



Oklahoma INSURANCE Department
State of Oklahoma

BULLETIN NO. LH 2009-02

**TO: ALL LIFE AND HEALTH INSURERS
ALL LIFE AND HEALTH PRODUCERS
ALL THIRD PARTY ADMINISTRATORS**

FROM: OKLAHOMA INSURANCE DEPARTMENT

**RE: Senate Bill (SB) 553 - CONTINUATION OF HEALTH
COVERAGE
CHANGES TO Section 4509 OF TITLE 36**

DATE: June 26, 2009 *(Revised 041910)*

SB 553 was passed by the Oklahoma Legislature and signed into law by Governor Brad Henry on May 18, 2009, going into effect immediately. It made substantive changes to Section 4509 of the Oklahoma Insurance Code. This bulletin clarifies these changes and briefly explains an insurer's obligations under recent changes to state and federal law.

Prior to passage of SB 553:

Prior to May 18, 2009, Section 4509 provided for the extension of group health coverage for the insured and his or her dependents in two situations. The first was that any employee whose insurance was terminated under any group policy was provided an extension of that coverage for 30 days after termination. The second was an extension of benefit for a continuous loss that began while the insurance was in force.

Following passage of SB 553:

Amended provisions:

Section 4509 now applies only to group insurance which is not subject to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), that is, insurance issued to employers with fewer than 20 employees. Prepaid health plans and health maintenance organization contracts issued to non-COBRA eligible groups are also subject to Section 4509.

Employees whose group health insurance is terminated for any reason shall remain insured for at least 63 days unless the employee and his dependents become entitled to similar insurance from another source. The terminated employee may be charged the same

premium that would have been charged if the termination had not occurred. Although the requirement to charge premium is permissive, the extension of coverage is not. Carriers are cautioned against developing procedures that preclude the terminated employee from receiving the benefit of the 63 day continuation.

The requirement to extend benefits for a continuous loss remains unchanged from prior law (except that, as previously mentioned, it is no longer required for groups subject to COBRA).

New provision:

A new subsection (d) has been added to Section 4509 to create a continuation right comparable to COBRA. This "mini-COBRA" allows employees or their dependents who have lost coverage due to the employee's involuntary termination to continue their group health insurance for up to four (4) months.

The new subsection was enacted in order to provide a means for employees laid off or involuntarily terminated from companies not subject to COBRA to be eligible for the premium subsidy made available pursuant to the federal stimulus bill, the American Recovery and Reinvestment Act of 2009 (ARRA). Although state law creates the "mini-COBRA" provision, it is the federal law, ARRA, which governs the availability of the premium subsidy for assistance eligible individuals. **The premium subsidy provisions of ARRA have been extended three times. Most recently, in legislation enacted April 15, 2010, the subsidy was extended to involuntary terminations that occur through May 31, 2010. Involuntary terminations of employment that occurred on and after April 1, 2010 and before the enactment of the latest extension will qualify for the premium extension.**

SB553 and ARRA:

ARRA provides a subsidy for both COBRA and state law continuations of coverage, but when ARRA was enacted, Oklahoma did not have a state law continuation right that was comparable to COBRA.

A state continuation right comparable to COBRA was created when subsection (d) of Section 4509 was added in SB553. Now, Oklahomans who work for the smallest employers are eligible for a premium subsidy. Oklahomans who work for employers not subject to COBRA and who are involuntarily terminated between May 18, 2009 and **May 31, 2010**, are eligible for a subsidy of their continuation premium.

There are differences between the premium subsidy available to individuals eligible under the state continuation right and the subsidy available to COBRA eligible individuals. First, in the case of coverage continued under state law, the insurer is the entity to whom premiums are payable and the entity that will receive the premium credit. It is the insurer that must notify involuntarily terminated employees of the availability of the subsidy, receive the employee's portion of the premium, and receive the credit against their payroll tax.

Second, the premium subsidy is only available for the continuation period provided by state law, i.e. in Oklahoma, the premium subsidy is only available for four months.

The same income limitations and eligibility restrictions apply to the premium subsidy regardless of whether the continuation coverage is provided pursuant to COBRA or state law. Much more detailed information on the premium subsidy is available from the federal agencies responsible for administering ARRA: the U.S. Department of Labor, the U.S. Department of Health and Human Services, and the Internal Revenue

Service. Information from those entities can be found at the following websites: <http://www.dol.gov/ebsa/COBRA.html>, <http://www.cms.hhs.gov/COBRAcontinuationofcov/>, <http://www.irs.gov/newsroom/article/0,,id=204505,00.html>

The Oklahoma Insurance Department website also contains ARRA information at http://www.ok.gov/oid/documents/fed_stimulus%20version%202.pdf.

This bulletin includes frequently asked questions with answers. The Department will update this portion of the bulletin as we receive additional questions.

Questions or comments applicable to this bulletin should be directed to Kathie Stepp at kathie.stepp@oid.ok.gov or Susan Dobbins at susan.dobbins@oid.ok.gov.

The Oklahoma Insurance Department encourages readers of this notice to periodically check the Department's web site <http://www.oid.ok.gov/> for news and updates to Bulletins and other relevant material.

Frequently Asked Questions

Questions regarding Section 4509(A) through (C)

Q.1. Is the change limiting section 4509 to groups under 20 (non-COBRA eligible) permanent?

A.1. Yes, unless changed through the legislative process in the future.

Q.2. If an employer changes benefits/rates/carriers after the termination of an employee who selected continued coverage, who becomes responsible for that individual's coverage and on what terms?

