



## State of New Jersey

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### BULLETIN NO. 21-08

**TO: ALL HEALTH CARRIERS ISSUING STANDARD SMALL EMPLOYER HEALTH BENEFITS PLANS IN THIS STATE AND ALL LICENSED BROKERS SELLING STANDARD SMALL EMPLOYER HEALTH BENEFITS PLANS IN THIS STATE**

**FROM: MARLENE CARIDE, COMMISSIONER**

**RE: THE AMERICAN RESCUE PLAN ACT OF 2021 - PREMIUM ASSISTANCE FOR COBRA OR STATE CONTINUATION**

The American Rescue Plan Act (“ARPA”) of 2021 was signed into law on March 11, 2021. ARPA includes many provisions that address access to and the affordability of health coverage. The primary purpose of this Bulletin is to address the ARPA provisions that address premium assistance under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) continuation coverage.

ARPA defines COBRA continuation coverage<sup>1</sup> to include not just the continuation required by Federal law known as COBRA but comparable state continuation coverage. As the state continuation coverage required under New Jersey law at N.J.S.A. 17B:27A-27 is comparable to COBRA, the ARPA applies to New Jersey continuation coverage.

#### **Eligibility for Premium Assistance**

ARPA defines the term “Assistance Eligible Individuals” as COBRA qualified beneficiaries who meet stated requirements during the period of April 1, 2021 through September 30, 2021. Assistance eligible individuals include New Jersey continuation qualified beneficiaries who meet the same requirements.

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<sup>1</sup> COBRA continuation coverage means continuation coverage provided pursuant to part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (other than under section 609), title XXII of the Public Health Service Act, or section 4980B of the Internal Revenue Code of 1986 (other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines), or under a State program that provides comparable continuation coverage. Such term does not include coverage under a health flexible spending arrangement under a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986. (See section 9501 of ARPA)

### Requirements for Assistance Eligible Individuals

- Eligibility for continuation, whether through COBRA or New Jersey continuation due to a reduction in hours or due to involuntary termination for a reason other than gross misconduct
- Election of COBRA or New Jersey continuation; and
- Lack of eligibility for other group health coverage or Medicare.

Note that the reduction in hours could be because the business reduced hours, the person moved to part-time status, or the person was on a leave of absence. In these cases, the person remains an employee.

### **Premium Assistance for Certain Persons Currently Covered as Active Employees**

Bulletin No. 20-12 required the relaxation of the full-time requirement such that employees whose hours were reduced did not need to elect COBRA or New Jersey continuation. The Bulletin allowed employers to cover employees who were furloughed or temporarily laid off without requiring their status to be changed to COBRA or New Jersey continuation.

Small employers that continued to cover employees under small employer plans using the relaxed full-time requirement or while the employees were furloughed or temporarily laid off must take the action outlined below for the employees to take advantage of the premium assistance under the ARPA as Assistance Eligible Individuals.

Action to Change Coverage Status to Continuation: Small employers currently covering employees whose hours were reduced below 25 hours per week or who are on furlough or layoff status should provide notice that coverage ended as of April 1, 2021 and that continuation coverage under COBRA or New Jersey continuation is available. The qualifying event was April 1, 2021. For New Jersey continuation, use the Alternative Notice of ARP Continuation Coverage Election Notice that has been modified for use with New Jersey continuation. For COBRA continuation use the model notice provided at [www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra](http://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra).

### **Premium Assistance for Certain Persons Who Had the Opportunity for Continuation**

Any Small Employers that did not continue to cover employees using the relaxed full-time requirement or while the employees were furloughed or temporarily laid off, and that gave the employees the opportunity to elect continuation under either COBRA or New Jersey continuation Coverage, must take the action outlined below for the employees to take advantage of an extended election period and the premium assistance under the ARPA as Assistance Eligible Individuals. Additionally, employees who are Assistance Eligible Individuals who elected continuation and have paid for continuation are eligible for premium assistance under the ARPA during the months of April through September 2021.

