

**TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 93
MINI-COBRA**

Sections

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§114-93-1. General.

1.1. Scope. -- This rule provides guidelines with respect to the continuation of health insurance coverage for former employees of certain small employers, their dependents and other qualified beneficiaries who are not entitled to such coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

This rule does not apply if continuation of coverage benefits are available to covered employees or other qualified beneficiaries pursuant to a 'COBRA continuation provision,' as that term is defined in W. Va. Code §33-16-3m(a)(1)(A).

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. -- April 20, 2012.

1.4. Effective Date. -- July 1, 2012.

§114-93-2. Definitions.

2.1. "Applicable premium" means, with respect to any period of continuation of coverage for qualified beneficiaries, the premium charged by the health benefit plan for such period of coverage for beneficiaries with respect to whom a qualifying event has not occurred, regardless of whether such premium or portions thereof are paid by the employer or employee.

2.2. "Carrier" means an insurer licensed in this state to transact accident and sickness insurance that has issued a health benefit plan.

2.3. "Commissioner" means the West Virginia Insurance Commissioner.

2.4. "Continuation coverage" means coverage under the health benefit plan that meets the requirements of section 3 of this rule.

2.5. "Covered employee" means an employee of a small employer who is covered under a health benefit plan by virtue of the employee's employment.

2.6. "Health benefit plan" means any group accident and sickness policy issued to a small employer that provides coverage for the employer's employees (including continuation coverage provided in accordance with this rule) and their dependents.

2.7. "Qualified beneficiary" means any individual who, on the day of the qualifying event for the covered employee, was covered under the health benefit plan by virtue of the individual being the covered employee, his or her spouse, or a dependent of the covered employee.

2.8. "Qualifying event" means the involuntary layoff or termination of an employee from employment for reasons other than misconduct that would disqualify such employee for unemployment benefits.

2.9. "Small employer" means any employer that is not subject to COBRA because it employs fewer than 20 employees.

§114-93-3. Continuation of Coverage under Health Benefit Plan.

3.1. *Policy provisions regarding continuation coverage rights.* Every health benefit plan policy and certificate of coverage delivered or issued in this state must provide that, in the event of a qualifying event with respect to a covered employee, such employee and any other qualified beneficiary may elect continuation coverage for up to 18 months under the same terms and rates as would have been applicable had the qualifying event not occurred, except to the degree such rates and terms may be modified in accordance with this rule.

3.1.a. Every plan booklet or other explanation of rights under a health benefit plan must include all information necessary for a qualified beneficiary to comply with the election requirements of subsection 3.6 of this section and either a form for notice of such election to the carrier or directions on how such a form may be found on the Commissioner's website.

3.2. *Periods of continuation coverage.* Continuation coverage under the health benefit plan must, at a minimum, extend for the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following: *Provided*, That whenever a policy subject to this rule is terminated by the carrier for any reason permitted by law, the coverage of all qualified beneficiaries is terminated as well:

3.2.a. The date that is 18 months after the date on which the qualified beneficiary's benefits under the health benefit plan would otherwise have ceased because of a qualifying event;

3.2.b. The date on which coverage ceases under the health benefit plan by reason of a failure to make timely payment of the applicable premium with respect to any qualified beneficiary. A cancellation for failure to pay premium is subject to the same process as is applicable to other covered employees;

3.2.c. The date a qualified beneficiary becomes covered under any other group health plan if the qualified beneficiary will not be subject to any exclusion or limitation because of a preexisting condition of that beneficiary;

3.2.d. The date a qualified beneficiary is entitled to benefits under either part A or part B of Title XVIII of the Social Security Act (Medicare); or

3.2.e. The date on which the employer terminates coverage under the health benefit plan for all employees; however, if the employer terminates coverage under the health benefit plan for all employees and if such health benefit plan is replaced by similar coverage under another health benefit plan, the qualified beneficiary shall have the right to become covered under the new health benefit plan for the balance of the period that she or he would have remained covered under the prior health benefit plan.

3.4. *Notice to carrier.* Any qualified beneficiary may give written notice to the carrier within 20 days after a qualifying event of his or her intent to apply for continuation coverage. The notice must, at a minimum, identify the covered employee, the employer and, to the extent that such information is known, the names and addresses of all other qualified beneficiaries and the health benefit plan number. Notice to the carrier by the employee should be to the address specified in the benefit document.

3.5. *Notice to beneficiaries by carrier.* Within 15 days after receipt of written notice under subsection 3.4 of this section, the carrier shall send each adult qualified beneficiary an election and premium notice, in a form approved by the Commissioner, which must provide for each qualified beneficiary's election or nonelection of continuation of coverage under the health benefit plan and, if elected, the applicable premium amount due. A separate mailing of notices to qualified beneficiaries residing in the same household is not required, but a separate mailing for each separate household in which a qualified beneficiary resides is required. Such notices may be sent by first class mail or, if the qualified beneficiary requests, by fax or e-mail.

3.6. *Election of coverage by beneficiary.* A covered employee or other qualified beneficiary who wants to elect continuation coverage must do so in writing to the carrier within 30 days after receiving a notice under subsection 3.5 of this section and must include payment of the initial premium set forth in such notice. The premium payment due shall be for the period beginning on the date coverage would have otherwise terminated due to the qualifying event. The premium charged for continuation of coverage may not exceed 100% of the applicable premium.

3.6.a. The carrier or its designee shall process all elections promptly and provide coverage retroactively to the date coverage would otherwise have terminated on the basis of the qualifying event. Employers are required to promptly provide to the carrier or its designee any information and paperwork necessary to facilitate the processing of a request for continuation of coverage. After an election and initial premium remittance, the carrier must bill the beneficiary for premiums no more often than monthly and with an allowance for a 30-day grace period for payment.

3.6.b. Except as otherwise specified in an election form, an election by a qualified beneficiary shall be deemed to include an election of continuation of coverage on behalf of any other

qualified beneficiaries residing in the same household who had lost or would lose coverage under the health benefit plan by reason of the qualifying event. Any qualified beneficiary may elect continuation of coverage on behalf of any other qualified beneficiary.

3.7. *Remedies in the event of carrier noncompliance.* If a carrier fails to comply with the requirements of this rule, including the notice requirements of subsection 3.5 of this section, and such noncompliance results in the failure of an eligible adult qualified beneficiary of a covered employee to timely elect continuation coverage, every qualified beneficiary of the covered employee covered on the day of the qualifying event shall remain covered under the health benefit plan until the qualified beneficiaries are afforded the opportunity to elect such coverage.

3.7.a. Coverage in accordance with subsection 3.7 of this section shall be limited to the period from the effective date of coverage, had an election been made, through 30 days beyond the date on which the qualified beneficiary or someone on his or her behalf receives actual notice, unless at an earlier date such coverage is affirmatively rejected or such coverage would have terminated for one of the reasons set forth in subdivisions c, d or e, subsection 3.2 of this section.

3.7.b. If a qualified beneficiary who is deemed to be covered pursuant to subsection 3.7 of this section subsequently receives the notice in the form required by subsection 3.5 of this section and affirmatively elects continuation coverage, the initial premium payable may include those amounts that would have been due had the election been made pursuant to a notice timely received pursuant to subsection 3.5 of this section.

3.7.c. This subsection does not apply to the extent that the failure of the carrier to comply with applicable notice requirements was due to noncompliance by a qualified beneficiary with notice requirements under subsections 3.4 or 3.6 of this section.