NATIONAL HEALTH POLICY
FORUM

Keeping Health Insurance After a Job Loss:

COBRA Continuation Coverage and Subsidies

ISSUE BRIEF
NO. 837

KATHRYN LINEHAN, *Principal Policy Analyst*

JUNE 24, 2010

OVERVIEW — *Many Americans under 65 have health insurance through an employer. Beginning in 1985, a federal law known as COBRA required that eligible workers and their dependents have the option to continue employer-based group health coverage when employment is terminated. Because premiums for COBRA coverage can be very expensive, the 111th Congress included provisions in the American Recovery and Reinvestment Act of 2009 (and subsequent legislation) to temporarily subsidize premiums for those who have lost their jobs since September 2008. This issue brief outlines the eligibility rules for COBRA as well as the current COBRA subsidies. It also discusses the possible choices consumers may face between COBRA and individual insurance with the implementation of insurance market reforms in the Patient Protection and Affordable Care Act.*

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON DC

National Health Policy Forum

2131 K Street, NW
Suite 500
Washington, DC 20037

T 202/872-1390
F 202/862-9837
E nhpf@gwu.edu
www.nhpf.org

Judith Miller Jones
Director

Sally Coberly, PhD
Deputy Director

Monique Martineau
Director, Publications and Online Communications

Congress passed provisions that allow eligible employees, their spouses, and their dependents to continue their health insurance coverage in the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272). These provisions, known as "COBRA" after the Act, allow people to maintain health coverage after a job loss or reduction in hours, provided they meet eligibility requirements and continue to pay the premiums, which by law are limited to 100 percent of the group premium plus a 2 percent administrative fee.

Although being able to continue purchasing group coverage can enable continuity and relatively good value for the premium (in comparison to premiums typically available in the non-group market), the dollar amount of the premium for COBRA coverage may be unaffordable for those who have lost their jobs. To assist the millions of eligible workers affected by the current recession, Congress provided temporary federal subsidies (also known as COBRA premium reduction) in the American Recovery and Reinvestment Act of 2009 (ARRA) to help pay the premiums to maintain COBRA coverage. Those subsidies have been modified and extended several times in subsequent legislation to make COBRA coverage more affordable.[1] Unless extended again, the workers eligible for COBRA subsidies are those who lost their jobs between September 1, 2008 and May 31, 2010.[2]

ADVANTAGES OF COBRA

When eligible employees lose their jobs for reasons other than gross misconduct or experience a reduction in hours that makes them ineligible for health benefits, they may elect COBRA to maintain health insurance for themselves or their dependents, provided they meet all eligibility criteria (see next page). COBRA has several advantages for those who would otherwise lose coverage. First, it allows them to keep the same coverage they had while they were employed, because COBRA coverage must be identical to that available to current employees. Second, COBRA provides the opportunity to purchase group insurance, which may have a richer benefit package, and cost less for some people, than policies available on the non-group (or "individual") market. Third, COBRA limits the amount that can be charged to continue coverage to 102 percent of the total premium for the coverage of an employed person. At this rate, COBRA coverage may be a better value than non-group coverage, particularly for those who might otherwise face higher premiums on the individual insurance market because of their age or health status. Conversely, people who are young and healthy may find that they can purchase a policy on the individual market for less than their COBRA premiums, although an individual policy may not provide comparable levels of coverage or cost sharing. Finally, maintaining COBRA coverage allows an individual to be eligible for a guaranteed issue policy on the individual market once the period of COBRA eligibility ends, per the Health Insurance Portability and Accountability Act (HIPAA) of 1996.[3] As explained below, several of the advantages of COBRA coverage may be altered by the non-group market reforms enacted as part of the Patient Protection and Affordable Care Act (Public Law 111-148, PPACA) that was signed into law on March 23, 2010. However, most of those provisions are not effective until 2014.

