

States Act to Help People Laid Off from Small Firms: More Needs to Be Done

In the past two months, several states have taken action to make sure state residents who lose their jobs in small businesses can get the health coverage assistance offered them under the American Recovery and Reinvestment Act (ARRA), the economic stimulus legislation signed into law in February. ARRA included provisions to help laid-off workers keep their health insurance by making it more affordable for them to enroll in continuation coverage under the federal COBRA program or under state “mini-COBRA” laws. This year, an estimated 7 million people who lost their jobs during the recession will have to pay only 35 percent of their COBRA health insurance premiums to maintain coverage; the federal government will pay the remaining 65 percent by providing tax credits to employers or health plans for up to nine months.

This subsidy applies to people laid off from firms with 20 or more workers, who are eligible for federal COBRA benefits. It also applies to people laid off from firms with fewer than 20 workers if the state they live in has enacted a law guaranteeing their right to continue their health insurance benefits. These state laws are often called “mini-COBRA” laws.

After ARRA (the Recovery Act) was enacted, many states took steps to improve their mini-COBRA laws so people in small firms would be able to take full advantage of the assistance offered by the federal government. However, in many states, gaps still remain, and those gaps leave people who have lost jobs in small firms with no, or limited, help.

Highlights as of April 14, 2009

- The following states have lengthened periods of coverage for mini-COBRA so that people will be eligible for continued coverage at least as long as they are eligible for the federal subsidy (nine months): the District of Columbia, Georgia, Ohio, Utah, and Virginia. These states previously provided only three or six months of continued coverage. This ensures that state residents laid off by small businesses have access to the COBRA subsidy for the full duration provided by ARRA (the Recovery Act). Some of these states have permanently lengthened their periods of continuation coverage, while others have temporarily lengthened coverage just for people eligible for premium assistance under ARRA.
 - Legislation to lengthen the period of coverage from six to nine months or more is pending in state legislatures in Oregon, Texas, and Vermont. Pennsylvania does not currently have a mini-COBRA law, but legislation is pending to establish one with coverage of more than nine months.
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- In the following states, workers losing jobs in small firms will receive fewer than 9 months of continued coverage and subsidies: Arkansas (120 days), Nebraska (6 months), New Mexico (6 months), Oklahoma (1 month, or 4 months if pending legislation passes), South Carolina (6 months), and Tennessee (3 months).
 - Some states have given people a second chance to enroll in mini-COBRA. That means that if people lost jobs after September but did not enroll in mini-COBRA before because it was too expensive, they will have a second chance to enroll now that help is available. This is an action *all* states with mini-COBRA laws should consider. Further, when states provide this second chance to enroll, they should also require that people who were laid off after September be notified that they can enroll. States that have acted to provide laid-off workers this second chance to enroll in mini-COBRA now that subsidies are available are as follows: Georgia, Kansas, Kentucky, Maryland, New Hampshire, New Jersey, New York, Rhode Island, South Dakota, Utah, Virginia, and West Virginia.
 - When states allow this second chance to enroll in mini-COBRA, they should ensure that any gap in the person's coverage is disregarded for purposes of determining whether the person has "creditable coverage" or whether an insurer can exclude coverage of a pre-existing condition. These requirements would parallel the ARRA requirements for large employers under federal COBRA. New York is an example of a state that provides a second chance to enroll and explicitly requires that gaps in coverage will be disregarded (see Assembly Bill 6740, available online at <http://assembly.state.ny.us/leg/?bn=A06740>). However, as noted in the table, many states that have acted to provide a second chance have not yet instructed insurers about how they should treat any gap in coverage after September but before the person enrolled in mini-COBRA. Absent specific instructions, insurers may decide to exclude coverage of pre-existing conditions if people went without coverage for more than 63 days.
 - Some states are exploring ways to provide deeper assistance to the lowest income unemployed workers, many of whom will be unable to afford 35 percent of premium costs. Many people who are poor do not qualify for Medicaid because, for example, they do not have dependent children or are not permanently disabled, and yet they cannot afford to pay for their health insurance. Adults without dependent children in some states, such as Massachusetts, may qualify for public coverage: if they are eligible for COBRA, the state will provide additional assistance in paying premiums. Maine's Governor has proposed providing deeper subsidies to low-income unemployed workers.
 - The following states do not have mini-COBRA laws, so workers losing jobs in small firms will not be able to continue the coverage they had at their jobs or get a subsidy to help pay the cost: Alabama, Alaska, Arizona, Delaware, Hawaii, Idaho, Indiana, Michigan, and Montana. Pennsylvania does not currently have a mini-COBRA law, but legislation is
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pending to establish one. In Washington, some small group insurers offer continuation of coverage but others instead offer conversion to an individual policy, which does not qualify for a subsidy. Under Maine's state laws, only workers who are temporarily laid off or injured on the job are eligible for mini-COBRA, so unless there is a change in Maine law or federal policy, Maine workers who are permanently laid off from small firms will not be able to continue their coverage or get the federal subsidy. (Note: Maine is one of a handful of states in which all individuals must be offered insurance policies regardless of their health status, and insurers cannot charge higher premiums based on health. Because they had these protections, the right to continue employer-based coverage was not so important for Maine consumers before the ARRA subsidy began.)