A.2. Section 4509 is silent on that issue, but section 4509.1(C) provides that when an insurance carrier replaces another carrier's group insurance plan, each person who was covered by the plan of the prior carrier shall be covered by the plan of benefits of the succeeding carrier conditioned only upon the payment of premium.

Q.3. Will the terminated employee's continued coverage be attached to the employer's plan in all other ways, i.e. benefit changes, rate changes, carrier changes, open enrollment, broker commission, etc?

A.3. Yes.

Q.4. Can a terminated employee change their dependent status during their continuation of coverage?

A.4. Yes, nothing in section 4509 prohibits this change and sections 6059 and § 6058 of the Oklahoma Insurance Code expressly allow it. See 36 O.S. §§ 6058, 6059.

Q.5. Are insurance carriers required to provide notice to employees eligible for state continuation?

A.5. The Oklahoma Insurance Department expects carriers to provide notice to terminated employees of their eligibility of coverage under this provision.

Q.6. How much time does an insurance carrier have to allow an employee to make this important decision?

A.6. The employee has the full 63-day period to pay any necessary premiums. Insurance carriers may not require the terminated employee to pay premium in advance of the coverage being provided.

Q.7. Since the continuation of coverage applies to small group, and carriers are required to file their small group rates with the Oklahoma Insurance Department, can they include this fiscal impact in the rates?

A.7. Yes, if the continuation of coverage has a demonstrable impact on the insurer's small group health insurance rates, that impact can be included in a future rate filing.

Q.8. Is section 4509 applicable to student "blanket" insurance? ("Blanket" insurance is a special kind of group health insurance policy as defined in 36 O.S. § 4504.)

A.8. No. Section 4509 addresses employer provided group health insurance.

Q.9. Does the terminated employee's continuation of coverage apply to dental plans when sold alongside Medical?

A.9. No, section 4509 does not apply to dental plans.

Q.10. Does subsection C of section 4509 apply to trust plans?

A.10. Yes, if the certificate is delivered to an Oklahoma employee the trust plan is subject to § 4509 because a certificate is considered a policy form. See 36 O.S. § 3602.

Q.11. Assuming all members of the association are defined as small groups under Oklahoma law, is section 4509 applicable to association plans?

A.11. Yes.

Q.12. Are church plans subject to section 4509?

A.12. Yes. Church plans are not subject to COBRA; thus, according to subsection a, group health insurance offered by a church employer is subject to subsections (B), (C), and (D).

Q.13. Is the premium charged to the employee the whole premium amount? It sounds like it could also be that the employee would only have to contribute the same amount towards the premium as he would if he were an active employee.

A.13. The premium charged to the terminated employee would be entire premium, with no employer contribution.

Questions specifically regarding § 4509(D)

Q.14. When a person is eligible for the four month continuation in subsection D, does the 63 day continuation in subsection b run concurrently with the four month continuation?

A.14. Yes. The two periods of continuation have the same start date; therefore the two periods run concurrently.

Q.15. Who is required to send notices to employees whose coverage is terminated, the carrier or the employer?

A.15. Section 4509 does not address which entity is required to provide notice. However, federal guidance, pursuant to ARRA, requires the insurance carrier to provide notice. Model notices are posted on the U.S. Department of Labor and Department of Health and Human Services web sites. <http://www.dol.gov/ebsa/COBRAModelNotice.html>

Q.16. Can the insurance carrier rely on the employer's representation of voluntary/involuntary misconduct?

A.16. This question relates to the carrier's obligations under federal law. Please review guidance available from DHHS and the IRS, at:
<http://www.cms.hhs.gov/COBRAcontinuationofcov/>
<http://www.irs.gov/newsroom/article/0,,id=204708,00.html>

Q17. Once an employee is terminated are insurers required to confirm if the termination was "involuntary"? Most terminations are now done online so do carriers have to verify the reason for the termination of coverage?

A17. The insurer of a non-COBRA eligible group health plan is the entity eligible to receive the ARRA payroll tax credit and is responsible for providing qualified beneficiaries with an election notice that contains information on how to request treatment as an assistance eligible individual. The Model Notice forms provided by the U.S. Department of Labor ask for information as to whether the termination was involuntary. However, if the terminated employee claims the subsidy and the insurer denies it on any basis, including the basis that the termination was voluntary, the terminated employee has the opportunity to file an appeal of that decision with CMS, the Centers for Medicare and Medicaid Services. That Department will decide the appeal within 15 business days. For more information, please see the following web page: <http://www.continuationcoverage.net/>.

Q.18. If an employee was involuntarily terminated between April 1 and April 15, 2010, is that person eligible for the 4 month continuation available pursuant to subsection D?

A.18. Yes, the federal extension law is clear that both COBRA continuation and state law continuation must look back to include qualifying events that occurred between April 1 and April 15, 2010.

Questions regarding Section 4509(A) through (D)

Q.19. Do insurers need to go back to the employees who terminated on or right after May 18, 2009 and give them the continuation? Or can they begin complying at the time the group renews?

A.19. The statute became effective as an emergency on May 18, 2009. Therefore, OIG expects insurers to begin compliance immediately.

Q. 20. When does the 63 days and 4 months start, on the date of termination of employment or the end of coverage date?

A. 20. Section 4509(B) requires an employee to remain insured for at least 63 days after coverage is terminated. Section 4509(D) provides an employee with a right to continue their health insurance coverage for four months following the termination of employment. The intent of each section is to provide a safeguard for employees who lose health insurance coverage due to a termination of employment; under the strictest reading of either section, the continuation periods begin on the first day of the coverage period that follows the employee's termination.