

The American Recovery and Reinvestment Act of 2009 (the “Act”) introduced a 65 percent federal subsidy of COBRA continuation coverage premiums for qualified beneficiaries receiving that coverage due to the covered employee’s involuntary termination of employment occurring between September 1, 2008, and December 31, 2009.

The Act also provides a second 60-day election period to qualified beneficiaries who experienced an involuntary termination of employment between September 1, 2008, and February 17, 2009 (the “enactment date”) but did not elect COBRA during their initial 60-day election period, as well as those who elected coverage but then subsequently lost that coverage prior to the effective date.

The Act also applies to state-sponsored continuation plans.

Action Plan for State Continuation

Under the Act, the 65 percent federal subsidy also applies to state continuation coverage premiums for qualified individuals who were involuntarily terminated from employment between September 1, 2008, and December 31, 2009. On April 8, 2009, the Virginia General Assembly passed a bill proposed by Governor Kaine (“VA Enhanced Continuation”) that creates a more expansive state continuation opportunity for those individuals enrolled in group coverage issued to small employers that are not subject to COBRA who are involuntarily terminated from employment, provided that such individuals qualify for premium assistance under the Act. The premium for this coverage is to be collected monthly and may be up to 102 percent of the premium normally applicable for the coverage. *New section 38.2-3541.1 of the Code of Virginia, which was effective upon enactment, is available on page 3.*

As the carrier, Anthem is responsible for the 65 percent premium on all assistance eligible individuals (“AEIs”) participating in VA Enhanced Continuation under its group policies. Anthem is responsible for administering the subsidy and seeking reimbursement from the Department of Treasury through Anthem’s payroll taxes. The coverage for an AEI is available for a maximum of 9 months beginning:

- on the date of notification (which must be made by April 18, 2009) of the availability of the premium assistance for AEIs involuntarily terminated between September 1, 2008, and before February 17, 2009;
- on the date of notification (which must be no later than 60 days from the date of involuntary termination) for AEIs who were terminated between February 17 and April 8, 2009; and
- on the date of involuntary termination if the termination occurs after April 8, 2009. An AEI who is involuntarily terminated after April 8, 2009, must be notified of the availability of premium assistance within 30 days of the termination date.

The new law requires that each of the notices described above be sent out by the employer. The AEI has up to 60 days from notification to elect coverage.

The following is an overview of our plans to assist groups in identifying AEIs; satisfy, if applicable, the notice requirement, and effectively administer the ongoing eligibility and premium remittance requirements introduced by the Act.

Identifying Assistance Eligible Individuals

The employer is responsible for identifying those AEIs who qualify for the 65 percent subsidy under VA Enhanced Continuation. The new state law relies on the federal definition of AEI as the basis for determining AEI status, **except that** for state law purposes an AEI is only the former employee. While other members of the former employee’s family may continue coverage with the former employee, the other family members do not have their own independent right of continuance.

To be considered an AEI and get reduced premiums, a former employee:

- MUST be eligible for continuation coverage at any time during the period from September 1, 2008, through December 31, 2009, and elect the coverage;
- MUST have a continuation coverage election opportunity related to an involuntary termination of employment that occurred at some time from September 1, 2008, through December 31, 2009;
- MUST NOT be eligible for Medicare; AND
- MUST NOT be eligible for coverage under any other group health plan, such as a plan sponsored by a successor employer or a spouse's employer.

Notifications to AEIs and Qualified Beneficiaries

The Department of Labor released guidance on March 19, 2009, clarifying that the Act law does require notifications to be mailed to state continuation members. The Department of Labor provided a model notice that Anthem will incorporate into this action plan for the VA Enhanced Continuation option.

We will provide the employer with an attestation form, on which the employer will indicate if the existing state continuation member was or is involuntarily terminated and potentially eligible for VA Enhanced Continuation. The employer must return the attestation form within 5 business days. It is critical the attestation be returned to us.

We will provide a notice template along with the attestation that the employer should complete and mail to the potential VA Enhanced Continuation members. The notice template will be based on the Department of Labor model notice for state continuants. We plan on mailing a general letter to state continuants that are listed on the attestation once the employer returns the attestation to us.

If there is a break in coverage, Anthem will require the former employee to complete a new application.

Premiums Paid

Anthem will not separately bill an AEI for his or her 35 percent share of premium. The bill for the AEI's coverage will still be shown on the group bill. The group will be required to collect the 35 percent premium and remit it to Anthem, but the group will not be required to pay the other 65 percent of the premium for the AEI.

Communicating New AEIs to Anthem

The enrollment forms may be updated to allow for the reporting by the employer of an AEI.

Important Note

VA Enhanced Continuation is a new law providing a new opportunity for those AEIs who experience a loss of coverage because of involuntary termination of employment. It does not replace the 90-day continuation option that exists in Anthem's group policies. That option still provides opportunities for coverage for individuals who are not eligible for premium assistance, who may waive premium assistance because of income limitations, or who may experience terminations of coverage that are voluntary or not related to loss of employment.

Code of Virginia § [38.2-3541.1](#). Continuation following involuntary termination of employment; special circumstances.

- A.** For purposes of meeting the definition of "COBRA continuation coverage" in Title III of Division B of the American Recovery and Reinvestment Act of 2009, P.L. [111-5](#) (the Act), employees who are involuntarily terminated during the period beginning September 1, 2008, and ending December 31, 2009, or during any period for which premium assistance is specified by the Act as later amended, shall be offered the option to continue their existing group health insurance coverage subject to the following:
1. Coverage shall continue for a period of up to nine months following the date of (i) involuntary termination for those terminated on or after the date of enactment of this section or (ii) following the date of the notification required pursuant to subdivision 3, contingent upon the involuntarily terminated employee's eligibility for premium assistance under the Act;
 2. Premium payments (i) may be paid on a monthly basis to the group policyholder and (ii) shall not exceed 102 percent of the insurer's current premium rate applicable to the group policy;
 3. Employers shall provide notification of the availability of continuation under this section as follows:
 - a. Notification shall be provided to those employees whose employment was terminated on or after September 1, 2008, and prior to February 17, 2009, in accordance with Section 3001 of the Act;
 - b. Notification shall be provided to those employees whose employment was terminated on or after February 17, 2009, and prior to the date of enactment of this section, no later than 60 days following the date of enactment of this section or the employee's termination, whichever is later; and
 - c. Notification shall be provided to those employees whose employment was terminated after the date of enactment of this section no later than 30 days following the date of the employee's termination;
 4. The employee shall elect this continued coverage no later than 60 days following notification of plan enrollment options; and
 5. All other provisions, restrictions and limitations contained in the Act shall apply.
- B.** The provisions of this section shall only apply to employees of small employers whose group health insurance coverage does not provide for continuation of coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).
- C.** As used in this section, "group health insurance coverage" and "health insurance issuer" shall have the same meaning as provided in § [38.2-3431](#).