

COBRA Subsidy Program Extended

The Temporary Extension Act of 2010 (the Act) was signed into law by President Obama on Tuesday, March 2, 2010. The Act extends the COBRA subsidy eligibility period originally introduced under the American Recovery and Reinvestment Act of 2009 (ARRA), as amended by the Department of Defense Appropriations Act, 2010 (2010 DoD Act), and creates new eligibility rules for certain individuals that experience a qualifying event that is a reduction in hours of employment that is subsequently followed by an involuntary termination of employment.

Subsidy Extension

The Act extends the eligibility period for the COBRA subsidy program until March 31, 2010. Individuals that experience an involuntary termination of employment through March 31, 2010 are eligible for the subsidy available under ARRA. Election notices and procedures must be modified to reflect this new sunset date.

New Rules Regarding Reduction in Hours Qualifying Events

Any individuals who experienced a qualifying event that was a reduction in hours of employment (occurring on or after September 1, 2008) and who later experience an involuntary termination of employment as defined by ARRA between March 2 and March 31, 2010 are eligible for the subsidy if they are otherwise an assistance eligible individual (AEI). This new rule only applies to periods of coverage beginning after March 2, 2010 (i.e. if the COBRA coverage period typically begins on the first of the month, the first subsidized COBRA coverage period would not begin until April 1, 2010).

New Election Period

Individuals that experienced a qualifying event due to a reduction in hours of employment and did not elect COBRA coverage, or elected and subsequently lost COBRA coverage, are entitled to a new COBRA election period if they subsequently experience an involuntary termination of employment between March 2 and March 31, 2010 (i.e., on or after March 2, 2010 and on or before March 31, 2010).

NOTE: Although the involuntary termination of employment is treated as the qualifying event for purposes of triggering eligibility for the subsidy, the applicable COBRA period is measured from the date of the original qualifying event (the reduction in hours of employment).

IMPORTANT: This new rule does not provide a new COBRA period to AEIs whose COBRA period has already expired simply because they have an involuntary termination of employment between March 2 and March 31, 2010.

AEIs are not required to pay for any period of coverage between the date of the reduction of hours of employment and the first period of COBRA continuation coverage following the subsequent involuntary termination of employment. Any break in coverage between the reduction in hours and the involuntary termination of employment is not treated as a "break in coverage" for HIPAA portability purposes.

New Notice Requirement

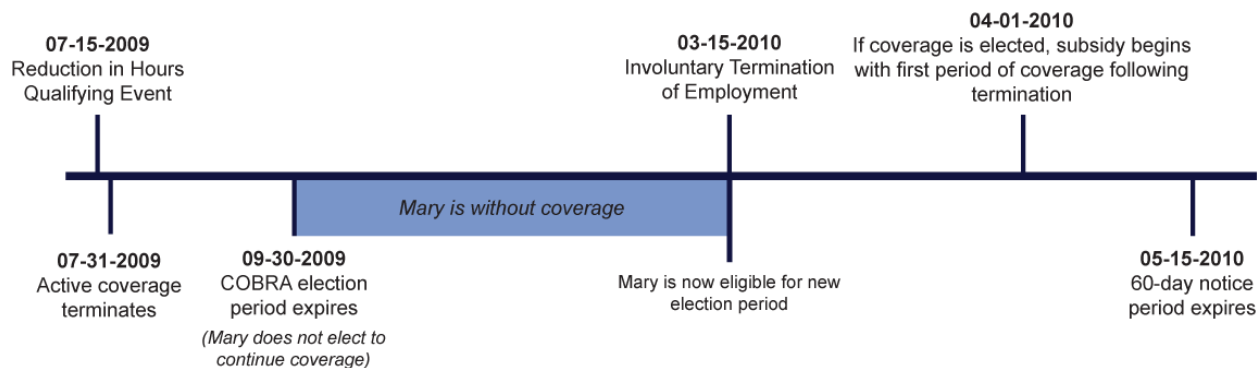
Individuals described above must receive a notice describing these new rules within 60 days of experiencing the involuntary termination of employment.

Example

The following timeline represents Mary, a hypothetical participant under an employer’s group health plan. In this example, Mary experienced a qualifying event that was a reduction of hours on July 15, 2009. Although Mary is still employed, she is no longer eligible for coverage under the employer’s group health plan.

Under the terms of the group health plan, Mary’s coverage continues until the end of the month (July 31, 2009). Mary’s employer provided the COBRA election notice to Mary on July 20, 2009, so Mary’s 60-day election period extends from August 1, 2009 through September 30, 2009. Mary does not elect COBRA continuation coverage.

On March 15, 2010, Mary experiences an involuntary termination of employment. Under the Act, Mary is eligible for a new election period. Mary’s employer must provide notice of this new election period within 60 days of Mary’s termination of employment. Mary must be given a 60-day election period, beginning on the date this notice is provided. If Mary elects COBRA coverage, her 18-month coverage period is measured from the original qualifying event (the reduction of hours event) and expires on January 31, 2011.



Civil Action and Penalties

In addition to civil actions that may be brought to enforce the provisions of ARRA and the Act, an affected individual or the Treasury and/or Department of Labor (DOL) may also bring a civil action to enforce any determinations and for appropriate relief. Additionally, plan sponsors or health insurers can be assessed a penalty of up to \$110 per day for failure to comply with Treasury or DOL determinations within 10 days after receiving notice of the determination.

Additional Information

CONEXIS will continue to monitor developments related to COBRA and the subsidy program and will provide additional information, including additional guidance issued by the Treasury or DOL, as it becomes available.