

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 7151 PCB GGPC 09-01 Small Employer Employee Continuation Coverage

**SPONSOR(S):** General Government Policy Council, Troutman

**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	General Government Policy Council	15 Y, 0 N	Barnum	Hamby
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**SUMMARY ANALYSIS**

The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides for continuation of group health coverage that might otherwise be terminated. COBRA applies only to group health plans for employers with 20 or more employees.

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a 65 percent reduction in premium for up to nine months for certain involuntarily terminated individuals and their families who elect COBRA continuation health coverage. The reduction applies effective with the first period of coverage on or after February 17, 2009. Individuals under a state program that provides comparable continuation coverage are also eligible for the premium reduction.

In addition, ARRA provides for a special election period for those whose COBRA qualifying event was involuntary termination of employment during the period from September 1, 2008 through February 16, 2009. Under ARRA, this special election period opportunity is not required to be provided with respect to state continuation coverage provided pursuant to state law.

The Florida Health Insurance Coverage Continuation Act provides for continuation coverage for employees of small employers employing 19 or fewer individuals. COBRA is not applicable to those enrolled in these small employer group health plans.

A state can take action to provide an additional election period in its continuation coverage program for individuals involuntarily terminated during the period from September 1, 2008 through February 16, 2009 who did not elect continuation coverage when it was first offered, or who did elect continuation coverage but are no longer enrolled.

The bill provides for a special continuation coverage election period for qualified beneficiaries impacted by involuntary termination of employment during the period September 1, 2008 through February 16, 2009. It provides carrier notification requirements and clarifies creditable coverage as it applies to pre-existing conditions.

The bill is effective upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides for continuation of group health coverage that might otherwise be terminated. COBRA applies to only certain groups of individuals who lose coverage due to specified events. Group health plans for employers with 20 or more employees are subject to COBRA. Coverage is for a specific period of time, and usually the participants pay the entire premium.<sup>1</sup>

Individuals are allowed up to 60 days after notification for election of COBRA continuation coverage. The person has 45 days after electing coverage to pay the premium. The initial premium payment generally must cover the period of coverage from the date of COBRA election retroactive to the date of loss of coverage due to the qualifying event.<sup>2</sup>

The American Recovery and Reinvestment Act of 2009 (ARRA) included a provision relating to premium assistance for COBRA continuation coverage.<sup>3</sup> It provides for a 65 percent reduction in premium for certain involuntarily terminated individuals and their families who elect COBRA continuation health coverage. The period of reduced premium is effective with the first period of coverage on or after February 17, 2009 and may not exceed nine months. The participant pays 35% and the employer recovers the remaining 65% of the premium by taking the subsidy amount as a credit on its quarterly employment tax return.<sup>4</sup>

In addition, a special election period is available for those qualified beneficiaries whose qualifying event was involuntary termination of employment during the period from September 1, 2008 through February 16, 2009 who did not elect continuation coverage when it was first offered, or who did elect continuation coverage but are no longer enrolled. For those individuals, ARRA requires COBRA notification not later than April 18, 2009 for coverage effective with the first period of coverage on or after February 17, 2009. Under ARRA, this special election period opportunity is not required to be provided with respect to state continuation coverage provided pursuant to state law, however a state can take action to provide an

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<sup>1</sup> [http://www.dol.gov/ebsa/faqs/faq\\_consumer\\_cobra.html](http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.html) last viewed April 17, 2009.

<sup>2</sup> Id.

<sup>3</sup> Section 3001, Public Law 111-5, enacted February 17, 2009.

<sup>4</sup> Instructions for Form 941 (Rev. January 2009), Employer's QUARTERLY Federal Tax Return, Department of the Treasury, Internal Revenue Service on file with the Insurance, Business and Financial Affairs Policy Committee.

additional election period in its continuation coverage program for individuals involuntarily terminated from September 1, 2008 through February 16, 2009.<sup>5</sup>

While ARRA does not change any state continuation coverage program requirements, under ARRA, assistance eligible individuals include those under a state program that provides comparable continuation coverage. In order to be comparable, a state program must provide a right to continue coverage under an employer's group health plan that is substantially similar to what was provided when the individual was employed and at a monthly cost that is based on a specified percentage of the group health plan's cost of providing such coverage.<sup>6</sup> For assistance eligible individuals under a state program, the individual pays 35% of the premium and the insurer recovers the remaining 65% of the premium by taking the subsidy amount as a credit on its quarterly employment tax return.<sup>7</sup>

The Florida Health Insurance Coverage Continuation Act<sup>8</sup> provides access to affordable health insurance for employees of small employers and other qualified beneficiaries not protected by COBRA. Florida's program provides comparable continuation coverage as defined under ARRA.

### **Current Situation:**

Qualified beneficiaries under the Florida Health Insurance Coverage Continuation Act are considered assistance eligible individuals and thus eligible for the premium reduction. For those already enrolled, the period of reduced premium is effective with the first period of coverage on or after February 17, 2009 and may not exceed nine months. Because ARRA may only mandate a special election opportunity for COBRA coverage, premium reduction for state program participants is only available prospectively, absent state legislative action. Those qualified beneficiaries whose qualifying event was involuntary termination of employment during the period from September 1, 2008 through February 16, 2009 who did not elect continuation coverage when it was first offered, or who did elect continuation coverage but are no longer enrolled are not provided a special election opportunity under current *Florida Statutes*.

### **Effect of Proposed Changes:**

The bill provides for a special election period for qualified beneficiaries whose qualifying event was involuntary termination of employment from September 1, 2008 through February 16, 2009 in order for them to be eligible for premium assistance as specified under ARRA based upon an involuntary termination occurring during that period. In addition, it provides clarifying language regarding creditable coverage as it applies to any pre-existing condition coverage limitations.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 627.6692(5)(d) and (g), F.S., by providing for a special election period, carrier notification requirements, and creditable coverage.

Section 2. Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

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<sup>5</sup> <http://www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionER.html> last viewed April 17, 2009.

<sup>6</sup> Helpful Information About State Continuation Coverage ("Mini-COBRA" Programs) and the American Recovery and Reinvestment Act of 2009 (ARRA), Department of Health & Human Services, Centers for Medicare & Medicaid Services on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>7</sup> IRS Notice 2009-27 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>8</sup> s. 627.6692, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

To the extent that an insurer is required to cover the costs of medical services which it would not otherwise be required to provide, absent the special election and coverage period, the bill could have a negative fiscal impact on insurers.

To the extent that providers may be able to recover full or partial payment for services rendered, which they might not otherwise be able to collect, the bill could have a positive fiscal impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

No data exists regarding the number of assistance eligible individuals who will avail themselves of this special election opportunity.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At the April 20, 2009 meeting of the General Government Policy Council, the bill was adopted with one amendment.

The amendment provided clarifying language regarding creditable coverage for pre-existing conditions.

The analysis is drafted to the Proposed Council Bill, as amended.