

## [ Alerts and Updates ]

### Pennsylvania Mini-COBRA Signed into Law

**June 22, 2009**

On June 10, 2009, Pennsylvania joined other states that mandate small employers provide medical continuation coverage, when Governor Ed Rendell signed Pennsylvania Mini-COBRA into law. Pennsylvania Mini-COBRA ushers in a new era of healthcare in Pennsylvania and requires employers with less than twenty employees that sponsor group medical insurance (typically group medical policies that insure two or more employees) to offer employees and their dependents the opportunity to purchase up to nine months of medical continuation coverage upon a qualifying loss of employer-sponsored medical coverage. Moreover, this law is expressly designed to coordinate with premium assistance available through state continuation coverage programs under the American Recovery and Reinvestment Act of 2009 ("ARRA"), as individuals who elect Pennsylvania Mini-COBRA may be eligible for ARRA premium assistance. It should be noted, however, that the availability of Pennsylvania Mini-COBRA, unlike ARRA premium assistance, is legislated as a permanent measure and will not expire at the end of 2009.

#### New Requirements for Small Employers

The enactment of Pennsylvania Mini-COBRA is a change in the status quo in healthcare provision in Pennsylvania; however, there are a few key distinctions between federal COBRA<sup>1</sup> and Pennsylvania Mini-COBRA. Pennsylvania Mini-COBRA:

- applies to employers with less than twenty employees (unlike federal COBRA, which applies to employers with twenty or more employees);
- provides continuation coverage for a period of nine months (federal COBRA provides a minimum of 18 months);
- applies only to insured group major medical, hospital or surgical policies (federal COBRA applies to all ERISA group health plans); and
- permits an employer to charge up to 105% of the of the group rate of the insurance being continued (federal COBRA provides for a maximum charge of up to 102%).

Similar to federal COBRA for large employers, however, a covered small employer will be required to provide a Pennsylvania Mini-COBRA election notice to a "Qualified Beneficiary" who experiences a "Qualifying Event." This notice is currently required to contain information regarding the availability of the ARRA subsidy.

For purposes of Pennsylvania Mini-COBRA, a Qualified Beneficiary who is potentially eligible to elect this continuation coverage includes an enrolled employee or his or her dependent(s) who has been continuously enrolled under the employer's insured group medical policy for three months prior to the Qualifying Event and who is not eligible for Medicare or covered by or enrolled in other private group health insurance. The Qualifying Events that trigger a right to Pennsylvania Mini-COBRA include the death of a covered employee, termination of employment or a reduction in an employee's hours, employee entitlement to Medicare or a dependent ceasing to qualify as such.

#### ARRA Subsidy

Pennsylvania Mini-COBRA is expressly designed to coordinate with the COBRA subsidy provision under the ARRA. The ARRA provides that a premium-assistance subsidy be made available to individuals who are eligible for continuation coverage under a

state law analogous to federal COBRA, as a result of an involuntary termination of employment. Under the ARRA, a Qualified Beneficiary may be eligible to elect to pay only thirty-five percent of the otherwise-applicable medical insurance premium, and employers providing the subsidy may seek a corresponding sixty-five percent premium-assistance credit for the nine month continuation period. This means that an individual who elects Pennsylvania Mini-COBRA may be able to receive the premium assistance benefit under the ARRA prior to the ARRA's expiration at the end of 2009.

### Action Items for Small Employers

Covered small employers may want to take action now to comply with the new Pennsylvania Mini-COBRA and prepare for offering it in conjunction with the ARRA premium assistance. An employer may wish to:

- Consult with its legal counsel regarding the obligation to provide Pennsylvania Mini-COBRA;
- Contact its medical insurer and confirm that the insurer will offer Pennsylvania Mini-COBRA by July 10, 2009; and
- Prepare a COBRA election notice incorporating the required ARRA provisions or work with its third-party administrator or insurer to ensure preparation and distribution of a compliant notice. There are model ARRA notices available for state continuation coverage; however, these will need to be tailored to fit the provisions of the Pennsylvania Mini-COBRA law.

It should be noted that Pennsylvania is not the only state to enact legislation to extend the benefits of the ARRA premium-assistance subsidy to those participating in state Mini-COBRA programs. On June 18, 2009, Illinois Governor Pat Quinn signed a law that gives a new opportunity to those who became eligible for Illinois Mini-COBRA on or after September 1, 2009, and who declined enrollment, to enroll in this program now (and possibly receive the benefit of the ARRA premium-assistance subsidy).

Duane Morris will provide more information regarding the application of Pennsylvania Mini-COBRA in a future Alert.

### For Further Information

If you have any questions about this Alert, please contact any of the [attorneys](#) in our [Employee Benefits and Executive Compensation Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

### Note

1. Consolidated Omnibus Budget Reconciliation Act of 1985.