



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
INDIVIDUAL HEALTH COVERAGE PROGRAM
& SMALL EMPLOYER HEALTH BENEFITS PROGRAM
PO Box 325
TRENTON, NJ 08625-0325

JON S. CORZINE
Governor

TEL (609) 633-1882
FAX (609) 633-2030

Neil N. Jasey
Commissioner

ADVISORY BULLETIN
09-SEH-04

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To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties

From: Ellen DeRosa
Executive Director

Re: Carrier Obligations in the Implementation of the American Recovery and Reinvestment Act of 2009 for New Jersey Small Employers that are Subject to New Jersey Continuation

On March 9, 2009 we issued [Advisory Bulletin 09-SEH-01](#) discussing features of the American Recovery and Reinvestment Act of 2009 (ARRA) as related to New Jersey Continuation. On March 26, 2009 we issued [Advisory Bulletin 09-SEH-02](#) to further address the vital role New Jersey small employer carriers must play in the implementation of the premium reduction for former employees electing continuation under N.J.S.A. 17B:27A-27.

The purpose of this Advisory Bulletin is to address both the election of New Jersey Continuation and the Request for Treatment as an Assistance Eligible Individual.

Election of New Jersey Continuation

N.J.S.A. 17B:27A-27e requires the small employer to provide notice of the opportunity to continue coverage at the time of the qualifying event. Election of continuation is to be made no later than 30 days from the loss of coverage.

While small employer carriers include a New Jersey Continuation Election Form as part of the ARRA materials the *small employer remains responsible* for providing notice of the option to elect continuation coverage and cost information.

The first premium is due no later than 30 days from the date New Jersey continuation coverage is elected.

For comprehensive information concerning the operation of New Jersey Continuation please refer to Advisory Bulletin 07-SEH-02 which may be accessed on our website at: http://www.state.nj.us/dobi/division_insurance/ihcseh/bulletins/sehblt07_02.pdf

Request for Treatment as an Assistance Eligible Individual (AEI)

Small employer carriers mail a package of ARRA materials to the former employee and dependents upon receipt of notice from the employer that coverage is to be terminated. Included in that package is a form entitled Request for Treatment as an Assistance Eligible Individual.

Although New Jersey continuation law requires that an election of continuation be made within 30 days, the Federal government has advised that it is *not* permissible to require that the Request for Treatment as an Assistance Eligible Individual be completed within that same 30 day period. If a person has timely elected New Jersey continuation coverage a person may complete the Request for Treatment as an Assistance Eligible Individual *at any time* during the 9 month period which is measured from the date New Jersey continuation coverage commences.

Since the person electing New Jersey continuation is responsible for paying the entire continuation premium until such time as the person is approved as an AEI, submitting the Request promptly would mean payments at the 35% rate would commence relatively soon after the beginning of New Jersey continuation and thus reduce the number of months the person would have to send payment for the full amount. If person is approved as an AEI the person will be entitled to a refund or credit of 65% of the amount paid prior to the time the person was approved as an AEI and thus will ultimately be responsible for only 35%. Please note that no premium assistance is available for any period prior to the later of: the first period of coverage on or after February 17, 2009; or the date continuation coverage commenced.

For those persons who were involuntarily terminated between September 1, 2008 through February 17, 2009, the period for requesting treatment as an AEI was limited by the extended election period. The Request for Treatment as an Assistance Eligible Individual was required to be made within the 60 days allowed for such request. Thus, such persons do not have a 9-month period during which the request may be made.

The following examples assume a small employer group that is subject to the requirements of New Jersey Continuation, N.J.S.A. 17B:27A-27.

Example 1:

Involuntary termination: 6/12/09

Coverage ends: Immediately (6/12/09)

Continuation Election: Must be made no later than 7/12/09; election made 6/17/09

Continuation Payment Must be made no later than 30 days following the election or 7/17/09

Carrier is immediately notified of the termination. Carrier sends former employee ARRA package on 6/20/09. Former employee fills out Request for Treatment as an Assistance Eligible Individual on 7/12/09 and mails to the former employer. The former employer completes the Employer Information and Verification form and sends it along with the former employee's Request for Treatment as an AEI to the carrier on 7/20/09. Carrier determines on 7/24/09 that the former employee qualifies as an AEI.