Action to Provide an Extended Election Period: Small employers whose employees had the opportunity to elect continuation due to reduced hours, furlough or layoff, but who did not elect continuation or who elected continuation but later terminated it, must be given the opportunity for an extended election period. Employers must provide notice of the extended election period no later than May 31, 2021 with respect to COBRA continuation and no later than 5 business days following July 21, 2021 for State continuation. For State continuation, use the attached Alternative Notice of ARP Continuation Coverage Election Notice that has been modified for use with New

Jersey continuation. For COBRA continuation use the model notice provided at [www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra](http://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra).

### **Duration of Premium Assistance**

Premium assistance lasts from April 1, 2021 through September 30, 2021. However, it will end earlier for an employee who gains eligibility for coverage under another group health plan, or eligibility for Medicare. Upon eligibility for coverage under another group plan or Medicare, the person who was receiving continued coverage under COBRA or New Jersey continuation must immediately notify the administrator of the continuation coverage (in many cases the administrator is the small employer) of the eligibility or that continuee risks owing a penalty. The assistance will also end if the 18-month continuation period expires before September 30, 2021.

Continuation premiums due for the period of October 1, 2021 for the balance of the available 18-month continuation period are the responsibility of the continuee.

### **Coverage Eligible for Premium Assistance**

Both COBRA and New Jersey continuation allow coverage of continuees who were covered as employees and their eligible dependents. Premium assistance is provided for the same continuees. COBRA allows continuation for health benefits plans as well as ancillary coverages such as dental and vision. For employers subject to COBRA, the premium assistance is available for all these coverages, if available under the employer's plan.

New Jersey continuation allows continuation of the small employer health benefits plan only. For employers subject to New Jersey continuation, the premium assistance is available for the small employer health benefits plan only.

### **ARPA - Required Notices**

ARPA imposes new notice requirements. The United States Department of Labor developed model notices that are available at [www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra](http://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra).

One of the notices is the [Alternative Notice of ARP Continuation Coverage Election Notice](#) which was designed to be used for persons who may qualify for premium assistance under state continuation. To facilitate use for New Jersey continuation in the circumstances described above, the notice includes text that addresses New Jersey-specific requirements.

### **Premium Assistance Decision Process**

Persons currently covered under COBRA or New Jersey continuation who qualify as an Assistance Eligible Individual can maintain the continuation coverage during April through September period at no cost. For those people, the continuation previously elected would remain in effect. Check the expiration of the existing continuation period since it could expire before September 30.

### **Premium Assistance Credit for Coverage under New Jersey Continuation**

As explained in Notice 2021-31, available at [www.irs.gov/pub/irs-drop/n-21-31.pdf](http://www.irs.gov/pub/irs-drop/n-21-31.pdf), the carrier that issued the coverage under which continuation is provided is the premium payee under § 9501 (a)(1) of the ARP. Thus, while New Jersey continuation requires employers to remit premium

payment for continuation coverage to the carrier, there will be no premium paid to the carrier for continuation coverage for persons entitled to premium assistance.

Carriers should continue to include the premium associated with coverage for Assistance Eligible Individuals on the monthly group premium invoice. For invoices for the months of April 2021 through September 2021, the employer will be responsible to remit the total amount billed less the premium due for coverage for Assistance Eligible Individuals.

For example, if the total July 2021 premium for the employer is \$10,000 and the employer has two persons who qualified for premium assistance whose premium totals \$3,500, the employer would remit \$6,500 to the carriers for the July 2021 premium, and that payment must be accepted as payment in full.

If there are any questions regarding the content of this Bulletin, please contact the Life and Health unit at [lifehealth@dobi.nj.gov](mailto:lifehealth@dobi.nj.gov).

7/21/2021

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Date



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Marlene Caride  
Commissioner

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