COBRA ELIGIBILITY

To be eligible for COBRA, a person must be losing eligibility for a health plan offered by an employer with 20 or more employees.[4] She must lose her job (voluntarily or involuntarily) for reasons other than gross misconduct, or have her hours reduced to a level that makes her ineligible for insurance. Spouses and dependent children qualify for COBRA if the covered employee is terminated (voluntarily or involuntarily), has a reduction in hours of employment, becomes entitled to Medicare, experiences divorce or legal separation, or dies. Dependent children can also become eligible for COBRA if they lose dependent status, for example, by achieving an age that no longer makes them eligible as a dependent. (See page 6 for PPACA changes to requirements for dependent coverage up to age 26.) COBRA coverage generally lasts for 18 months from the date coverage would have ended due to job loss or other qualifying event. [5] Coverage may end sooner for those who do not pay premiums on time, obtain group coverage that does not have any pre-existing condition exclusions, or become entitled to Medicare. Plan administrators must notify employees of their right to elect COBRA, and employees have 60 days to notify the plan administrator that they are electing COBRA coverage.

COBRA eligibility does not extend to all workers losing their health insurance because of a job loss. People who work for businesses that close or stop providing group health insurance benefits to employees are not eligible for COBRA coverage. People working for businesses with fewer than 20 employees are also not eligible for COBRA coverage, but many states have similar requirements to protect people who lose their jobs with employers with fewer than 20 workers. These are often referred to as "mini-COBRA laws" and may provide comparable coverage to COBRA plans or less generous coverage, for example, coverage with shorter periods of eligibility.[6] COBRA does not apply to employees of the federal government, but the Federal Employees Health Benefit (FEHB) Plan is subject to similar temporary continuation of coverage provisions according to the Federal Employees Health Benefits Amendments Act of 1988.[7]

COBRA SUBSIDIES

To help with COBRA premium costs, ARRA included a provision to subsidize COBRA premiums for those who have lost their jobs involuntarily at any point between September 2008 and May 31, 2010. The subsidy was available for COBRA coverage on or after February 17, 2009 (subsidies were not available for premiums paid for periods before that date even if eligibility for COBRA began earlier). The ARRA originally provided for a 9-month subsidy that was extended to 15 months in subsequent legislation, as shown in Table 1.

TABLE 1 | Legislative Changes Providing COBRA Subsidies

LEGISLATION	Date	Subsidy Provision
American Recovery and Reinvestment Act	February 2009	9-month COBRA premium subsidy of 65 percent to employees laid off between September 1, 2008 and December 31, 2009
Defense Department Appropriations Act	December 2009	Extends COBRA subsidy eligibility to 15 months for employees laid off between September 1, 2008 and December 31, 2009 15-month subsidy of 65 percent to employees laid off between January 1 and February 28, 2010
Temporary Extension Act	March 2010	15-month subsidy of 65 percent to employees laid off between March 1 and March 31, 2010
Continuing Extension Act	April 2010	15-month subsidy of 65 percent to employees laid off between April 1 and May 31, 2010

As mentioned above, premiums for COBRA coverage are limited by law to 102 percent of the total premium for an employed person. In 2009, the average annual premiums for employer-sponsored insurance were $4,824 for single coverage and $13,375 for family coverage; when working, employees paid an average of 17 percent of the total premium for single coverage and 27 percent for family coverage.[8] Paying the full premium amount plus a 2 percent administrative fee, while possibly a better value than a non-group policy, can be a barrier to coverage for those who lose their jobs and who may have paid only a portion of the premium while employed. Under the ARRA subsidy program, eligible employees pay 35 percent of the COBRA premium instead of the full amount they would pay otherwise. Eligible employees do not receive the subsidy in the form of a check. Rather, employers pay 65 percent of the COBRA premium and are repaid by claiming a dollar-for-dollar credit against their payroll taxes. If the 65 percent subsidy payment exceeds an employer's payroll tax liability, employers can obtain a refund of their payroll taxes.[9]

As many as 2 million households are estimated to have received COBRA premium assistance between February 2009 and the end of 2009.

The subsidies apply to group health insurance plans that are subject to the federal COBRA rules. They also apply to group plans that are required by state "mini-COBRA" laws to provide continuation coverage that is comparable to the federal COBRA requirements.[10]

To be eligible for the subsidy, COBRA eligibility must be the result of involuntary termination of the covered worker's employment during the period beginning September 1, 2008 and ending May 31, 2010, and the worker must not have access to another source of group coverage such as a spouse's employer.[11] In cases where the employer voluntarily provides continuation coverage, even though not required by law, the subsidy is not available. Dependents who lose eligibility because of their age or individuals who are eligible for other group health coverage are also not eligible for the subsidy. There is also an income limit. If a person's modified adjusted gross income exceeds $145,000 ($290,000 for a couple filing jointly) for the year in which the subsidy is received, then the premium subsidy must be repaid.