The first premium was due 7/17/09 before the former employee is approved as an AEI. The former employee must send the full continuation premium to the former employer who will send it to the carrier with the group premium. The carrier will refund or credit 65% of the continuation premium. The former employer who receives the refund or credit is required to apply it toward the former employee's future continuation premium or send the former employee a check for the refund.

Example 2:

Involuntary termination:6/12/09

Coverage ends: Immediately (6/12/09)

Continuation Election: Must be made no later than 7/12/09; election not made by 7/12/09

Continuation Payment Must be made no later than 30 days following the election

Carrier is notified of the termination on 8/1/09 and directed to terminate the coverage retroactive to 6/12/09. Carrier sends former employee ARRA package on 8/6/09. Former employee fills out a continuation election form and Request for Treatment as an AEI on 8/12/09 and mails to the former employer. The former employer delays sending the Employer Information and Verification form and former employee's Request for Treatment as an AEI to the carrier until 9/20/09. Carrier determines on 9/24/09 that the former employee elected New Jersey continuation after the 30-day period for such election and thus the former employee is not eligible for New Jersey Continuation. Since New Jersey continuation is not available, neither is the premium reduction under ARRA.

Example 3:

Involuntary termination:6/12/09

Coverage ends: Immediately (6/12/09)

Continuation Election: Must be made no later than 7/12/09; election made 6/17/09

Continuation Payment Must be made no later than 30 days following the election or 7/17/09

Carrier is immediately notified of the termination. Carrier sends former employee ARRA package on 6/20/09. Former employee fills out Request for Treatment as an Assistance Eligible Individual on 6/29/09 and mails to the former employer. The former employer completes the Employer Information and Verification form and sends it along with the former employee's Request for Treatment as an AEI to the carrier on 7/01/09. Carrier determines on 7/05/09 that the former employee qualifies as an AEI.

The first premium is due 7/17/09. Since the former employee has been approved as an AEI the first payment is 35% of the continuation premium.

Example 4:

Involuntary termination:6/12/09

Coverage ends: Immediately (6/12/09)

Continuation Election: Must be made no later than 7/12/09; election made 6/17/09

Continuation Payment Must be made no later than 30 days following the election or 7/17/09

Carrier is immediately notified of the termination. Carrier sends former employee ARRA package on 6/20/09. Former employee delays completing the Request for Treatment as an Assistance Eligible Individual until 9/30/09 and mails to the former employer. The former employer completes the Employer Information and Verification form and sends it along with the former employee's Request for Treatment as an AEI to the carrier on 10/20/09. Carrier determines on 10/24/09 that the former employee qualifies as an AEI.

The former employee has sent five months of the full continuation premium to the former employer who sent it to the carrier with the group premium. The carrier will refund or credit 65% of the continuation premium. The former employer who receives the refund or credit is required to apply it toward the former employee's future continuation premium with any balance paid as a refund.

General Information

Information concerning ARRA is found on the U.S. Department of Labor's website which is <http://www.dol.gov/ebsa/COBRA.html>

CMS's website is <http://www.cms.hhs.gov/COBRAContinuationofCov>.

Maximus is the contractor that handles premium assistance appeals. The website is <http://www.continuationcoverage.net>.

The IRS website also contains a lot of good information:
<http://www.irs.gov/newsroom/article/0,,id=204505,00.html?portlet=7>.

Information concerning New Jersey Continuation and ARRA is found on the Department of Banking and Insurance website which is http://www.state.nj.us/dobi/division_consumers/insurance/arra.html

Questions

If you have any questions concerning New Jersey continuation or the treatment of assistance eligible individuals please contact me by email at ellen.derosa@dobi.state.nj.us or by phone at 609-633-1882 ext. 50302.