billing AEI's for the reduced premium based on the subsidy. WPS will accept a reduced premium payment from the employer and handle the support for the subsidy including the collection of the 65% subsidy via reduction of the WPS payroll taxes as outlined in the act.