In June 2010, the Department of the Treasury published an interim report, mandated in the ARRA, on the COBRA premium assistance program.[12] According to that report, as many as 2 million households are estimated to have received COBRA premium assistance between February 2009 and the end of 2009. The estimated cost for the subsidies in 2009 was about $2 billion according to Internal Revenue Service (IRS) data used in the report. A final report on the number of individuals receiving the subsidies and the related spending is due, per the ARRA, after the last cohort of COBRA eligible individuals have ended their 15-month eligibility period, which is currently no earlier than August 2011.

COBRA AND HEALTH INSURANCE REFORM

After eligibility for COBRA and COBRA subsidies ends, those who do not have an alternative source of employer coverage will have the option of purchasing a HIPAA guaranteed-issue policy until health insurance reform is fully implemented in 2014. Even though a policy must be available, premiums for HIPAA policies may vary depending on characteristics of the individual seeking coverage (because they can be based on the expected cost of the policy for the individual), subject to state insurance laws and regulations. This means that, in most states, policies can be very expensive for individuals with characteristics associated with high medical costs and less expensive for those with few risk factors. When individual market reforms are implemented in 2014, HIPAA coverage guarantees for those losing group coverage will no longer be necessary because individual plans will be guaranteed-issue and community rated (meaning they cannot vary based on health characteristics of the enrollee) for all.

The PPACA, while it did not specifically alter COBRA, made a number of changes to individual insurance market rules that could ultimately affect consumers' decisions about coverage as reforms are implemented.

The PPACA, while it did not specifically alter COBRA, made a number of changes to individual insurance market rules that could ultimately affect consumers' decisions about coverage as reforms are implemented. Effective in plan years beginning on or after September 23, 2010, dependent coverage is extended to age 26 for self-funded health plans and insurers offering coverage on the group and individual markets. As a result, those who may have formerly elected COBRA coverage—and paid COBRA premiums—upon losing dependent coverage at a younger age will be able to maintain their health coverage as a dependent until at least the mandatory federal age.

Once PPACA market reforms are fully implemented in 2014, those losing their jobs may have a choice between a COBRA policy, with the same benefits for 102 percent of the premium, and a new Qualified

Health Benefits Plan (QHBP), which offers the "essential health benefits."[13] As mentioned above, before PPACA implementation, premiums for individual policies in most states can vary based on age, health status, and other factors, and benefits can vary widely in their comprehensiveness. As a result, COBRA coverage can currently be a much better value relative to an individual policy, particularly for those individuals with many risk factors. However, under the PPACA market reforms, premiums for individual health insurance products must be community rated. QHBPs' premiums can vary (with limits) only based on geography, age, tobacco use, and whether the policy is for an individual or family. QHBPs must also provide a standardized package of benefits of specified actuarial values.

It remains to be seen whether those losing coverage once reform is fully implemented will choose a COBRA policy or possibly a QHBP on the new health insurance exchanges. In and after 2014, individual insurance products may become more accessible and attractive to consumers because of the standardization of the benefits in QHBPs, community rating, and guaranteed issue requirements. In addition, the availability of means-tested eligibility for subsidies for QHBPs (or even expanded Medicaid) could make these options more attractive for some losing employer coverage. An individual's decision to choose COBRA coverage or an individual policy after 2014 will ultimately depend on the still-unknown relative costs (premiums and cost sharing) and benefits of the products available

ENDNOTES

1. Another subsidy program with much more limited scope, the Health Coverage Tax Credit (HCTC) program, was created under the Trade Adjustment Assistance (TAA) Act of 2002 and amended under ARRA. The HCTC program provides a refundable federal income tax credit of 80 percent of health insurance premiums for qualified health plans to certain workers and early retirees. To be eligible for the tax credit, a person must be (i) a trade-displaced worker who qualifies for TAA income support or (ii) an early retiree, age 55 to 64, receiving pension benefits from the Pension Benefits Guaranty Corporation. The HCTC credit is available for qualified health plans that meet consumer protections. COBRA continuation coverage plans are automatically qualified for the subsidy. In an average month, about 16,000 households—or about 15 percent of those eligible—receive HCTC subsidies. (For additional information about the HCTC program see Stan Dorn, "Health Coverage Tax Credits: A Small Program Offering Large Policy Lessons," The Urban Institute, February 2008, available at www.urban.org/publications/411608.html; and Internal Revenue Service (IRS), "HCTC: Eligibility Requirements and How to Receive the HCTC," available at www.irs.gov/individuals/article/0,,id=185800,00.html.)