What States Could Do

Legislative or regulatory actions states could take to ensure that people laid off from small firms have the same rights to a federal subsidy as those laid off from large firms:

- They could make sure that their state requires small group insurers to offer continued coverage (mini-COBRA) to workers leaving small firms.
- They could make sure that the period of continued coverage is at least nine months, the period the subsidy lasts (federal COBRA lasts 18 months and can be extended in some circumstances, but the subsidy is only available for nine months).
- They could require small group insurers to give people a second chance to enroll in mini-COBRA if they were laid off between September 2008 and the date they get notice of available subsidies. Normally, people have to enroll in continued coverage shortly after leaving their jobs, but since many people could not afford to enroll until subsidies were available, the federal government has given people entitled to federal COBRA a second chance to enroll; if states give people in mini-COBRA this same second chance, those who lost coverage this past fall and winter will also be able to get subsidies.
- They could make sure that, for people who do take this second chance, any gap between when they lost insurance and when they elect mini-COBRA does not result in an exclusion of coverage for pre-existing conditions.
- They could provide deeper assistance to the lowest income unemployed workers.

For more information, see the COBRA pages of U.S. Department of Labor, online at www.dol.gov/cobra; see also Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, online at <http://www.cms.hhs.gov/COBRAContinuationofCov/>.

State Coverage Protections for Workers Laid Off from Small Firms, April 2009

	At least 9 months continuation coverage?	New second chance to elect?	Gap not counted towards pre-ex?
Alabama	No - none	na	na
Alaska	No - none	na	na
Arizona	No - none	na	na
Arkansas	No (120 days)	na	na
California	Yes	Pending	Pending
Colorado	Yes	No	na
Connecticut	Yes	Pending	Pending
Delaware	No - none	na	na
District of Columbia	Yes	No	na
Florida	Yes	No	na
Georgia	Yes	Yes	Yes
Hawaii	No - none	na	na
Idaho	No - none	na	na
Illinois	Yes	No	na
Indiana	No - none	na	na
Iowa	Yes	No	na
Kansas	Yes	Yes	Yes
Kentucky	Yes	Yes	No
Louisiana	Yes	No	na
Maine	Yes	No	na
Maryland	Yes	Yes	No
Massachusetts	Yes	No	na
Michigan	No - none	na	na
Minnesota	Yes	Pending	Pending
Mississippi	Yes	No	na
Missouri	Yes	No	na

Table Notes:

Blue highlights indicate final action subsequent to ARRA or a pending change.

In Florida, Illinois, and Wisconsin, legislation is expected but has not yet been introduced.

In Maine, only workers who are temporarily laid off or losing employment because of an injury or disease are eligible for mini-COBRA.

Missouri has pending legislation to extend coverage further, from 9 to 18 months.

Though New Hampshire has not issued guidance about gaps in coverage, the insurance department tells us that they intend to require insurers to disregard these gaps.

In Oregon, under pending legislation, the insurance department would have authority to make rules about a second election period.

Wyoming places some restrictions on eligibility for mini-COBRA.

State Coverage Protections for Workers Laid Off from Small Firms, April 2009

	At least 9 months continuation coverage?	New second chance to elect?	Gap not counted towards pre-ex?
Montana	No - none	na	na
Nebraska	No (6 months)	No	na
Nevada	Yes	No	na
New Hampshire	Yes	Yes	No
New Jersey	Yes	Yes	Yes
New Mexico	No (6 months)	No	na
New York	Yes	Yes	Yes
North Carolina	Yes	Pending	Pending
North Dakota	Yes	No	na
Ohio	Yes	No	na
Oklahoma	No (4 months pending)	No	na
Oregon	Pending (was 6 months)	Pending	Pending
Pennsylvania	Pending (was none)	No	na
Rhode Island	Yes	Yes	No
South Carolina	No (6 months)	No	na
South Dakota	Yes	Yes	Yes
Tennessee	No (3 months)	No	na
Texas	Pending (was 6 months)	Pending	Pending
Utah	Yes	Yes	Yes
Vermont	Pending (was 6 months)	No	na
Virginia	Yes	Yes	No
Washington	No - generally none	na	na
West Virginia	Yes	Yes	Yes
Wisconsin	Yes	No	na
Wyoming	Yes	No	na

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State Mini-COBRA Actions and Pending Actions Pursuant to ARRA, as of April 2009

(Note: We list legislation as “passed” if it has passed both houses of the state legislature, even if it has not yet been signed by the Governor.)

State	Legislation	Action
California	AB 23	Pending
Connecticut	Bill 6715	Pending
District of Columbia	Bill 18-159 Bill 18-160	Enacted Pending (extends period of coverage from 3 months to the maximum for which a subsidy is available under ARRA)
Georgia	SB 94	Passed
Kansas	Bill 2390 (subsequently renumbered)	Passed
Kentucky	806 Kentucky Administrative Regulation 18:090E	
Maryland	SB 84	Passed
Minnesota	SF 1904	Pending
New Hampshire	Insurance Department bulletin, Docket Number INS No. 09-017-AB.	
New Jersey	Department of Banking and Insurance, Advisory Bulletin 09-SEH-01	
New York	Assembly Bill A06740	Passed
North Carolina	Senate Bill 957	Pending
Ohio	HB 2	Passed
Oklahoma	SB 553	Pending
Oregon	HB 2433	Pending
Pennsylvania	SB 442	Pending
Rhode Island	H 6099/S 843	Passed
South Dakota	Regulation 120:06:40:19 et seq.	
Texas	S.B.A No. A1771	Pending
Utah	HB 178 and HB 188	Passed
Vermont	H 444	Pending
Virginia	HB 2024	Passed
West Virginia	SB552 HB&I AM 4-6	Passed as amendment to another bill

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REPORT**

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