2. Although it was being debated at the time of the writing of this paper, Congress had not extended the COBRA subsidy to those laid off after May 31, 2010.

3. For more information about HIPAA coverage provisions see Lisa Sprague, “HIPAA Coverage Provisions,” National Health Policy Forum, The Basics, March 25, 2008; available at www.nhpf.org/library/details.cfm/2597.

4. For additional information see the United States Department of Labor’s “FAQs for Employees about COBRA Continuation Health Coverage,” available at www.dol.gov/ebsa/faqs/faq_consumer_cobra.HTML.

5. People with disabilities may be eligible for COBRA for an additional 11 months if the Social Security Administration determines that the person became disabled within the first 60 days of COBRA coverage. The qualified beneficiary must also provide a copy of the Social Security letter on the disability determination within 60 days of receiving it and before the end of the 18-month initial COBRA eligibility period. Premiums are limited to 150 percent of the total premium for the extended period of coverage (months 19 to 29) for the qualified person who becomes disabled within the first 60 days of COBRA coverage. A spouse who would otherwise lose coverage because of divorce is eligible for COBRA for up to 36 months.

6. Karyn Schwartz, “The COBRA Subsidy and Health Insurance for the Unemployed,” Kaiser Commission on Medicaid and the Uninsured, October 2009; available at www.kff.org/uninsured/upload/7875.pdf.

7. Centers for Medicare & Medicaid Services, “Overview of COBRA Continuation of Coverage”; available at www.cms.hhs.gov/COBRAContinuationofCov.

8. The Kaiser Family Foundation and Health Research and Educational Trust, “Employer Health Benefits: 2009 Summary of Findings”; available at http://ehbs.kff.org/pdf/2009/7937.pdf.

9. David J. Laurent and John E. McGrady, III, “U.S. Department of Labor Issues Model Notices for New COBRA Rules,” from the Buchanan, Ingersoll & Rooney Labor and Employment Group, Labor and Employment Advisory, March 2009; available at www.buchananingersoll.com/media/pnc/4/media.2304.pdf.

10. U.S. Department of Labor, “COBRA Premium Reduction,” fact sheet, April 16, 2010; available at www.dol.gov/ebsa/pdf/fsCOBRApremiumreduction.pdf.

11. The COBRA subsidy is also available to people who become eligible for COBRA coverage as a result of a reduction in hours between September 1, 2008 and May 31, 2010, which was followed by an involuntary termination between March 2, 2010 and May 31, 2010. The COBRA coverage and subsidy for these individuals is available starting with the first period of coverage beginning after the involuntary termination and continues until 18 months after the reduction in hours. If a person with these circumstances did not elect COBRA coverage after the reduction in hours or elected it and later dropped it, he or she was given a new opportunity to elect COBRA coverage. (See IRS, “COBRA Health Insurance Continuation Premium Subsidy”; available at www.irs.gov/newsroom/article/0,,id=204505,00.html.)

12. Department of the Treasury, “Interim Report to the Congress on COBRA Premium Assistance,” June 2010; available at www.ustreas.gov/offices/tax-policy/library/COBRAInterimReport.pdf.

13. Qualified Health Benefit Plans are a new type of plan defined in PPACA. They will meet numerous requirements related to their marketing, networks, providers, array of benefits, and premiums. QHBPs will be required to offer the essential health benefits that will be defined by the Secretary and will include coverage for at least the following categories of services: ambulatory, emergency, hospital, maternity and newborn, mental health and substance abuse, prescription drugs, rehabilitation and habilitation, laboratory, preventive and wellness care, chronic disease management, and pediatric (including oral and vision).